

Federal Court



Cour fédérale

**Date: 20190924**

**Docket: IMM-1656-19**

**Citation: 2019 FC 1221**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, September 24, 2019**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**ERICK KARIM TORRES CASTRO  
MARYTZA ROSALES CAMACHO**

**Applicants**

**and**

**THE MINISTER OF IMMIGRATION AND  
CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], against a decision of the Refugee Appeal

Division [RAD] rendered on February 18, 2019, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] rejecting the applicants' refugee protection claim.

II. Facts

[2] The applicants are citizens of Mexico. The female applicant, Marytza Rosales Camacho, is married to the male applicant, Erick Karim Torres Castro, and bases her claim on that of her husband.

[3] The male applicant is involved in politics for the Encuentro Social party in the municipality of San Francisco del Rincon in the state of Guanajuato

[4] The male applicant alleges that he received threatening calls to stop his political activity. A few months later, the members of his party and those of the Partido Revolucionario Institucional [PRI] had a dispute that ended with the intervention of the police, who reportedly detained the Encuentro Social members, including the male applicant, for two hours before releasing them.

[5] Following this altercation, the federal police reportedly questioned the male applicant about his political activities and advised him to stop going to certain places to avoid problems.

[6] As for the female applicant, she was verbally attacked by strangers who asked her to stop criticizing the government. A while later, strangers came to the applicants' residence while the

male applicant was absent and questioned the female applicant. Shouts and gunshots were reportedly heard by neighbours.

[7] The applicants left Mexico and on December 12, 2016, were admitted to Canada as visitors. On March 2, 2017, the applicants filed their claim for refugee protection against Mexico.

### III. Impugned decision

[8] The RPD rejected the applicants' refugee protection claim finding that the claimants lacked credibility and reasons in support of their claim. It is not disputed that the male applicant was involved in politics. However, the RPD did not believe the allegations that the police were responsible for the political persecution for two reasons: (1) the police appear simply to have acted on the basis of the complaints received; and (2) the male applicant's omissions from his Basis of Claim Form [BOC Form] regarding the police's role in the alleged events.

[9] The RAD found that the RPD did not err and that the applicants were not credible. Consequently, the RAD confirmed the RPD's decision to not grant the applicants refugee status or that of persons in need of protection pursuant to the IRPA.

[10] Similarly, the applicants wanted to submit as evidence a newspaper article that highlighted a conflict between political parties and police involvement. The RAD refused the filing of the new evidence and to hold a hearing under subsections 110(4) and (6) of the IRPA on the basis that the document in question was not relevant.

IV. Issues

[11] The issues put forward by the applicant can be reworded as follows:

- 1) Did the RAD err in concluding that the applicants' evidence did not comply with subsection 110(4) of the IRPA?
- 2) Did the RAD err in refusing to grant the applicants refugee protection or persons in need of protection status within the meaning of the IRPA?

V. Relevant provisions

[12] The following provisions are relevant:

***Immigration and Refugee Protection Act***

**Convention refugee**

**96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that

***Loi sur l'immigration et la protection des réfugiés***

**Définition de « réfugié »**

**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne

country.

**Person in need of protection**

**97** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

veut y retourner.

**Personne à protéger**

**97** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

**Exclusion — Refugee Convention**

**98** A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

**Ineligibility**

**101** (1) A claim is ineligible to be referred to the Refugee Protection Division if

...

(d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;

*United Nations Convention Relating to the Status of Refugees*

**Article 1 - Definition of the term "refugee"**

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

**Exclusion par application de la Convention sur les réfugiés**

**98** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

**Irrecevabilité**

**101** (1) La demande est irrecevable dans les cas suivants :

[...]

d) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé;

*Convention des Nations Unies relatives au statut des réfugiés*

**Article premier. - Définition du terme "réfugié"**

E. Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.

VI. Analysis

A. *Standard of review*

[13] The RAD's decision to exclude new evidence under subsection 110(4) of the IRPA is reviewed on a standard of reasonableness (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29 [*Singh*]).

[14] The assessment of the applicants' credibility is also analyzed according to the standard of reasonableness (*Liang v Canada (Citizenship and Immigration)*, 2017 FC 1020 at para 7).

B. *New evidence and application of subsection 110(4) of the IRPA*

[15] The RAD did not err in law by refusing to accept the document as evidence. This was a newspaper article dated June 4, 2017, and was therefore available to the applicants at the time of the RPD hearing. Consequently, subsection 110(4) of the IRPA did not allow the applicants to present this new evidence. Similarly, the RAD analysis under *Singh*, above, is not flawed. It was entirely reasonable to conclude that the newspaper article was not relevant to the analysis.

C. *Reasonableness of the RAD's decision*

[16] The RAD's findings of credibility for the applicants are reasonable and cannot be revised by this Court. Contrary to the allegations of the applicants, the RAD's intelligible and justified reasons demonstrate that the decision maker took care to verify the applicants' entire account.

[17] Therefore, its conclusion as to the applicants' credibility is defensible based on the facts and the law. It was entirely permissible to conclude that the police did their job by interviewing participants in the political conflict following complaints from neighbours.

[18] Similarly, the omissions in and discrepancies between the applicants' version in their BOC Form and their testimony before the RPD are significant and reasonably support a conclusion that the applicants lack credibility.

[19] It should also be noted that the RAD was careful to consider the evidence with respect to Mexico's national conditions and the political situation. For this purpose, the RAD's conclusion is reasonable. Although it is known that there may be open conflicts between members of different political parties, it was reasonable to conclude that the applicants' personal situation does not demonstrate a well-founded fear of persecution or a probability of being exposed to such a risk.

## VII. Conclusion

[20] This Court finds no error in the RAD's decision-making process and therefore dismisses this application for judicial review.



**JUDGMENT in IMM-1656-19**

**THIS COURT ORDERS that** the application for judicial review is dismissed. There is no question of general importance to certify.

“Michel M.J. Shore”

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Judge

Certified true translation  
This 7th day of October 2019.  
Johanna Kratz, Reviser

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1656-19

**STYLE OF CAUSE:** ERICK KARIM TORRES CASTRO, MARYTZA  
ROSALES CAMACHO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** SEPTEMBER 5, 2019

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** SEPTEMBER 24, 2019

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