

Date: 20071001

Docket: IMM-5664-06

Citation: 2007 FC 982

Montreal, Quebec, October 1, 2007

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**RICARDO ALBERTO MARTINEZ
ELVA RAMONA BOGADO
LUCIA FLORENCIA MARTINEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Martinezes; husband, wife and minor daughter, fled Argentina to escape persecution, or at least criminal intimidation, by one Luis, the ex common-law spouse of their adult daughter Karina.

[2] Luis subjected Karina to such abuse that she came here in 2000 and successfully claimed refugee status.

[3] Since then, Luis has been obsessed with finding her. Not only has he intimidated the applicants but he wants to make them pay for the break-up.

[4] Finally, they too left Argentina and claimed refugee status. The Refugee Protection Division of the Immigration and Refugee Board held that they were not refugees within the meaning of the United Nations Convention and were not persons otherwise in need of international protection, and so rejected their claims. Although the panel found them to be credible overall, it was not persuaded they were being persecuted. At best, they were victims of crime. The panel also found that an internal flight alternative within Argentina was open to them, and adequate state protection was afforded them.

[5] This is a judicial review of that decision.

ISSUES

[6] As credibility has not been put in doubt, the issues are the internal flight alternative, and state protection.

[7] The internal flight alternative is a pure question of fact. It has been held that the standard of review is that of patent unreasonableness (*Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, [2003] F.C.J. No. 1263; *Mahmood v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 957, [2006] F.C.J. No. 1218; and *Singh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 67, [2007] F.C.J. No. 100).

[8] On the other hand, it has been held that the appropriate standard of review regarding questions of state protection is reasonableness simpliciter (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, [2005] F.C.J. No. 232, which has been followed many times including just last month in *Torres v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 864, [2007] F.C.J. No. 1122.

ANALYSIS

[9] Counsel for the applicants has seized upon some rather loose language in the panel's decision. Given that Mr. Martinez had left Argentina for Bolivia, where he says he could not find satisfactory work, and given that his wife and young daughter had gone ahead to Canada, the panel speculated that family reunification was the real point of seeking refuge in Canada, as the elder daughter, Karina, was here and pregnant.

[10] Even a characterization of that remark as speculation does not take away from the panel's analysis with respect to the internal flight alternative. The panel found that the family had no need to remain in Buenos Aires. They were prepared to relocate, as witnessed by Mr. Martinez's visit to Bolivia. The panel noted that Argentina is a large country with an area a little less than 3/10s the size of the United States and with a population of approximately 40 million. There were several large cities such as Cordoba or San Miguel de Tucuman, where the claimants could move and live in peace. Counsel submits that no proper analysis was done of these two cities. However, with respect, the burden rested on the claimants to establish that they had no reasonable alternative but to

leave the country. Rather the focus was on state protection and the panel's view, which is certainly open to challenge, that claimants must exhaust all avenues of protection and redress.

[11] Although both state protection and the internal flight alternative are in issue in many claims, the fact is that they are distinct. If one can flee the source of persecution or criminality so that there is no more than a mere possibility of harm, then state protection is not really in issue. State protection comes to the fore when the victims cannot escape the source.

[12] The decision of the panel was not patently unreasonable, and so the application must be dismissed.

[13] The Minister had submitted questions of general importance for certification in the event that the determination of adequate state protection formed the basis of my decision. Although the questions are interesting, one of the tests for certification is that the question must be dispositive of an appeal. Since I have based my decision on other grounds, there is no question to certify.

ORDER

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

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5664-06

STYLE OF CAUSE: RICARDO ALBERTO MARTINEZ ET AL. v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 24, 2007

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: October 1, 2007

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