

Date: 20071001

Docket: IMM-4858-06

Citation: 2007 FC 993

Toronto, Ontario, October 1, 2007

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**MARTIN VAZQUEZ LARA
LAURENTINO USCANGA LARA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Martin and Laurentino Lara are cousins who sought refugee protection in Canada, claiming to fear persecution in Mexico on the basis of their perceived political opinion. The Refugee Protection Division of the Immigration and Refugee Board rejected the cousins' claim, finding their story of persecution at the hands of the authorities within the Pentathlon Deportivo Militarizado Universitario and the military police not to be credible. The Board further found that, in any event, adequate state protection was available to the cousins in Mexico.

[2] The applicants now seek judicial review of the Board's decision, asserting that the Board erred in failing to provide any reasons for its negative credibility finding. This in turn resulted in it being impossible to determine the extent to which the Board's negative credibility assessment affected the Board's state protection analysis.

[3] Moreover, the applicants say, the Board's state protection analysis was flawed, as the Board did not take into account the fact that the agents of persecution in this case had close ties to the Mexican military.

[4] Finally, the applicants submit that the Board acted in a procedurally unfair manner by relying on extrinsic evidence with respect to conditions within Mexico, without providing either of them with any opportunity to respond to the evidence.

Background

[5] The applicants are former students of the Pentathlon Deportivo Militarizado Universitario, an educational institution that provides training to its students in military values, discipline and physical education. According to the applicants, while the school was a private institution, the administration of the school has very close ties to the Mexican military.

[6] The applicants say that they became aware of corruption and abuse of power within the Pentathlon's administration, and that they became involved with a student activist group whose goal

was to bring about change in the Pentathlon's leadership. Both applicants claim that they were threatened and suffered physical attacks as a result of their involvement with the group.

[7] Martin Vazquez Lara also asserts that he was kidnapped and beaten a few days before the cousins fled Mexico, and that his passport was also stolen by his assailants. He believes that his kidnapping was done at the behest of the commandant of the Pentathlon.

[8] Martin says that he approached the police to complain about his kidnapping. Although he tried to tell an officer what had happened, it was clear that the officer was not interested in dealing with his complaint. As a consequence, he only filed a written complaint with respect to the stolen passport. A few days later, the cousins left Mexico and came to Canada, where they made their refugee claims.

Standard of Review

[9] The applicants' concern with respect to the Board's negative credibility finding is the absence of reasons supporting that finding. A question as to the sufficiency of reasons raises an issue of procedural fairness. So too does the Board's alleged reliance on extrinsic evidence.

[10] It is unnecessary to go through a pragmatic and functional analysis in relation to a question of procedural fairness – it is for the Court to determine whether the procedure that was followed in a given case was fair or not, having regard to all of the relevant circumstances: *Sketchley v. Canada (Attorney General)*, [2005] F.C.J. No. 2056, 2005 FCA 404, at 52-53.

[11] Insofar as the Board's assessment of the availability of adequate state protection is concerned, the applicable standard of review is that of reasonableness: see *Chaves v. Canada (Minister of Citizenship and Immigration)* [2005] F.C.J. No. 232, 2005 FC 193.

Analysis

[12] There is no question but that the Board's assessment of the applicants' credibility was wholly inadequate. After reciting the applicants' allegations, the sum total of the Board's discussion of the credibility question is "Even if the panel had accepted the claiman[ts'] evidence as credible and trustworthy, which it did not, the panel is of the opinion that state protection is and was available in Mexico for these claimants". No reasons whatsoever were provided for the Board's conclusion that the applicants were not credible.

[13] The respondent submits that the Board's credibility finding was clearly made in the alternative, and that the state protection can stand on its own, regardless of any question as to the applicants' credibility. I do not agree.

[14] First of all, the Board identified both credibility and state protection as determinative issues in this case.

[15] Moreover, if, as the respondent suggests, the Board conducted its state protection analysis on the assumption that the applicants' story was true, then its analysis was inadequate as it failed to

assess the availability of state protection in situations where the agents of persecution are members of the military, as is claimed by the applicants.

[16] If, on the other hand, the Board did not accept the applicants' evidence as to the connection between the senior administration of the Pentathlon and the military and the identity of the agents of persecution, then the Board erred in failing to provide any reasons for its negative credibility findings in this regard.

[17] On this basis, I would allow the application for judicial review, and set aside the Board's decision.

[18] I would also note that it appears that the Board further erred in taking into account documentary evidence regarding country conditions within Mexico that was not properly before it in this specific case. The applicants point to this as evidence that the Board merely lifted a "boilerplate" state protection analysis from another decision, inserting it into this decision, without regard to the particular circumstances of the applicants.

[19] I would prefer not to speculate as to how the references to the documentary material in question found their way into the decision in this case. While I agree with the respondent that the documentary evidence in issue was not materially different than the country condition information that was properly before the Board, suffice it to say that reference to extrinsic evidence in such

circumstances is unfair, and that the Board should confine its consideration to the evidence properly before it.

Conclusion

[20] For these reasons, the application for judicial review is allowed.

Certification

[21] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a different visa officer for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4858-06

STYLE OF CAUSE: MARTIN VAZQUEZ LARA ET AL v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 27, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

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