

Date: 20080123

Docket: IMM-1624-07

Citation: 2008 FC 83

Ottawa, Ontario, January 23, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

LUIS FRANCISCO FLORES DE LA ROSA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant asks for judicial review of the Immigration and Refugee Board's rejection of his claim for protection wherein it found that: (1) part of his story was not credible, (2) he had an internal flight alternative (IFA) in Mexico City, and (3) state protection was available.

II. BACKGROUND

[2] Mr. Flores de la Rosa is a gay man originally from Guadalajara, Mexico. He claimed that his lover, Bernardo, beat and stabbed him and that one of Bernardo's friends offered to put him "out of the way". He also alleged that Bernardo and his friends tried to find him when he tried to hide in another city.

[3] The Applicant also claimed that Bernardo prevented him from obtaining immediate medical assistance. He also said that when he filed a police report against Bernardo, the police laughed at him and took no action.

[4] Lastly, he alleged that his former boyfriend had friends in the federal judicial police who would assist Bernardo in finding him. The Applicant is also HIV-positive and allegedly at risk of persecution on that ground alone in addition to being unable to secure the anti-retroviral drugs.

[5] The Board found that on a balance of probabilities, the Applicant was not subject to the alleged abuse and that both state protection and an IFA were available.

III. ANALYSIS

[6] Whatever the alleged infirmities may be on the credibility finding, the existence of state protection and IFA are a complete answer to the Applicant's claim.

[7] On the facts underpinning the IFA and on the findings of fact and credibility, this Court has held the standard of review to be patent unreasonableness (*Sarker v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 353; *Aguebor v. (Canada) Minister of Employment and Immigration (F.C.A.)*, [1993] F.C.J. No. 732 (QL)). As to state protection, the standard has been held to be reasonableness (*Robinson v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 402). Even if credibility and IFA were measured against a standard of reasonableness, the result would be the same.

[8] Even if the Board's credibility finding as to an incident related to reports of police was suspect (a finding that I do not make), the adverse credibility conclusion which flowed in part from the credibility finding did not affect (as in "taint") the findings of IFA and state protection. Therefore, the decision in *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1617 is distinguishable on that ground alone.

[9] With respect to the IFA finding, there have been numerous decisions of this Court upholding as reasonable or not patently unreasonable Board findings that Mexico City is an IFA for most gays and lesbians in Mexico (see, for example, *Ortiz v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1365).

[10] The Applicant has not identified any evidence related to the IFA which runs contrary to the Board's finding. The burden of proof rested on the Applicant to overcome this presumption.

[11] On the finding of state protection, it was open to the Board to conclude that the Applicant had provided insufficient evidence to rebut the presumption of state protection. Mexico was found to be a democratic state with a functioning government. On a general level, there was nothing to suggest that Mexico could not provide protection.

[12] On a personal level, it was open to the Board to conclude that the Applicant had not sufficiently attempted to engage state protection to be able to sustain the argument that it was not available to him personally.

IV. CONCLUSION

[13] Therefore, this application for judicial review will be denied. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be denied.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1624-07

STYLE OF CAUSE: LUIS FRANCISCO FLORES DE LA ROSA

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 22, 2008

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

DATED: January 23, 2008

APPEARANCES:

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