

Date: 20080328

Docket: IMM-2966-07

Citation: 2008 FC 399

Ottawa, Ontario, March 28, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

OMAR GEOVANI CRUZ MARTINEZ

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] In the present case, the Refugee Protection Division of the Immigration and Refugee Board (RPD) rejected the claim for protection of Omar Geovani Cruz Martinez on a single ground: the existence of an internal flight alternative in Mexico City. Counsel for the Minister has candidly acknowledged that the RPD's finding of an internal flight alternative in Mexico City is flawed. I agree and, as a result, this application for judicial review will be allowed.

[2] At the hearing before the RPD, the presiding member indicated that "at this particular time, I'm not raising credibility concerns." Thus, Mr. Cruz Martinez's testimony before the RPD is to be accepted as being true.

[3] He testified that, in 2005, his father began being pressured by members of the federal police to sell illegal drugs in his variety store. Mr. Cruz Martinez helped to manage the store and, when his father refused to comply with the demands, Mr. Cruz Martinez began to be threatened.

[4] On April 18, 2006, Mr. Cruz Martinez was abducted by members of the federal police and kept for three days.

[5] His mother reported the abduction to the Public Ministry. After his release, Mr. Cruz Martinez filed a report with the Public Ministry.

[6] The family began receiving threats and Mr. Cruz Martinez was sent to live with his uncle. After moving to his uncle's home in Veracruz – a distance of approximately four and one half hours by car – Mr. Cruz Martinez was contacted, threatened, and told that he would not be safe anywhere in Mexico.

[7] Mr. Cruz Martinez was then sent to live with his aunt. After moving to his aunt's home in Toluca – a distance of approximately fourteen or fifteen hours by car – a person told the applicant's father that they knew where the applicant was living.

[8] When asked if he would be safe in Mexico City, Mr. Cruz Martinez testified that the police officers would eventually find him because of their ability to access information, such as voting cards and records of persons returning to Mexico.

[9] The central finding of the RPD with respect to an internal flight alternative was as follows:

I agree with counsel that there are many identified problems in the enforcement of the laws that have implemented to combat corruption in the security forces. However, I do not agree that these efforts of the government have not had an impact in urban areas of Mexico such as Mexico City.

[...]

On a balance of probabilities, I am satisfied that should the claimant suffer further harm or threat of harm from officers of the Federal Police, that the legal recourses available to him in Mexico City will provide him with adequate protection.

[10] However, in reaching this conclusion, the RPD failed to cite any evidence that established that the situation existing in Mexico City was qualitatively different from that prevailing elsewhere in Mexico.

[11] In addition to Mr. Cruz Martinez's unchallenged testimony, the following evidence was before the RPD:

- corruption is widespread in the police and criminal justice systems;
- although a number of efforts have been initiated to combat corruption, monitoring organizations have reported that acts of public and private corruption still occur on a regular basis;
- secret drug trafficking networks exist in the police and the armed forces;

- the extensive use of the voter's registration card makes it easy for the police to find a person by accessing the database;
- kidnapping for extortion is prevalent across the country, especially in major urban areas such as Mexico City; and
- police involvement in kidnappings was reported in numerous media articles.

[12] As explained above, the finding of an internal flight alternative in Mexico was made without any evidentiary basis to establish why things were different in Mexico City. The finding of an internal flight alternative was also made without apparent regard to the above evidence, which contradicted the finding of the RPD. For these reasons, the decision of the RPD cannot be justified. It is therefore unreasonable.

[13] Counsel for the Minister did attempt to argue that the decision could be upheld on the basis that it constituted a finding of adequate state protection. However, it is clear from the entirety of the RPD's reasons that it was only considering the situation in Mexico City and whether that situation constituted a viable internal flight alternative. The decision cannot be upheld on a ground not specifically considered by the RPD.

[14] For these reasons, the application for judicial review is allowed. No question is certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed and the decision of the Refugee Protection Division dated July 3, 2007, is hereby set aside.

2. The matter is remitted to the Refugee Protection Division for redetermination by a differently constituted panel.

“Eleanor R. Dawson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2966-07

STYLE OF CAUSE: OMAR GEOVANI CRUZ MARTINEZ, Applicant
and
MINISTER OF CITIZENSHIP AND IMMIGRATION,
Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 19, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: MARCH 28, 2008

APPEARANCES:

SELF-REPRESENTED	FOR THE APPLICANT
MS. J. MICHAELY	FOR THE RESPONDENT

SOLICITORS OF RECORD:

SELF-REPRESENTED	FOR THE APPLICANT
JOHN H. SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA	FOR THE RESPONDENT