

Date: 20080404

Docket: IMM-4135-07

Citation: 2008 FC 438

Montréal, Quebec, the 4th day of April 2008

Present: the Honourable Madam Justice Danièle Tremblay-Lamer

BETWEEN:

**JUAN LUIS GONZALES TEJEDA
ERIKA MARIA LOPEZ REYES**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) made pursuant to section 72 of the *Immigration and Refugee Protection Act* (the Act). In its decision dated September 6, 2007 (the decision), the panel concluded that the applicants did not have the status of Convention refugees or persons in need of protection.

[2] The applicants are citizens of Mexico. The principal applicant alleged he was kidnapped and tortured by the underworld, which was looking for his father, who had been arrested and sentenced to eight years' imprisonment for drug trafficking.

[3] He said they left the city in August 2006 and moved to Santa Catarina Nuevo Leon, located in northern Mexico, where they were again attacked.

[4] In December 2006 they left Mexico for Canada. On February 28, 2007, they filed their refugee status claim, which was dismissed on the ground that they were unable to provide clear and persuasive evidence that the Mexican government was unable or unwilling to protect them.

[5] The earlier decisions of this Court indicate that unless the governmental apparatus has collapsed completely, it should be presumed that the government is capable of protecting a claimant. It is also established that general documentary evidence on conditions in the country of origin is not adequate to rebut this presumption (*Sholla v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1299, 2007 FC 999, and *Ward v. Canada*, [1993] 2 S.C.R. 689). The Court has further recognized that the protection offered by the government does not necessarily have to be effective (*Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (QL) at paragraph 7).

[6] It is hard to blame a decision-maker for concluding that a refugee status claimant has not rebutted the presumption that government protection is available when he "has made no effort to

seek government protection” (*Skelly v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1244, at paragraph 51).

[7] In the case at bar, except for a complaint filed with the Mexican authorities by the applicant’s mother, no other action was taken to seek government protection. When the applicants were attacked in Santa Catarina Nuevo Leon, they preferred to leave the town at once without seeking the assistance of the local authorities.

[8] It should be noted that the panel did not in any way question the applicants’ credibility as to the truth of the facts alleged. In order to obtain a favourable response from the panel, they had to rebut by clear and persuasive evidence the presumption that a democratic state such as Mexico is capable of protecting its citizens, which unfortunately they could not establish.

[9] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that

The application for judicial review is dismissed.

“Danièle Tremblay-Lamer”

Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4135-07

STYLE OF CAUSE: **JUAN LUIS GONZALES TEJEDA *ET AL.***
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 3, 2008

REASONS FOR JUDGMENT
AND JUDGMENT BY: THE HONOURABLE MADAM JUSTICE DANIÈLE
TREMBLAY-LAMER

DATED: April 4, 2008

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Kinga Janik FOR THE RESPONDENT

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