

Date: 20080610

Docket: IMM-236-08

Citation: 2008 FC 728

Toronto, Ontario, June 10, 2008

PRESENT: The Honourable Madam Justice Layden-Stevenson

BETWEEN:

**NORMAN HERNAN LOPEZ MEDINA
TERESITA DEL ROSARIO PUENTE MERCADO
(a.k.a. TERESITA DEL RO PUENTE MERCADO)
NORMAN HERNAN LOPEZ PUENTE
DIEGO ANDREE LOPEZ PUENTE
FRIDA NATALIA LOPEZ PUENTE**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are citizens of Mexico. The family sought protection in Canada on the basis of membership in a particular social group and on the basis of the male applicant's political opinion. The Refugee Protection Division (RPD) rejected the claim because: (a) the claim is based on speculation; and (b) adequate state protection exists in Mexico City.

[2] The applicants contend that the analysis (or lack thereof) regarding both findings does not pass the justification, transparency and intelligibility requirement mandated by *Dunsmuir v. New Brunswick* 2008 SCC 9. I agree. Consequently, the application will be allowed.

Background

[3] Distilled, the facts advanced by the applicants follow. The male applicant, Mr. Medina, a successful businessman, lived in Naucalpan (a suburb of Mexico City). He, along with several other individuals, invested money to open a private university in the state of Veracruz (Latin America Centre of Professional Studies). He began working several days a week in Veracruz to attend to this project. He became involved with a civil association, “New Times for Veracruz”, created to support the Institutional Revolutionary Party (PRI) candidate running for governor of the state of Veracruz.

[4] When the candidate was successful, Mr. Medina was offered a position as the head of Veracruz’s Water Commission. Subsequently, beginning in September of 2005, he received several personal threats warning him not to take the job because the area of land “belongs to a local powerful landowner”. Ultimately, Mr. Medina decided to withdraw his investment from the university project and leave Veracruz. The major investor objected to the withdrawal of the investment money.

[5] Thereafter, Mr. Medina received numerous threatening calls on his cell phone. In April of 2006, the caller stated that he was instructed to hurt Mr. Medina if he did not cooperate and pay them money. In July, after receiving a call during a family meal in Tepotzotland, a car tried to run the family vehicle off the road. Further telephone calls followed. In September, the caller stated that he knew exactly where Mr. Medina's family members were and what they were wearing. The caller demanded 50,000 pesos not to kidnap Mr. Medina. In October, the same caller stated that he knew Mr. Medina's wife was at the convenience store and that instructions for payment of money would be forthcoming.

[6] Mr. Medina reported the initial telephone call to the Federal Agency of Investigations and provided the caller's telephone number. The family filed a complaint with the police after the car incident. The demand for 50,000 pesos was also reported to the authorities. Regarding the latter report, after being told to return the following day, the police officer allegedly told Mr. Medina that "someone influential" was behind these calls. The officer, for a fee, offered to put a patrol outside the Medina home.

[7] The Medina family left Mexico on October 5, 2006. During a telephone conversation with the police officer, from the airport, the officer stated that "what he [Mr. Medina] was doing was best". The claims for protection were made on October 6th.

The Standard of Review

[8] The parties agree, and I concur, that the applicable standard of review is that of reasonableness.

Analysis

[9] Regarding the finding that the entire claim is based on speculation, the RPD stated:

No member of the family has ever been harmed. While there may have been threatening phone calls or even an attempt to cause the principal claimant to stop his car, there was no accident, no vehicle was damaged, and no one was injured. Other than the phone number of a cell phone and the make of the other car involved, the claimants have been able to offer no evidence to the authorities.

The fact the authorities offered to provide extra patrols if paid for by the principal claimant does not seem different than what occurs here, when Canadian citizens hire private security firms to provide patrols. Based on the evidence the claimant provided the authorities, it would be hard to fault those authorities for not providing additional patrols.

[10] This is the entirety of the analysis and, in my view, it constitutes an elusive negative credibility finding. Credibility is a matter which falls within the exclusive purview of the RPD. The RPD was not obliged to accept Mr. Medina's story. However, the law has long required that credibility findings be stated in clear and specific terms: *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 130 N.R. 236 (C.A.). In the absence of a definitive determination of non-credibility, an applicant's evidence is presumed to be true. In my opinion, the RPD's analogy regarding private security firms and state authorities is not an appropriate one. Similarly, the fact that "no one was harmed" or "no one was injured" is not indicative of the absence of fear.

[11] Notwithstanding the obvious frailties with respect to the noted “analysis”, the crucial finding underlying the RPD’s rejection of the Medina family’s claim is the issue of state protection. I disagree with the applicant’s counsel that the mere use of the words “serious efforts” indicates that the RPD misdirected itself in its state protection analysis.

[12] Nonetheless, I conclude that the state protection analysis is untenable. On its face, it appears to be a template with scant reference to the applicants’ circumstances.

[13] The statements relied upon by the RPD, from the United States Department of State: Mexico (USDOS) report, are not relevant to the circumstances of the Medina family. There were no allegations with respect to human rights abuses, police brutality and the use of torture, or to the independence of the judiciary. These issues are not relevant to the claims. The contents of the Issue Paper, “Mexico, Situation of Witnesses to Crime and Corruption, February 2007”, are described in more accurate and detailed terms.

[14] Contrary to the applicants’ submission, the RPD should not be faulted for failing to address the Human Rights Watch document because the circumstances of this matter do not fall within the categories discussed in the document (justice to victims of violent crime and human rights abuses). The same cannot be said for the IRB Response to Information Request 100642, which specifically discusses kidnapping for extortion being especially prevalent in Mexico City, information that contradicts the RPD’s conclusions and goes directly to the Medina family’s circumstances. Similarly, the Mexico State Protection May 2005 document, which is not mentioned, contains

information both helpful and detrimental to the Medina family's claim. Finally, the RPD neglects to squarely address the applicants' efforts to access state protection in Mexico.

[15] Unquestionably, it is open to the RPD to conclude that state protection exists in Mexico. That said, to arrive at such a conclusion, on the basis of a summary of country conditions (such as those that are present in this case), without more, does not constitute a decision that falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. It goes without saying that references relied upon from the country conditions documents, to support a finding of state protection, should bear some relevance to the claim. That is not the situation here.

[16] I am well aware that the standard of reasonableness does not invite substitution of the court's opinion for that of the RPD. Curial deference is owed. However, this is not a case involving the desirability for more elaborate or informative analysis. On the contrary, the reasons are, in my view, profoundly flawed. Mere recitation of excerpts from documentary evidence, immaterial to the claim, followed by a conclusion (which does not, and in the present case could not, link the contents of the country conditions documentation to the claim) yields an unreasonable decision which lacks justification, transparency and intelligibility.

[17] Counsel did not suggest a question for certification and none arises. The respondent's counsel is to be commended for declining to defend the indefensible.

JUDGMENT

The application for judicial review is allowed and the matter is remitted for determination to the Refugee Protection Division of the Immigration and Refugee Board, differently constituted.

“Carolyn Layden-Stevenson”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-236-08

STYLE OF CAUSE: *NORMAN HERNAN LOPEZ MEDINA TERESITA DEL ROSARIO PUENTE MERCADO (a.k.a. TERESITA DEL RO PUENTE MERCADO) NORMAN HERNAN LOPEZ PUENTE DIEGO ANDREE LOPEZ PUENTE FRIDA NATALIA LOPEZ PUENTE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION*

PLACE OF HEARING: TORONTO, ONTARIO

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AND JUDGMENT:** LAYDEN-STEVENSON J.

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