**Date: 20080617**

**Docket: IMM-5160-07**

**Citation: 2008 FC 750**

**Toronto, Ontario, June 17, 2008**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**LUZ ALICIA LOPEZ GEA**
**LUZ BELEN LOPEZ GEA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP**
**AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review made pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated November 27, 2007, wherein the applicants were found not to be "Convention refugees" nor "persons in need of protection" under sections 96 and 97 of the Act, on a finding of the availability of adequate state protection in the Federal District of Mexico City.

I. Facts

[2] The applicants, Ms. Alicia Lopez Gea (the applicant) and her minor daughter Belen Lopez Gea, are citizens of Mexico. The applicant alleged on behalf of herself and her daughter a fear of persecution in Mexico at the hands of her former common-law spouse.

[3] The applicant met her partner Ulises in July of 1995, and initially all went well. But the applicant was soon the victim of jealousy and violence. A series of abusive behavior ensued and climaxed when she became pregnant in October 1996. Ulises threatened to end the pregnancy and in fact beat her in the stomach in an attempt to do so. Fortunately the unborn child survived and after a brief stay at a clinic, the applicant moved back to her parents' house where she stayed until December 1998.

[4] Though he was not to be found at the time of his daughter's birth, Ulises attempted to contact the applicant, see the baby and begged for reconciliation while the applicant was staying with her parents. The applicant alleged that she resisted before eventually giving in to Ulises' pursuits as he seemed to have progressively changed for the better, and at the insistence of her mother who was ashamed of her failure and status as an unmarried mother. She returned to co-habit with Ulises to be very quickly subjected to violence once again.

[5] Ulises would intimidate the applicant and remind her that he had friends who were in the police and would invite them over to the house. In September 2000, the applicant had confided in

her landlady who took her to the Departmento Integral Familiar (DIF) to ask for police protection. She was given an appointment three months hence. She continued to be abused until she decidedly left him and returned to her parents a month later. In December 2000, Ulises visited the applicant at her parent's house and at first attempted reconciliation, but when the applicant told him in no uncertain terms that she would never return, he became angry and threatened her and reminded her of his police connections.

[6] At her meeting with the DIF, the applicant was offered nothing more than counseling. In the meanwhile, Ulises continued to harass the applicant during a period of on-again off-again communication until finally there was a complete silence between November 2002 and March 2004 at which time he asked and received supervised visitation rights at the encouragement of the applicant's mother. He soon began to make disparaging remarks about the applicant to their daughter and threatened to take her away. The applicant went to the police and was assigned a lawyer who she alleges was of little help and kept demanding more money. She would still receive threatening visits by her ex at her parents' home, and he showed up once with an alleged court order granting him custody of their daughter. He did leave without the child, but when the applicant discussed the matter with her lawyer, she was told he was unaware of such a court order and that there was nothing further he could do to help her.

[7] Hence began a series of travels. In September 2005, she decided to flee and went to Toluca, Mexico State, stayed with a friend and worked in a bakery. A month later, she alleges that Ulises contacted her there, so she fled to Xalapa, Veracruz and stayed with an aunt and got a job as a

waitress. She was called back to her parents' home under the obligation of responding to what she thought was a legal notice to show up for a court hearing to discuss the custody of Belen. A new lawyer was hired and it was quickly discovered that there was no such hearing. The applicant filed a statement with the authorities. Ulises showed up at the house and demanded to see their daughter and beat the applicant when she refused the visit. The police were called but never showed up to the house. She received medical care and subsequently filed another statement with the authorities.

[8] In December 2005 the applicant traveled with her daughter to Morelia, Michogan and found work as a nanny. In February 2006, the applicant claims that Ulises showed up with two men and threatened to kill her and unsuccessfully tried to kidnap their daughter. She fled to Tijuana with her daughter the next day and from there to Mexico City. In April the applicant returned back to her parents' home where she was once again visited by her ex who tried to reconcile; but when she refused, he produced a gun and threatened to kill her. She escaped into the house and fled back to Mexico City where she filed, on April 18, 2006, a report with the police detailing her problems. The applicant alleges that the next day, she was visited by two police men who took her into a police car, beat and sexually molested her before being told to give her daughter to Ulises. She did not file any complaint with the police about this last incident, but told her lawyer what had happened so he could file on her behalf. Six days later, she arrived with her daughter in Canada and claimed refugee status.

[9] On October 2007, the Board held a hearing of the applicant's refugee claim, and in a decision dated November 27, 2007, denied the claim after having determined that neither she nor her daughter were "Convention refugees" nor "persons in need of protection".

II. The Impugned Decision

[10] The credibility of the applicant was not in issue. The Board rejected the applicant's claim on the basis of the availability of an internal flight alternative (IFA) in the Federal District (DF) of Mexico City, and state protection for both the applicant and her daughter. In reaching this conclusion, the Board refers to the documentary evidence which indicates that in the DF place there is in place a legislative framework that is designed to provide victims of domestic violence recourse through the rule of law.

[11] In its reasons, the Board lists a number of documents it considered in taking a negative decision, including a psychologist's report that stated the applicant was suffering from "symptoms of Posttraumatic Stress Disorder and a Major Depressive Disorder, Severe without Psychotic Features". The report also suggests that the psychological functioning of her minor child would likely be threatened if they were to be deported. While the Board accepted these findings, the Board concluded that there was no persuasive evidence submitted to show that the claimants would not be able to obtain suitable mental health care if they were to return to Mexico. This finding was supported by information taken from the Guidelines on Women Refugee Claimants fearing Gender-related Persecution, an IRB publication.

[12] In order to evaluate the applicant's claim that she would not be able to obtain protection in Mexico City because her ex-partner has and will continue to find her, the Board considered a number of documentary submissions to conclude that state protection is available in light of legislative requirements to report and prevent domestic violence and criminal behaviour including spousal rape. The Board further narrowed its analysis to the Federal District (D.F.) area in Mexico City, given that the implementation of these laws is not uniform across Mexico and therefore adequate state protection would be questionable, but that all such legislation and initiatives have been implemented in the D.F., and therefore would respond to the applicants' needs if they lived in that area. There is also a finding that, despite a lack of reliable data that makes it difficult to assess the effectiveness of some recent initiatives including the training of officers in gender based violence, availability of shelters, legal consultations and a mechanism to file a complaint against a public servant, the Board is satisfied that perfect protection is not necessary (*Canada (Minister of Employment and Immigration) v. Villafranca,* [1992] F.C.J. No. 1189, (1992) 18 Imm. L.R. (2d) 130 (F.C.A.) and is rarely the case in any country.

[13] As to the specific incident in Mexico City in which the applicant was beaten and sexually molested by two police officers, the Board finds that there are recourses available to her as a victim of a criminal act from police officers, which she chooses not to exercise. The Board is satisfied that while there may be many areas of Mexico where serious efforts to provide adequate protection as a result of a corruption and criminality are not being made, in the D.F., including Mexico City, this is not the case.

[14] The Board finds that the applicant did not exhaust the courses of action available to her, as is required by a claimant living in a democratic country, before seeking international protection. It was found that the applicant did not discharge the onus of showing clear and convincing proof of the state's inability or unwillingness to protect her and her daughter.

[15] With respect to the minor child, the Board finds that the applicant's ex-spouse was trying to obtain custody, and that she did not provide persuasive evidence that he wished to harm the child, nor that the functioning of the domestic court would undermine the process of resolving this custody dispute between them.

[16] The Board summarizes its analysis and applies a two prong test for the IFA, determining that there is not a serious possibility of persecution should the applicants return to Mexico and live in Mexico City, and that it would not be unduly harsh for them to do so, as the applicant was successful at finding employment in various fields. Given the existence of an IFA in Mexico City, coupled with adequate state protection, the claimants are found not to be Convention refugees nor in need of protection.

## III. Issues

[17] The issues submitted by the parties can be rephrased as follows:

a. Did the Board err in finding that the applicant had an IFA and state protection in the D.F. of Mexico City?

b. Did the Board base its decision on unreasonable inferences and speculation without due regard to the evidence?

[18] The applicant argues that credibility is not an issue, and in light of the fact that no adverse finding of credibility was made by the Board, it must be taken to have accepted the entirety of the testimony as credible. The respondent did not make submissions as to the issue of credibility.

[19] Nevertheless, deciding is choosing or retaining in the proof the elements supporting a conclusion instead of another. This is what is called appreciating or weighing the evidence; and it is precisely the role of the Tribunal to do so.

IV. Standard of Review

[20] The Board's findings with respect to an available IFA in Mexico are findings of fact reviewable on the standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9; *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449; *Eler v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 418, 2008 FC 334, at paragraph 6). [2008] F.C.J. No. 571). This is a deferential standard which recognizes that certain questions before administrative tribunals do not lend themselves to one specific, particular result but instead give rise to a number of possible and reasonable conclusions.

[21] There fore the Court will review the Board's decision with regard to "the existence of justification, transparency and intelligibility within the decision-making process [and also] [...] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, *supra*, at paragraph 47).

[22] Further, the Court will keep in mind that the Board is not required to establish the existence of state protection. The onus to rebut the presumption of state protection remains at all time on the refugee claimant, (*Canada (Attorney General) v. Ward,* [1993] 2. S.C.R. 689, [1993] S.C.J. No 74).

V. Analysis

[23] The applicant has attempted to argue that the Board erred because it failed to consider contradictory evidence, and fails to consider the effectiveness and immediacy of the police reaction in its determination on state protection.

[24] In the present case, the Board determines that the applicant has an IFA in the Federal District. However, in reaching that conclusion, the Board finds that the applicant had not rebutted the presumption of state protection. Given that the applicant's challenge is primarily mounted against the Board's findings on state protection, that finding must be dealt with.

[25] It is true that a decision-maker should refer to evidence that contradicts its conclusions, and that the Court could infer that an erroneous finding of fact was made from "a failure to mention in

its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency." *(Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425, at para. 15). On the other hand, "the reasons given by administrative agencies, (such as the Board here), are not to be read hypercritically by a court", nor are tribunals required to refer to every piece of evidence that they received (*Cepeda-Gutierrez,* above, at paragraph 16).

[26] It is also true that the effectiveness of the mechanisms of state protection must be evaluated. *Lopez v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1341, deals with this concept.

[27] However, it must also be remembered that there is a presumption of state protection, especially in a democratic state. This presumption has been accepted numerous times in this court (*De La Rosa v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 83, *Santos v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 793; *Lazcano v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1630, *Baldomino v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1638). The applicant has the burden of rebutting that presumption.

[28] The Board clearly considered in its decision the effectiveness of state protection and, on a general level, addressed the gaps or inconsistencies in Mexican state protection. It recognized also that the documentary evidence shows that the Federal District must be distinguished from the generalized information about Mexico, and that the legislative framework differs from state to state.

In the documentary evidence that was before the Board, the Federal District is referred to separately from other states with regard to domestic violence, and its legislative and institutional framework – as well as some information about its implementation – is dealt with. While the information regarding the "effectiveness" of the serious effort to deal with domestic violence in the DF of Mexico City is limited, it does not contradict the Board's findings. The Board notes that there are serious problems regarding domestic violence in Mexico, but that the authorities in its Federal District are making serious efforts to deal with the violence. This is supported in the documentary evidence that was before the Board in this case.

[29] The applicant simply overstates the amount and strength of the contradictory documentary evidence on the Federal District that was before the Board when it made its decision In accordance with the decision in *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, the applicant was required to put forward clear and convincing evidence that state protection is not available to her and her daughter.

[30] With respect to the incident in Mexico City were the applicant was beaten and sexually molested by police officers, the Board retains that while documentary evidence indicates that there are recourses available to the applicant as a victim of criminal act from police officers, the applicant choose not to exercise her recourses.

[31] The applicant argues further that the Board misconstrued evidence to conclude that the applicant's ex-spouse was seeking custody of their minor child, rather than using lies, threats and

violence to force the applicant to return to him. Further she argues that at no time did the father of the child attempt to use the court system to affect a change in custody.

[32] While Ulises may not have taken legal steps to assert a claim to custody, still the Board's inference in light of other evidence that Ulises was remarried and could not have other children lends to a reasonable conclusion that he was interested in taking his daughter away from her mother, the applicant. The Court therefore finds that the Board's stated conclusion as to the intent of the ex-partner to seek custody of his daughter falls within a range of possible, acceptable conclusion quite defensible in respect of the evidence.

[33] This still leaves however the question of the reasonableness of the Board's finding that the applicant has an IFA. The test for this can be found, reformulated, at paragraph 20 of *Kumar v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 601:

> In order for the Board to find that a viable and safe IFA exists for the applicant, the following two-pronged test, as established and applied in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.) and *Thirunaukkarasu*, [1994] 1 F.C. 589 (C.A.), must be applied:
> (1) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the proposed IFA; and
> (2) Conditions of the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[34] The applicant's prior efforts to obtain state protection outside the DF of Mexico City is not sufficient to rebut the presumption of state protection in the DF of Mexico city where evidence shows that measures are increased to provide adequate state protection.

[35] Given the evidence before the Board regarding the various avenues available to the applicant in the DF, its finding that the applicant had not reasonably pursued available courses of action, including those available to her as a victim of the police, and that there is no serious possibility of the applicant and her daughter being persecuted in the proposed IFA is far from being unreasonable. On the contrary the Court finds this conclusion logical and one of the possible acceptable outcomes based on the evidence.

[36] Would it be unreasonable for the applicant and her daughter to seek refuge in the DF of Mexico City?

[37] The applicant failed to offer persuasive evidence to the Board that she would not be able to obtain suitable mental health care if she was to return to Mexico. The Board also takes note of the fact that the applicant had previously worked in the DF for numerous years, and has shown an ability to obtain employment in various fields. Therefore, under the circumstances, the Court finds reasonable the Board's determination for the applicants to live in the DF of Mexico City.

[38] The applicant has invited, more or less, the Court to weigh the evidence differently, and to substitute its own conclusion and opinion for those of the Board. The Court will resist this invitation

since it is the role of the Board to do so; this Court is only called to verify if the decision of the Board is reasonable or unreasonable.

[39] Having reviewed the evidence the Court concludes that the applicants have failed to show that the impugned decision is unreasonable because falling outside the range of acceptable outcomes which are defensible in respect of the facts and law. Therefore this application for judicial review will be dismissed.

[40] The Court agrees with the parties that there is no question of general interest to certify.

## JUDGMENT

**FOR THE FOREGOING REASONS THIS COURT** dismisses the application.

"Maurice E. Lagacé"

Deputy Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-5160-07 |
| **STYLE OF CAUSE:** | LUZ ALICIA LOPEZ GEA and<br>LUZ BELEN LOPEZ GEA<br><br>- and -<br><br>THE MINISTER OF CITIZENSHIP<br>AND IMMIGRATION |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | May 23, 2008 |
| **REASONS FOR JUDGMENT AND JUDGMENT OF:** | LAGACÉ D.J. |
| **DATED:** | June 17, 2008 |

**APPEARANCES:**

| | |
|---|---|
| J. Byron M. Thomas | FOR THE APPLICANTS |
| Sharon Stewart-Guthrie | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| J. Byron M. Thomas<br>Barrister and Solicitor<br>Toronto, Ontario | FOR THE APPLICANTS |
| John H. Sims, Q.C.<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |