

Date: 20080818

Docket: IMM-4208-07

Citation: 2008 FC 952

Ottawa, Ontario, August 18, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**LUIS DUENAS SORIANO
MONICA GABRIELA ARGUETA SAINZ
ANA DUENAS ARGUETA**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), following a decision by the Immigration Protection Division of the Immigration and Refugee Board (the panel) dated September 13, 2007. The panel determined that the applicants were not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the Act.

ISSUES

[2] Two questions were raised by the applicants in this matter:

(a) Did the panel err in drawing negative inferences regarding the applicants' credibility?

(b) Did the panel err in finding that the applicants had not reversed the presumption of the Mexican state's protection?

[3] After analyzing the record, the Court considers that the panel did not make a determination in regard to the female applicant's credibility, therefore we need only examine the second issue.

[4] For the following reasons, the application for judicial review will be dismissed.

FACTUAL BACKGROUND

[5] The applicants are all citizens of Mexico: the male applicant is 31 years old, the female applicant is 33 years old and the child is a minor. They left Mexico following problems which began in February 2007.

[6] On February 20, 2007, the applicant noticed a white SUV following her when she was on her way to her daughter's music class. The next day, she was followed by the same SUV and she received two phone calls from a woman who asked where she was calling. On February 22, 2007, the female applicant was once again followed. On February 23, 2007, the female applicant again received two telephone calls. The first time, the caller asked to speak with her and quickly hung up.

The second time, a woman told the applicant that she was aware of her activities and that she knew that she was alone with her daughter every day. The applicant received several phone calls in the next two days and she noticed the white SUV parked on the corner of the road.

[7] On February 25, the applicants received calls during the night, and they called the state police. The police arrived shortly thereafter and asked them several questions about the incidents. The police told them that they would cruise the street and told them to keep their eyes open.

[8] On February 26, a man called and asked to speak to the minor daughter, telling them that he had to take her because he had found a buyer for her. The applicants again called the state police. The police told them to file a report with the public prosecutor, which they did that same day. The applicants had to wait at the station for 40 minutes before making this report.

[9] The applicants decided to leave Mexico in order to ensure their daughter's safety. They arrived in Canada on March 2, 2007, and sought protection the same day.

IMPUGNED DECISION

[10] The panel determined that the applicants were not Convention refugees or persons in need of protection. Specifically, the panel determined that the applicants had not reversed the presumption of state protection. The panel's determination was based on the following reasons:

- (a) The panel noted that the female applicant had no idea who the people she feared were. The panel considered the female applicant's explanation for the question regarding why she had not sought refuge elsewhere in Mexico: she explained that her first instinct had been to leave Mexico.
- (b) The panel stated that the applicants left Mexico only four days after they filed a report with the public prosecutor, despite the fact that the officials had assured her that they would investigate and that they would do what they could. The panel asked the female applicant whether she had given the public prosecutor the chance to help them. Her answer was also noted: she explained that she had not given the public prosecutor the opportunity because she did not feel protected. She explained that she had heard of similar cases.
- (c) The panel stated that it informed the applicants of the burden of proof required to reverse the presumption of state protection. In response, the female applicant said that the attitude of the public prosecutor officials angered and scared her. She referred in particular to the fact that they had to wait 40 minutes while the officials ate before they dealt with their case. The panel asked the female applicant why these events would lead her to believe that they could not be protected in Mexico and she replied that the news and the newspapers had reported abductions. The panel asked why she had not taken other steps. She replied that she was afraid and that she did not want to take a chance staying in Mexico with her daughter.
- (d) The panel considered that the documentary evidence indicated that there was some corruption in Mexico, but that not all of the authorities were corrupt. Further, the

documentary evidence did not establish that there was a complete breakdown of the state apparatus.

- (e) Finally, the panel referred to the fact that the applicants had a valid visa for entering the United States. The question raised was why they had chosen to go to Canada and not to the United States. The female applicant's answer was vague.

ANALYSIS

Standard of review

[11] The appropriate standard of review in this case is the standard of reasonableness (*Chagoya v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 721, at paragraph 3, [2008] F.C.J. No. 908; *Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraphs 55, 57, 62, and 64).

[12] According to the Supreme Court, the elements to consider are: justification of the decision, its transparency and its intelligibility. The outcome must be defensible in respect of the facts and the law (*Dunsmuir*, at paragraph 47).

Did the panel err in finding that the applicants had not reversed the presumption of the Mexican state's protection?

[13] For this application for judicial review to be allowed, the applicants must establish that it was unreasonable for the panel to determine that the applicants did not reverse the presumption of Mexican state protection.

[14] The applicants claim in their written arguments that it is well established that Mexican society as a whole is corrupt. They allege that the police are indifferent to criminality and corruption within government institutions. They also submit that the changes contemplated by Mexican anti-corruption legislation have not been achieved.

[15] The respondent on the other hand points out in his memorandum that it is imperative that the applicants be able to establish through clear and convincing evidence that Mexico is unable to provide them with protection (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689).

[16] The respondent also points out that unless there has been a complete breakdown of the state apparatus, it should be presumed that the state is able to protect the claimant. The country's protection need not be perfect, but only adequate (*Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (F.C.A.); *Kadenko v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1376 (F.C.A.)).

[17] It is clear from the facts in this matter, as admitted by the applicants, that the Mexican authorities took the complaints and reports from the female applicant seriously and that the state officials reacted adequately when the applicants filed a report. It was reasonable for the panel to determine that the applicants had not established by clear and convincing evidence that Mexico was unable to protect them.

[18] The applicants left the country before giving the authorities time to act. The police rapidly proceeded when the female applicant called on February 25, 2007. The fact that the public prosecutor officials obliged the applicants to wait 40 minutes is not sufficient to indicate that state protection is not available.

[19] The panel did not make a reviewable error. The decision is justified and intelligible and the outcome is defensible in respect of the facts and the law.

[20] There was no question proposed for certification and none is involved in this matter.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4208-07

STYLE OF CAUSE: **LUIS DUNAS SORIANO**
MONICA GABRIELA ARGUETA SAINZ
ANA DUENAS ARGUETA
and
MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: August 12, 2008

REASONS FOR JUDGMENT
AND JUDGMENT: Beaudry J.

DATE OF REASONS: August 18, 2008

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