

**Date: 20080826**

**Docket: IMM-237-08**

**Citation: 2008 FC 971**

**Toronto, Ontario, August 26, 2008**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**ALEJANDRO SANCHEZ GUTIERREZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Alejandro Sanchez Gutierrez is a citizen of Mexico, whose claim for refugee protection was rejected by the Refugee Protection Division of the Immigration and Refugee Board on the grounds that adequate state protection was available to him in Mexico.

[2] Mr. Sanchez now seeks judicial review of the Board's decision, asserting that the Board erred in ignoring or misapprehending the evidence before it, and in finding that he had not rebutted the presumption that state protection would be available to him in Mexico.

[3] While I am satisfied that certain aspects of the Board's analysis were flawed, for the reasons that follow, I have concluded that the Board's finding that adequate state protection was available to Mr. Sanchez in Mexico was one that was reasonably open to it on the record before it. As a consequence, the application for judicial review will be dismissed.

### **Background**

[4] Mr. Sanchez worked as both a pastry chef and as a car salesman in the state of Michoacan. He claims that he had an acquaintance by the name of José Luis Wong Chow, who was involved in drug trafficking. When Mr. Wong asked Mr. Sanchez to become involved in the drug trade, Mr. Sanchez says that he refused.

[5] Mr. Sanchez says that Mr. Wong then threatened to kill him. Over the next several months, Mr. Sanchez says that he was threatened with death on several other occasions. After the third threat on his life, Mr. Sanchez says that he went to the judicial police and made a denunciation.

[6] According to Mr. Sanchez, the police told him that there could be no investigation without evidence to support his allegations. He says that he was given a copy of his police report, which he put in a box in his home which contained his personal papers. Because he did not believe that the police would be able to help him, Mr. Sanchez then fled to Canada a few days later.

[7] A few months later, Mr. Sanchez was advised by a relative that his home in Michoacan had been broken into, and that although many valuables had been present in the home, only a television set had been taken.

[8] Some time later, in preparation for his refugee hearing, Mr. Sanchez asked his relative to retrieve the police report from his file box. It was then discovered that the box was missing. Mr. Sanchez concluded that the box had been stolen in the burglary.

[9] Mr. Sanchez then asked his brother-in-law to go to the police station to get a copy of the police report. The brother-in-law was informed by the police that there was no record of Mr. Sanchez's denunciation. Mr. Sanchez believes that Mr. Wong and his associates were informed of his denunciation by the police, and had the record of his complaint erased. Mr. Sanchez also believes that Mr. Wong was behind the burglary at Mr. Sanchez's home.

### **Standard of Review**

[10] The standard of review to be applied with respect to Board findings regarding the availability of state protection is that of reasonableness: see *Hinzman v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 584, at paragraph 38 (F.C.A.), and *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraphs 55, 57, 62, and 64.

[11] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the

decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and law: see *Dunsmuir* at paragraph 47.

### **Analysis**

[12] As is often the case with respect to refugee claims brought by citizens of Mexico, the Board did not carry out any evaluation of the credibility of Mr. Sanchez's evidence whatsoever, and made no negative findings in this regard. Rather, it confined its analysis to the issue of state protection.

[13] In the absence of any credibility analysis by the Board, Mr. Sanchez's story must be taken as having been accepted as true.

[14] This state of affairs renders two of the Board's findings unreasonable: firstly, the Board's finding that Mr. Sanchez had not given Mr. Wong's name to the police, and secondly, the finding that Mr. Sanchez did not wait long enough to find out what the outcome would be of the complaint that he had filed with the judicial police.

[15] Insofar as the finding regarding the giving of Mr. Wong's name to the judicial police is concerned, Mr. Sanchez's testimony before the Board was that he had told the police that Mr. Wong was behind the threats. While his evidence on this point may not have always been consistent, it was not open to the Board to simply find that Mr. Sanchez had not advised the police of Mr. Wong's identity without at least addressing Mr. Sanchez's sworn testimony in this regard, and providing some explanation for rejecting it.

[16] With respect to the Board's finding that Mr. Sanchez did not give the judicial police the chance to investigate his case before fleeing to Canada, the Board failed to address Mr. Sanchez' evidence that the police had told him that they would not be able to investigate his complaint without more evidence to support it. Why would Mr. Sanchez wait for the results of an investigation that was quite clearly not going to happen?

[17] Furthermore, having accepted Mr. Sanchez's evidence as true, it was unreasonable for the Board to have failed to consider Mr. Sanchez's testimony regarding the destruction of the police records of his complaint, as it clearly related to the willingness of the police to investigate the matter.

[18] That said, the Board's finding that Mr. Sanchez did not give the judicial police a chance to investigate his case before fleeing to Canada was not the end of its analysis. Indeed, the Board then went on to conclude that even if Mr. Sanchez was dissatisfied with the response of the judicial police in Michoacan, there were a number of other avenues of protection available to him in Mexico. Mr. Sanchez has not persuaded me that the Board's findings on this point were unreasonable.

[19] In this regard, the Board noted that there were a number of state agencies from which Mr. Sanchez could have sought assistance, including the Federal Agency of Investigations, the Deputy Attorney General's Office of Special Investigations into Organized Crime, the Secretariat of Public Administration, and the Telephone Assistance System for Citizens.

[20] As Justice Barnes observed in *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, state agencies may be of assistance in providing protection in cases where the initial police response is not adequate.

[21] Moreover, the Board was clearly aware of the limits of Mexico's ability to protect its citizens from drug traffickers, noting that state protection was not perfect. In addition, the Board considered the evidence as to effectiveness of the measures taken to protect citizens, and did not merely consider the existence of laws "on the books". The Board further recognized that corruption continues to be a serious problem in Mexico.

[22] Having recognized the limitations in Mexico's ability to protect its citizens, it was up to the Board to weigh the evidence before it, in order to determine whether the available state protection was adequate. This it did. It is not the task of this Court sitting on judicial review to reweigh the evidence that was before the Board.

[23] As a consequence, and despite the able submissions of counsel for Mr. Sanchez, I am not persuaded that the Board erred in ignoring or misapprehending the evidence before it in relation to the state protection issue, or that it erred in finding that Mr. Sanchez had not rebutted the presumption that state protection would be available to him in Mexico.

**Conclusion**

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

**Certification**

[25] Neither party has suggested a question for certification, and none arises here.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-237-08

**STYLE OF CAUSE:** ALEJANDRO SANCHEZ GUTIERREZ v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 25, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MACTAVISH J.

**DATED:** August 26, 2008

**APPEARANCES:**

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