Date: 20081006

Docket: IMM-3390-07

Citation: 2008 FC 1122

Ottawa, Ontario, October 6, 2008

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

LUIS ARTURO FRANCO TABOADA
CLAUDIA GUADALUPE ESCORCIA ORDONEZ
LEONARDO ARTURO FRANCO ESCORCIA
KARLA GUADALUPE GALARZA ESCORCIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated July 24, 2007, which found that the applicants were neither Convention refugees nor persons in need of protection.

[2] The applicants requested that the decision be set aside and the matter be referred back to a newly constituted panel of the Board for re-determination.

Background

[3] Luis Arturo Franco Taboada (the principal applicant), his wife, Claudia Guadalupe Escorcia Ordonez, son, Leonardo Arturo Franco Escorcia and stepdaughter, Karla Guadalupe Galarza Escorcia (collectively, the applicants), are all citizens of Mexico. The applicants based their applications for refugee status on the principal applicant's claim. The principal applicant alleged that while he was working in Veracruz as a manager for Banco Azteca (a national bank), his supervisor, Jose Luis Chavarria Cambrano pressured him into becoming his lover. The principal applicant alleged that over time Chavarria Cambrano's advances towards him became more aggressive, but the principal applicant always refused them.

[4] One night while at work, the principal applicant alleged that he witnessed Chavarria Cambrano engaged in oral sex with Gerardo Mendez, a senior bank officer. The principal applicant also alleged that he discovered that Chavarria Cambrano and Gerardo Mendez were conducting fraudulent transactions at the bank. Essentially, they were authorizing loans to people that did not exist, taking the money for themselves and then as head of collections for the bank, Mendez would write the accounts off as unrecoverable. The principal applicant alleged that he confronted Chavarria Cambrano with his discoveries on January 25, 2006 and in response, Chavarria Cambrano threatened him saying that he could keep his job and would receive money if he would

give in to the sexual advances. The principal applicant alleged that when he refused, the threats and sexual harassment escalated. As a result, the principal applicant alleged that in February 2006, he told Chavarria Cambrano that he was going to approach Luciano Vargas, the divisional director of the bank, about the fraudulent activities. In response, Chavarria Cambrano said "you don't know who you are dealing with and […] Mr. Vargas has been my lover for the last five years . . .".

[5] On the night of February 12, 2006, the applicant alleged that he was kidnapped while leaving work. He was taken in a car by four men and beaten. The men threatened the principal applicant's family and told him they would all be murdered if he told anyone about Chavarria Cambrano's sexual involvement with Mendez and Vargas or the fraudulent activities. Before they released the principal applicant, the men explained that they knew all of the details of his life and his families. The following day, their house was shot at eight times. In fear, the principal applicant's daughter was sent to Mexico City to live with her biological father. On February 14, 2006, the principal applicant submitted his resignation to the bank. He had to wait until March 2006 to officially leave the bank because as a manager, all the accounts at the bank he managed had to be audited before his resignation could be accepted. During this waiting period, the principal applicant alleged that his family was continually threatened. The principal applicant, his wife and son finally fled to Mexico City in March 2006.

[6] The principal applicant alleged that during the evening of March 20, 2006, he was out buying groceries when he was kidnapped a second time. The principal applicant alleged that he was beaten, threatened, and reminded of the previous kidnapping. After being released, the principal

applicant reported the incident to police in Mexico City and also made a report to the National Commission of Human Rights. In light of the reports filed, the principal applicant felt that the threat to his and his family's safety was heightened. As a result, he, his wife and his son fled to Canada in April 2006, and made a refugee claim in May 2006. The principal applicant's stepdaughter followed in July 2006 and made her claim for refugee status at the airport upon arrival. In a decision dated July 24, 2007, the Board found that the applicants were neither Convention refugees, nor persons in need of protection. This is the judicial review of the Board's decision.

Board's Decision

[7] In rendering its decision, the Board found that the principal applicant's account of the second kidnapping was implausible. The Board found on a balance of probabilities that if the first attack had been ordered by Chavarria Cambrano to keep the principal applicant quiet, it had succeeded, and thus there was no reason for a second attack. The Board noted that counsel for the applicants had raised the difficulties inherent in speculating as to the reasonability of the actions of the agents of persecution, but the Board did not find these arguments convincing.

[8] The Board was also satisfied on a balance of probabilities that the principal applicant had not made a police report of the incidents. In making this finding, the Board relied on the principal applicant's oral testimony wherein he replied "no" that he had never made a report to police when being questioned about the first kidnapping incident.

[9] The Board also took issue with an apparent inconsistency between the principal applicant's PIF narrative and his oral testimony with regards to the second kidnapping and the identity of the person who had ordered it. While paragraph 24 of his narrative stated that he knew it was Chavarria Cambrano when his attackers mentioned Veracruz, in his oral testimony he claimed that his attackers informed him that they had been sent by Chavarria Cambrano. The Board also noted that the police report (which the Board found not to be genuine) fails to mention that the attackers mentioned Chavarria Cambrano by name. The Board stated:

> It is one thing to say that I believe Chavarria Chambrano is responsible but it is very different to say I know Chavarria Cambrano is responsible because the attackers told me while they were beating me that this is a message from Chavarria Cambrano. The first is opinion; the second case is direct evidence.

[10] The Board's ultimate finding on the inconsistency was that given there was no mention of the statements made by the attackers in the narrative or the body of the police report, this detail was created by the principal applicant to advance his claim.

[11] The Board also found that the police report submitted by the applicant had been altered. The Board noted that the letterhead was aligned on the page differently than the body of the report and that the obvious explanation was that the letterhead was copied or scanned onto a page misaligned and then the body was added thereafter. The Board agreed that this was speculation on their part; however, on a balance of probabilities found that if this was a copy of a genuine report, the letterhead would be aligned with the page. The Board also denied the request by counsel for the

applicants to send the document for verification reasoning that this was not the only problem with the evidence and it would not offset the remaining issues.

[12] Given all of the above findings, the Board found that the principal applicant was not a credible witness, and as such, chose not to conduct an analysis of the availability of state protection. In conclusion the Board rejected the applicants' claims pursuant to both sections 96 and 97 of the Act.

Issues

[13] The applicants submitted the following issues for consideration:

1. Did the Board err in finding that the principal applicant's evidence was implausible?
2. Did the Board ignore the principal applicant's corroborating medical evidence?
3. Did the Board err in finding that the principal applicant's evidence was inconsistent?
4. Did the Board err in drawing a negative inference from an alleged omission from the principal applicant's PIF and police report?
5. Did the Board err in finding that the principal applicant's police report was not genuine?

[14] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the Board apply the wrong legal test in finding that the second kidnapping was implausible?

3. Did the Board err in failing to consider the principal applicant's corroborating medical evidence?

4. Was the Board's finding that the principal applicant's oral evidence was inconsistent with respect to whether or not he approached the police unreasonable?

5. Did the Board err in drawing a negative credibility inference from an alleged omission from the principal applicant's PIF and police report?

6. Was the Board's finding related to whether or not the applicant made a police report reasonable?

Applicants' Written Submissions

[15] The applicants submitted that the Board erred in finding that the second kidnapping was implausible. The applicants noted that the principal applicant had always been honest in stating that he could not explain why he had been kidnapped a second time given that he was silent after the first kidnapping. The applicants noted that during the hearing, counsel for the applicants attempted to present some potential explanations for the kidnappers' actions including that the second kidnapping might have been ordered by someone else involved in the fraudulent activity. The applicants took issue with the Board's finding that absent further evidence, the Board could not conclude that counsel's speculation was the "probable reason for the attack." The applicants submitted that the Board applied the wrong test; the correct test requires the applicants to prove on a

balance of probabilities that the second kidnapping occurred, not why it occurred. Moreover, the Board had failed to identify any valid basis for doubting that the attack occurred (*Yoosuff* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FC 1116). The applicants submitted that this finding should be set aside because although implausibility findings are reviewable on a standard of patent unreasonableness, only in the clearest of cases can implausibility findings withstand scrutiny (*Karakeeva* v. *Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 492 at paragraph 13).

[16] The applicants also submitted that the Board failed to consider corroborating medical evidence submitted by the principal applicant, namely, photographs of scars resulting from the torture and a medical report corroborating his injuries. The applicants noted that the Board did not refer to this evidence in its decision. While the Board does not have an obligation to refer to every piece of evidence before it, a claimant's relevant personal documentation should ordinarily be addressed (*Gourenko* v. *Canada (Solicitor General)*, [1995] F.C.J. No. 682).

[17] The applicants' third argument was that the Board erred in finding that the principal applicant had not made a report to police after the second kidnapping. It was submitted that the Board misunderstood the principal applicant's testimony that he had not made a report to police. The applicants admitted that the principal applicant replied "no" when asked if he had made a report to authorities, but stated that this answer was in relation to the principal applicant's actions after the first kidnapping. The applicants submitted that upon reading the transcript of the principal applicant's oral testimony, it is evident that the Board erred in finding as it did.

[18] The applicants also submitted that the Board erred in drawing a negative inference from an alleged omission in the principal applicant's PIF and police report. The applicants argued that while the principal applicant's PIF narrative and the police report did not include that his attackers had actually uttered Chavarria Cambrano's name during the second kidnapping, this was not an omission of sufficient significance or importance to form the basis of the Board's negative credibility finding.

[19] And finally, the applicants disputed the Board's finding that the police report was not genuine. The applicants submitted that the Board has no particular expertise assessing the genuineness of foreign documents (*Cheema* v. *Canada (Minister of Citizenship and Immigration)*, 2004 FC 224). The applicants further submitted that the Board erred in refusing to have the report verified as this evidence was central to the applicants' case. If found to be genuine through verification, two of the Board's four negative findings would have evaporated and the two remaining would have to be reconsidered.

Respondent's Written Submissions

[20] The respondent submitted that the applicants are challenging the Board's credibility findings and they are subject to the most deferential standard on review (*Tekin* v. *Canada (Minister of Citizenship and Immigration)*, 2003 FCT 357).

[21] The respondent submitted that the Board did not require the applicants to prove why the second attack occurred; the Board simply found the entire event so implausible that it doubted whether or not it had even occurred. The respondent submitted that the case of *Yoosuff* above, relied on by the applicants is distinguishable from this case. In *Yoosuff* above, the persecutors were known to have done the very actions the Board considered irrational, whereas in the present case, there is no evidence that the alleged persecutors were known to attack victims, impose conditions, and then attack again although the victims complied with the conditions.

[22] With regards to the applicants' argument that the Board ignored medical evidence, the respondent submitted that the applicants have conceded that the Board is not required to refer to every piece of evidence in their decision (*Woolaston* v. *Canada (Minister of Employment and Immigration)*, [1973] S.C.R. 102). Moreover, the respondent submitted that relevance is not the only criteria in determining whether or not the evidence should be addressed by the Board. The Board must consider whether the document (1) bears on the relevant time period, (2) is prepared by a reputable, independent author who is in a position to be the most reliable source of information, and (3) is directly relevant to the claim (*Gourenko*, above). The respondent argued that the medical evidence did not satisfy the second enumerated requirement.

[23] The respondent also submitted that the applicants' argument that the Board misinterpreted the principal applicant's testimony is baseless. The respondent submitted that the Board considered whether the principal applicant had misunderstood the question and concluded that it was not plausible that he had. The Board provided clear reasons for its decision.

[24] Regarding the applicants' argument that the Board erred in drawing a negative inference from an omission in the principal applicant's PIF and police report, the respondent submitted that this is simply not so. There was a clear omission in the PIF narrative and police report and it was reasonable for the Board to conclude as it did.

[25] And finally, with regards to the Board's finding that the police report was not genuine, the respondent submitted that one does not have to be an expert on forged documented to be suspicious about a letterhead which is misaligned with the body of the letter. Moreover, the Board's decision not to send the police report for verification was not an error given the Board's other implausibility findings.

Applicants' Written Reply

[26] On reply, the applicants responded to a number of the respondent's submissions. With regards to the standard of review, the applicants agreed that the standard is patently unreasonable, but submitted that the Board is in no better position than the Court to make such determinations.

[27] As to the implausibility of the second kidnapping, the applicants submitted that the respondent has failed to understand that the Board's implausibility finding was based on the fact that there was "no reason" for the second kidnapping and as such, the Board has required the applicants to prove on a balance of probabilities why it occurred, not that it occurred. The applicants also argued that the photographs and medical report did satisfy the requirements in order to be

specifically addressed by the Board. The applicants submitted that this evidence should have been addressed as it corroborated the principal applicant's claim of torture during the second kidnapping and therefore met the criterion of being from an independent author.

Analysis and Decision

[28] **Issue 1**

What is the appropriate standard of review?

The Supreme Court of Canada in *Dunsmuir* v. *New Brunswick*, [2008] S.C.J. No. 9 on March 7, 2008, collapsed the standard of reasonableness *simpliciter* and patent unreasonableness for a more straightforward standard of reasonableness. *Dunsmuir* above, also streamlined the steps to take in establishing the appropriate standard of review, which was previously referred to as the "pragmatic and functional" approach. The Supreme Court proposed a two step process at paragraph 62:

> First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of [deference] to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[29] In Dunsmuir above, the Supreme Court of Canada has stated that questions of law are generally reviewed on a standard of correctness however, the Court also stated that when an administrative body is interpreting its own statute, deference may be granted and a standard of

reasonableness might apply when certain factors are considered. The Court also stated that questions of fact are to be reviewed on a standard of reasonableness. Questions of mixed fact and law will be reviewed on a standard of reasonableness.

[30] In the past, great deference was given to the board's credibility findings and they were reviewable on the then standard of patent unreasonableness. However, credibility findings based on implausibilities were scrutinized closer by the courts but the standard of review of patent unreasonableness still applied.

[31] I am of the view that following the jurisprudence contained in Dunsmuir above, the standard of review to be applied to credibility findings based on implausibility should now be reviewed on a standard or reasonableness.

[32] **Issue 2**

Did the Board err in finding that the second kidnapping was implausible?

In finding that the second kidnapping was implausible, the Board relied upon the idea that there was no reason for a second kidnapping given that the first kidnapping had accomplished what it was meant to do. The applicant challenged this finding on the basis that the Board applied the wrong legal test. While I disagree that this involves a legal test, I agree that the basis of the decision is not in accordance with the law. As stated above, the applicant's evidence is presumed true unless there are cogent reasons not to believe the claimant, *Vodics* above.

[33] In this case, the Board member rejected the plausibility of the second kidnapping based on his own assumptions on how people act rather than on the evidence before him. I acknowledge that the Board member did have issues with evidence related to the second kidnapping (the issue of whether Chavarria Cambrano was mentioned by name during the beating and the issue of whether a police report was ever made following the attack), however, these are not the reasons that the Board member uses to reject the second kidnapping outright. As stated in the reasons of the Board:

> […] I am not persuaded that these various explanations provided by counsel explain or provide a framework that I could accept as a probably reason for the attack.
>
> […]
>
> On a balance of probabilities, if Chavarria Cambrano ordered the first attack to keep the principal claimant quiet, there is no reason for a second attack.

[34] In my opinion, this was unreasonable and an error on the part of the Board. The Board is not permitted to judge the reason the attack occurred but only "that" the attack occurred. I accept the applicant's argument that the Board did not identify any valid basis for doubting the attack occurred. The alleged kidnappers did not give evidence, and as such, the applicant's story must be believed unless common sense and rationality based on the whole of the evidence (*Shahamati* above) suggests that his version of the attack should not be believed. Otherwise, the applicant is ultimately not availed of the principles of natural justice.

[35] The finding of implausibility was done on the bare finding that the second kidnapping must not have happened because the kidnappers and torturers may have accomplished what they intended with the first kidnapping. Justice O'Reilly in *Yoosuff* v. *Canada (Minister of Citizenship and Immigration)* 2005 FC 1116 stated that the Board erred when they seemed to require an applicant to prove that agents of persecution act rationally or justifiably. In my opinion, the Board's credibility finding based on implausibility was not reasonable and must be set aside. I would allow the judicial review on this ground.

[36] **Issue 3**

Did the Board err in failing to consider the principal applicant's corroborating medical evidence?

The applicants submitted that the Board erred in failing to consider the principal applicant's corroborating medical evidence in its decision. The medical evidence in question consists of photographs of the scars the principal applicant bears on his back and finger as a result of the torture that he suffered, as well as a medical report from a physician. The respondent submitted that the Board is under no duty to refer to every piece of evidence in its decision. Moreover, the respondent also submitted that the evidence in question was not prepared by a reputable, independent author and as such does not meet the criteria set out in *Gourenko* above.

[37] I am satisfied that the Board erred in not explaining how its consideration of the corroborating medical evidence factored into its analysis in rendering its decision. I do not agree

with the respondent that the evidence was not prepared by a reputable, independent author; the photographs speak for themselves, and the medical report is authored by a physician.

[38] I accept that the Board is presumed to have considered all the evidence before it (*Hassan* v. *Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (C.A.)). I also recognize that the Board is under no duty to mention every piece of evidence in its reasons; however, in my opinion, the evidence in question was personal to the principal applicant, and corroborated his allegations of persecution. As a result, the Board had a duty to assess the evidence and provide an explanation as to how it factored into the analysis of the claim. As such, I would allow the judicial review on this ground.

[39] **Issue 4**

Was the Board's finding that the principal applicant's oral evidence was inconsistent with respect to whether or not he approached the police unreasonable?

The relevant portion of the Board's decision reads as follows:

> Did the principal claimant make a police report that accused Chavarria Cambrano or others of wrongdoing? I am satisfied this is not the case.
>
> Early in the hearing I asked if the principal claimant had ever reported his suspicions concerning his former boss to any authority. He responded "no". The principal claimant explained to his counsel he thought my first question referred only to the time after the first kidnapping. If that was the case, I would not have worded the question as I did. Even so, his response, to be consistent with the balance of his evidence, should have been something in the nature of "not at that time" or "only later".

> His fear today, he states, is even greater due to his making a report both to the police and the national Human Rights Commission. Since it is these reports that may increase his fear of returning, I do not accept that the claimant would answer in the negative if he had in fact made such reports in the past.

[40] The relevant portions of the hearing transcript read as follows:

> **PRESIDING MEMBER:** And when did you move from Veracruz back to Mexico City?
>
> **PRINICPAL CLAIMANT:** I arrived after that day right away, exactly on the 5th. However, I have to tell you that I had resigned before. That was on February 13th, right after the first kidnapping. However, because of my position as a bank manager, I was not able to leave that branch right away, until the proper auditing had been carried out.
>
> **PRESIDING MEMBER:** Did you ever make a report to any authorities about your suspicions concerning you [*sic*] former boss?
> **PRINCIPAL CLAIMANT:** No, because in the threats they warned me exactly about that.
>
> **PRESIDING MEMBER:** So, you never made a report to the senior authorities in the bank about the ongoing fraud?
>
> **PRINCIPAL CLAIMANT:** No, because the top individuals of the bank, they were involved in this fraud.
>
> **PRESIDING MEMBER:** You never made a report to the Attorney General's office or any of the Ministry of Commerce or anything of that nature?
>
> **PRINCIPAL CLAIMANT:** In the first kidnapping I did not do it, because like I said before, those were the threats. I was threatened not to go to the police or to talk about that, or to talk about their sexual preferences.
>
> […]
>
> **PRESIDING MEMBER:** Okay. So, you quit the bank?

PRINCIPAL CLAIMANT: Yes.

PRESIDING MEMBER: You never made a report to anybody.

PRINCIPAL CLAIMANT: I only sent a report to him because that's the way I was told to do it when I spoke to the Director of the division of the bank. However, I did not know that the Director of the division of Azteca Bank happened to be his lover.

PRESIDING MEMBER: Stop. Listen to my whole question. You quit the bank. You never made a report to the police about the suspected fraud. Listen to the whole question. You've never complained about the unwanted sexual advances. You'd been warned in a kidnapping and a beating to keep your mouth shut.

PRINCIPAL CLAIMANT: Exactly.

[…]

PRESIDING MEMBER: We're going to talk about Mexico City. So, you've been kidnapped in Mexico City, you've been released. Did you go to the authorities in Mexico City?
P**RINCIPAL CLAIMANT:** Yes, I did.

PRESIDING MEMBER: Tell me about that.

PRINCIPAL CLAIMANT: On the third day when I was kidnapped, three days after the kidnapping I spoke with my brother and my wife and I decided to go to the police because if I had never spoken out about anything and in spite of that they kidnapped me again, maybe they [*sic*] third time they were going to kill me. Because of that ---

PRESIDING MEMBER: No, I want to know what you told the police.

PRINCIPAL CLAIMANT: Okay, that's fine. When I arrived to the police I made a complete description of all the events regarding the first kidnapping first and also of the second kidnapping that had just happened two days before. I was told by the police that they were only going to focus themselves in the kidnapping that had happened in Mexico City, because the events that happened in Veracruz, they didn't have any jurisdiction.

> **PRESIDING MEMBER:** And that's what I would expect would happen. So, I want you to tell me what you told the police that happened to you in Mexico City.
>
> **PRINCIPAL CLAIMANT:** I told them that I had been kidnapped, that I was severely beaten up, and they referred me to a doctor, a forensic doctor, and he made a recommendation in my favour telling them that the injuries and the blows that I suffered happened as a consequence of the kidnapping and the beatings that I had suffered a couple days earlier.

[41] In my opinion, the Board's finding that the applicant provided inconsistent testimony regarding reporting the matter to police was unreasonable. From the above reproduced portions of the hearing transcript, it is obvious that the principal applicant's testimony that he did not make a report to police was regarding the first kidnapping and whether a report was made immediately after it occurred. This is supported by the fact that later in the hearing, the principal applicant testifies that he went to the police after the second kidnapping and made a report concerning both kidnappings. In my opinion, it was unreasonable for the Board to find that the principal applicant provided conflicting evidence about whether a report to police was made, and as such, find that no such report was made. I would allow the judicial review on this ground.

[42] Because of my findings on these issues, I need not deal with the remaining issues.

[43] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

[44] The application for judicial review is therefore allowed and the matter is referred to a different panel of the Board for re-determination.

JUDGMENT

[45] **IT IS ORDERED that** the application for judicial review is allowed and the matter is referred to a different panel of the Board for re-determination.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA):

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
97.(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Hilary Evans Cameron	FOR THE APPLICANTS
Ricky Y. M. Tang	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Downtown Legal Services Toronto, Ontario	FOR THE APPLICANTS
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT