

**Date: 20081107**

**Docket: IMM-1949-08**

**Citation: 2008 FC 1246**

**Toronto, Ontario, November 7, 2008**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**EMMANUEL MEJIA BALLESTEROS,  
MARIA EUGENIA GUZMAN DE LA CRUZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicants are common-law spouses and citizens of Mexico. The male Applicant entered Canada on September 30, 2006 and made a claim for refugee status on December 15, 2006. The female Applicant entered Canada on January 29, 2007 and made a claim for refugee status that day.

[2] Their claims were heard together in November and December 2007. A decision was made in writing by the hearing Member of the Immigration and Refugee Board dated April 10, 2008 rejecting the Applicants claim. This decision is the subject of the judicial review.

[3] For the reasons that follow, I find that the application is allowed.

[4] The Applicants formerly resided in the Mexico City area. The sister of the male Applicant was being courted by two suitors, one being a well-placed police officer. Ultimately, his sister chose the other suitor. This caused the police officer, Romero, to harass his sister to such an extent that she fled Mexico to come to Canada for respite. About a year later, his sister made a Refugee claim in Canada which, by a decision of the Board dated December 11, 2002, was accepted. The Applicants claim to have been unaware of this decision or at least the basis for this decision.

[5] The male Applicant alleges that the police officer, Romero, pursued him and threatened to kill him unless he revealed his sister's whereabouts. The male Applicant alleges that on two separate occasions, he reported Romero's conduct to the police to no avail. He left Mexico and came to Canada where he made his claim for refugee status.

[6] The female Applicant allegedly then became the subject of Romero's harassment and threats made in order to coerce her to reveal the sister's whereabouts. The female Applicant was pregnant at the time with the male Applicant's child. The female Applicant left Mexico and came to Canada where she made a claim for refugee protection. The child was born in Canada.

[7] There is one central issue in this matter, whether Mexico is able to offer adequate state protection to these two Applicants. It is well established law that state protection is presumed and that an applicant must rebut that presumption with clear and convincing evidence (*Canada*

*(Attorney General) v. Ward*, [1993] 2 S.C.R. 689). In order to rebut the presumption of state protection, an applicant must introduce evidence of inadequate state protection; this is an evidentiary burden; in addition, as a legal burden of persuasion, the applicant must convince the Board that the evidence adduced establishes that state protection is inadequate (*Canada (MCI) v. Carrillo*, 2008 FCA 94 at paras. 17-19).

[8] Here there is uncontested evidence:

- On similar facts the Refugee Board allowed a claim for refugee protection made by the male Applicant's sister;
- There was pressing and persistent harassment of the male Applicant, the female Applicant and even the male Applicant's parents by Romero;
- Romero was a police officer; his father was well placed in the Attorney General's office. Romero was known to police colleagues as a rogue police officer.
- Romero physically threatened and assaulted the male and female Applicants.
- The male Applicant denounced Romero to the police on two occasions and nothing was done about it.
- The female Applicant received advice from her sister, a lawyer, that it would be futile to denounce Romero to the police and that she should simply leave the country.

[9] All of those facts are established in the evidence and are not subject to any issues as to credibility.

[10] The Board Member at page 8 of his Reasons writes:

*If the claimants believe certain members of the police force to be corrupt, the onus was theirs to approach other members of the police force or another level of police. I am guided in the analysis of De Baez which states: “the actions of some police officers does not obviate the need to seek protection from the authorities. Discrimination by some police officers is not sufficient proof of the state’s unwillingness to provide, or inability on the part of the applicants, to seek protection.”*

[11] The Board Member does not refer to the fact that, at paragraph 14 of *De Baez (De Baez v. Canada (MCI) 2003 FCT 785)* Dawson J. says that, in that case, the Applicants never went to the police.

[12] Here the evidence shows that the male Applicant went to the police on two separate occasions and, on my review of the oral transcript, there is credible evidence that he went a third time. The evidence is clear that whether he went two or even three times, the police did nothing.

[13] The female Applicant sought the advice of a lawyer and was told that it was futile to go to the police.

[14] Given this evidence, the Board Member was required to weight it, not against an arbitrary standard, but against clearly identified other evidence before the Board, whether documentary or otherwise, and determine if the weight of the evidence favours the Applicants or not. This did not happen.

[15] The matter must be returned for redetermination by a different Member.

[16] No party requested certification or costs.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application is allowed;
2. The matter is returned for redetermination by a different Member;
3. No questions for certification; and
4. No Order as to costs.

“Roger T. Hughes”

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Judge

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

**DOCKET:** IMM-1949-08

**STYLE OF CAUSE:** EMMANUEL MEJIA BALLESTEROS, MARIA  
EUGENIA GUZMAN DE LA CRUZ v.  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 6, 2008

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

**DATED:** NOVEMBER 6, 2008

**APPEARANCES:**

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Ada Mok FOR THE RESPONDENT

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