

Date: 20090324

Docket: IMM-3372-08

Citation: 2009 FC 307

Montréal, Quebec , March 24, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

**RICARDO CAMARENA CASTELLANOS
MARIA NORMA JIMENEZ KAISER
ALDO CAMARENA JIMENEZ
DANTE CAMARENA JIMENEZ**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicants are seeking a judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of the decision of the Refugee Protection Division of the Immigration and Refugee Board dated June 18, 2008, refusing their application

for refugee status because they were not Convention refugees within the meaning of section 96 or persons in need of protection under section 97 of the Act.

II. The facts

[2] The applicant Maria Norma Jimenez Kaiser (applicant), her husband, Ricardo Camarena Castellanos, and their two sons Aldo Camarena Jimenez and Dante Camarena Jimenez, all Mexican citizens, claimed refugee protection alleging persecution based on their membership in a social group and their political opinions.

[3] After receiving telephone threats at work and at home, targeting all of the members of their family, the applicant and her husband allegedly called the police and were told that these phone calls were normal, not to worry and that the police could not do anything to stop it.

[4] After temporarily hiding away in a hotel with their sons to escape these telephone calls, the applicant and her husband decided to close their daycare, to recover their passports from their home while escorted by the police, and to leave Mexico for Canada to seek refugee protection there.

III. Issue

[5] Did the panel err in determining in its negative finding that the applicants had not established that the Mexican State was unable to protect them?

IV. Analysis

Standard of judicial review

[6] Considering that this litigation raises a mixed question of fact and law, the Court will apply to its analysis the standard of reasonableness set out by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

State protection

[7] The panel determined that the determinative issue in this matter was whether the applicants, considering the circumstances, did what was necessary to obtain from the Mexican authorities protection against the telephone threats against them. The panel, weighing the evidence submitted, determined:

. . . that the testimony of the principal claimant and her husband, and the documentary evidence . . . do not constitute convincing evidence that can lead to a presumption that the ability of the Mexican authorities to protect their citizens has been overturned in their case. The panel is of the opinion that it is not unreasonable in this case to expect the claimants to take steps, if necessary, by going to another part of the country to alert the Mexican authorities and claim protection, particularly informing them that the people who threatened them were acting on behalf of other people who

were affected by the claimants' activities. Although threatened, the claimants adduced no evidence . . . that demonstrates that they took the necessary steps in the circumstances to obtain state protection in their country. The applicants chose instead to come to Canada when, in fact, claiming refugee status in a country that is a signatory to the Convention is to be used as a last resort.

[Emphasis added.]

[8] The applicants allege that the panel did not consider all of the evidence that they deemed relevant and which support their claims.

[9] They point out that their attempt to secure state protection, having called the police to obtain protection, did not produce any result, except for a rather discouraging and unsettling reply – when they were informed that they need not worry because such threatening phone calls were normal and that in any event the police could not do anything to help them to stop those calls.

[10] We point out from the outset that it is not the Court's place to substitute its opinion for that of the panel as the applicants are asking it to do. The Court must only analyze the decision in light of the facts in evidence and the relevant law to verify whether the findings in the decision are reasonably justified by the evidence as well as the law. The Court need not even ask whether the decision would have been the same had it had the responsibility of hearing the applicants and the facts put in evidence; that is not the role of this Court in an application for judicial review such as this.

[11] A careful analysis of the evidence indicates that the applicants left Mexico barely five days after the first alleged threatening phone calls, without even filing a written complaint with the police or a formal complaint with the State's attorney, not giving the authorities of their country any opportunity to attempt to help them and without availing themselves of the recourse Mexican authorities put at their disposal.

[12] Apart from a short stay in a hotel in their neighbourhood, to distance themselves from the telephone calls received at home or at their workplaces and to prepare for their departure, the applicant and her husband never sought for themselves or for their sons an internal flight alternative elsewhere in this large country that is Mexico.

[13] To the contrary, they opted rather to quickly leave their country to go to Canada to seek protection, even though a refugee claim in a Convention signatory state must be a last resort solution.

[14] The applicants had to establish that the State of Mexico was unable to provide them with the protection that they were entitled to expect before claiming the status of "Convention refugee" or "persons in need of protection" within the meaning of sections 96 and 97 of the Act (*Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689). To establish this, it is first expected that serious and reasonable steps were taken to get this protection, which was not the case here.

[15] It was not enough for the applicants to establish that the protection offered in Mexico was not perfect. This is also the case for any State professing to have democratic values or human rights protection. No State can guarantee the protection of each of its citizens at all times (*Canada (Minister of Employment and Immigration) v. Villafranca* (1992) 18 Imm. L.R.(2d) 130 (F.C.A.)).

[16] One would be deluding oneself to believe the contrary; and the best protection remains the protection that one owes and gives to oneself. Therefore, since the threats were limited to telephone calls, what obstacle was there to changing one or more telephone numbers or simply temporarily cancelling the personal home service or the cellular service? If the applicants could afford to finance a move to Canada, would it not have been cheaper to seek a permanent or temporary internal flight alternative that would have sheltered them from threats while they were pursuing the matter with the Mexican authorities?

[17] As noted by the panel in its reasons, in the case of a democratic State such as Mexico, the applicants had an even greater obligation to seek State protection. They had to establish that they had reasonably exhausted all of the recourse available to them in order to obtain the necessary protection while taking reasonable personal measures to protect themselves (*Kadenko v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1376. In this case, apart from once trying “to contact the police through the emergency number,” there was practically no attempt to seek protection; no complaint was filed with the police and/or the State’s attorney. The only

assistance requested that was obtained: a police escort during their short stay at the hotel to go get the passports they required to leave for Canada.

[18] Further, there is no credible evidence in the file that would allow the Court to determine that the lives of the applicants would still be in danger if they were to return to Mexico.

V. Conclusion

[19] For all of these reasons, the Court determines at the end of its analysis that the decision contemplated by this recourse is justified by the facts in evidence as well as by the law; it was therefore a reasonable decision even if its effect on the applicants did not meet their expectations.

[20] The application will therefore be dismissed, no serious question of general importance was proposed, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISS the application for judicial review.

“Maurice E. Lagacé”

Deputy judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3372-08

STYLE OF CAUSE: RICARDO CAMARENA CASTELLANOS ET AL.
v. MCI

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DATE OF REASONS: March 24, 2009

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