Federal Court		Cour fédérale

Date: 20100107

Docket: IMM-2393-09

Citation: 2010 FC 21

Ottawa, Ontario, January 7, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

LEONARDO MACIAS BARAJAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board), dated April 20, 2009 (Decision), which refused the Applicant's application to be deemed a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of Mexico who fears the federal security forces of Mexico. He was a truck driver who was asked by the Commander of the Judicial Police of Guadalajara to transport illicit drugs in his truck. The Applicant refused, and the Commander threatened the Applicant's family. The Applicant approached the Judicial Police in Guadalajara for help; however, the police told him to leave upon hearing that the Applicant's complaint was against a high-ranking official. The next day, the Applicant was assaulted by three policemen and was told that he should not have gone to the police.

[3] On another occasion, the Applicant was again beaten by police officers who also threatened him at gunpoint and demanded that he report to a certain location to adhere to their demands. The Applicant attempted to file a denunciation in another location in Mexico, but was called a liar and told to leave.

[4] The Applicant fled Mexico and arrived in Canada in June, 2008. He filed a refugee claim in November, 2008.

DECISION UNDER REVIEW

[5] The Board found the determinative issues in the Applicant's claim to be nexus, a delay in making the claim, state protection, and an internal flight alternative (IFA).

[6] The Board noted the Applicant's "lack of education and sophistication" in interpreting his responses to questions, but concluded that he was credible. The Board also considered the Chairperson's Guidelines regarding the vulnerability of the claimant.

[7] Although the Applicant had argued that state protection was unavailable because it was the state that protected his aggressors, the Board determined that if judicial police officers were involved, they were not acting in their official capacities in conducting illegal activities. The Board quoted *Rivero v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1517 in finding that there is no nexus to a Convention Ground where an applicant is the target of a "private vendetta or personal vengeance" by a government official. The Board also discussed the case of *Mehrabani v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 427 in which it was determined that the applicant's fear of officials, whose activities he had denounced, did not ground the claim in political opinion. Similarly, the Board decided that the Applicant's fear was not linked to race, nationality, religion, political opinion, or membership in a particular social group. Consequently, his claim under s. 96 was rejected.

[8] The Board expressed concern over the delay between the Applicant's arrival in Canada and his application for refugee status; however, the Board accepted the Applicant's explanation for the

delay. The Board also accepted the Applicant's explanation as to why his family did not accompany him.

[9] The Board recognized the efforts made by the Applicant to seek state protection, but concluded that there were "other state authorities upon whom he may have relied." The Board noted that Mexico is a democracy with a relatively free and impartial judiciary.

[10] The Board also noted that state and municipal security forces contain more than 500,000 officers. The Board found that these forces are hierarchical, which allows for redress to a higher level if anyone is dissatisfied with services. Moreover, a number of authorities exist to assist members of the public who encounter a corrupt official or are otherwise unsatisfied with the security forces.

[11] The Board found that Mexico had also created laws to address corruption and bribery for convicted officials. The Board noted the existence of the Deputy Attorney General's Officer of Special Investigations into Organized Crime which works closely with the United States to control organized crime in Mexico.

[12] While the Board acknowledged that Mexico continues to struggle with issues of criminality and corruption, it found that the President is "making serious efforts to address these problems." Consequently, the Board was satisfied that adequate state protection was available to the Applicant.

[13] The Board also considered the existence of an IFA. Based on the Applicant's belief that he was targeted because he had access to the harbours, the Board first concluded that it did not believe that the agents of persecution in this instance were likely to pursue the Applicant in the future. The Applicant no longer maintains such access because he no longer drives a truck for the same company.

[14] The Board found that even if the Applicant was pursued, which it determined was unlikely, state protection would be reasonably forthcoming in the Federal District.

[15] The Board acknowledged that corruption and drug trafficking remain problematic in Mexico, but found that there are state authorities in the Federal District from whom the Applicant could seek protection if he was pursued. The Board also considered the Applicant's psychological health if he were returned to Mexico and determined that he could access therapy upon his return if required.

ISSUES

[16] The issues on this application can be summarized as follows:

1. Whether the Board erred in concluding that the Applicant's actions in attempting to report the Commander did not constitute an expression of political opinion;
2. Whether the Board erred in its analysis of state protection;
3. Whether the Board erred in its finding of a viable internal flight alternative;

4. Whether the Board erred in failing to address whether the Applicant was at risk of torture in Mexico.

STATUTORY PROVISIONS

[17] The following provisions of the Act are applicable in these proceedings:

Convention refugee	Définition de « réfugié »
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.

Person in need of protection	Personne à protéger
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	(iv) la menace ou le risque ne

the inability of that country to provide adequate health or medical care.	résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	Personne à protéger
(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.

STANDARD OF REVIEW

[18] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review" (*Dunsmuir* at paragraph 44). Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[19] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may

adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[20] Whether the Board erred in finding that the Applicant's attempt to report the Commander was not an expression of political opinion is an issue of the application of a legal test to the facts of the case. Accordingly, the appropriate standard of review is one of reasonableness, and deference is owed to the decision maker. See *Dunsmuir*, *supra*, at paragraph 164.

[21] The issue of state protection is also considered on a standard of reasonableness. See *Song v. Canada (Minister of Citizenship and Immigration*), 2008 FC 467, [2008] F.C.J. No. 591. Similarly, reasonableness will be the appropriate standard in determining whether the Board erred in its finding of a viable flight alternative for the Applicant. See *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449, [2008] F.C.J. No. 571 and *Agudelo v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 465, [2009] F.C.J. No. 583 at paragraph 17.

[22] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[23] The Applicant raises whether the Board failed to apply the proper legal test. Issues of the correct legal test are to be determined on a standard of correctness. See *Dunsmuir*, and *Golesorkhi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 511, [2008] F.C.J. No. 637. Thus, in reviewing whether the Board erred in failing to address whether the Applicant was at risk of torture in Mexico, the appropriate standard is one of correctness.

ARGUMENTS

The Applicant

Political opinion

[24] The Applicant submits that the Board erred by relying on dated case law in concluding that exposing corruption does not form the requisite nexus to a Convention Refugee ground.

[25] The Applicant cites and relies on *Klinko v. Canada (Minister of Citizenship and Immigration)*, [2000] 3 F.C. 327, [2000] F.C.J. No. 228 at paragraph 34:

> The opinion expressed by Mr. Klinko took the form of denunciation of state official's corruption. This denunciation of infractions committed by state officials led to reprisals against him. I have no doubt that the widespread government corruption raised by the claimant's opinion is a "matter in which the machinery of state, government, and policy may be engaged."

[26] Consequently, the Applicant contends that his actions were indeed an expression of political opinion and that the Board erred in concluding otherwise.

State Protection

[27] The Applicant submits that the Board erred by ignoring relevant evidence and reaching an unreasonable conclusion in its determination of state protection.

[28] The Board accepted the credibility of the Applicant and his testimony. Accordingly, the Board accepted that the Applicant sought state protection on two occasions in two separate locations. In both instances, the Applicant was either refused help or accused of lying.

[29] Nevertheless, the Board determined that the Applicant should have taken further steps to obtain state protection, because

> [T]here are a number of authorities and agencies who will assist members of the public if they believe they have countered [*sic*] a corrupt official or if they are not satisfied with the services of security forces. Transgressors on the security forces face sanctions, removal, suspension or dismissal.

[30] The Applicant contends that the Board based its determinations with regard to state protection on: a) the Applicant's ability to get alternative forms of protection; and b) the assumption that police who are corrupt are punished for their wrongdoing. The Applicant submits that the Board's conclusions on these issues were unreasonable.

[31] The Board listed other entities the Applicant could have approached for assistance, including the Deputy Attorney General's Office, the National Human Rights Commission, the Secretariat of Public Administration, and a 24-hour telephone hotline. The Applicant submits that the Board erred in determining that such bodies constitute state protection.

[32] In *Zepeda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 491, [2008] F.C.J. No. 625 the Federal Court rejected many of the bodies named by the Board as constituting state protection. The Court in *Zepeda* held that the only entity which has the mandate to protect is the police. Thus, where the police fail to provide protection, it cannot be said that state protection is available. The Board erred in finding that the mere existence of these bodies constitutes adequate state protection.

[33] Moreover, the Applicant contends that the Board must address the documentary evidence provided, and cannot ignore this evidence in making its decision. It is not enough for the Board to determine that the mere existence of a police force, a judicial system, and a complaints procedure system in Mexico constitutes adequate state protection. Nor is it adequate for the Board to disregard the documentary evidence provided by the Applicant that contradicts its finding by simply stating that "it has all been considered."

[34] The Applicant provided evidence from respectable sources that contradicted the Board's findings. The Board failed to address this evidence in making its conclusion on state protection.

Moreover, the Board failed to consider that citizens of Mexico do not trust the institutions that are intended to protect them because of the widespread corruption that exists.

[35] In *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1336, 76 Imm. L.R. (3d) 102, the Federal Court held as follows at paragraph 86:

> [T]he evidence that refuted the Board's conclusions on this point was so cogent and so important to the Applicants' case, that the Board's failure to deal with it and to simply rely upon the usual presumptions of state protection looks more like defending a general position on Mexico than addressing the specifics of the evidence before the Board in this case.

[36] Similarly to *Sanchez*, the Applicant produced cogent evidence demonstrating: a) the prevalence of corruption in Mexico; b) the ineffectiveness of the National Human Rights group; c) the ineffectiveness of the prosecution of corrupt officers; and d) the hesitancy of citizens to approach the police in Mexico because of the officers' impunity. The Board failed to address this evidence that strongly contradicted its finding of state protection, and by doing so committed a reviewable error.

[37] The Board also erred in finding as follows:

> Transgressors on the security forces face sanctions, removal, suspension or dismissal. New government laws attacking corruption and bribery, and sentences of 5 to 10 years imprisonment for convicted official, have reportedly had a market [sic] effect.

[38] This finding is contrary to evidence adduced by the Applicant which showed that only an extremely small portion of cases involving corrupt officials in the PGR made it to Court in 2007.

This is not cogent evidence of the government taking action to "cleanse" its law enforcement organizations. The Board erred in finding otherwise, and in failing to address the Applicant's evidence which sharply contradicted its conclusion.

[39] The Applicant recognizes that the Board does not need to make reference to every piece of evidence before it, but cites and relies on *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration),* [1998] F.C.J. No. 1425 at paragraph 47:

> [T]he more important the evidence that is not mentioned specifically and analyzed in the Board's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence." In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact.

Internal flight alternative

[40] The Applicant also submits that the Board erred in finding that a viable internal flight alternative existed. The Board found that if the Applicant was pursued in Mexico City, he would be able to find protection there. Specifically, the Board found that because "[h]e is no longer driving a truck for the same company [he] would not be viewed as someone to pursue in the future."

[41] The Applicant submits that the Board erred in this conclusion. The Applicant was not at risk simply because he was a truck driver. Rather, the Applicant faced and continues to face risk because

he has knowledge with regard to corrupt officials, and he attempted to report these findings to the police.

[42] The Applicant's testimony demonstrates that he is still being pursued, even after having come to Canada. Consequently, the Board's finding that the Applicant would not be pursued is in direct opposition to the Applicant's credible testimony.

[43] The Applicant submits that the Board also erred with regard to its consideration of Mexico City itself. The Board found that "Mexico City is an international destination for tourists, thus creating an atmosphere where criminality is combated to ensure tourism flourishes."

[44] The Applicant submits that this finding is unreasonable, since documentary evidence shows that Mexico City has the highest crime rates in all of Mexico. The Board's unreasonableness is compounded by finding that Mexico City is a viable internal flight alternative because it is "an international destination for tourists," where "tourism flourishes." The Board's finding that crime in Mexico City is combated because it is a tourist destination is completely at odds with the documentary evidence.

[45] Moreover, the Applicant submits that the Board erred in failing to demonstrate why Mexico City would be a viable flight alternative over other cities in Mexico such as, for example, Zapopan, where the Applicant moved to try and escape. The Board erred in: a) failing to provide any evidence

as to why the situation in Mexico City is any different from anywhere else in the country; and b) by failing to explain how the Applicant would be any safer in Mexico City.

[46] A similar error occurred in *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 399, [2008] F.C.J. No. 487 where the Federal Court made the following determination at paragraph 12:

> …the finding of an internal flight alternative in Mexico was made without any evidentiary basis to establish why things were different in Mexico City. The finding of an internal flight alternative was also made without apparent regard to the above evidence which contradicted the finding of the RPD....It is therefore unreasonable.

Risk of torture

[47] The Board also erred in failing to address whether, pursuant to section 97 of the Act, the Applicant is at risk of torture in Mexico. The Applicant submits that the Board should have addressed and come to a conclusion on this issue, and the Board erred in neglecting to do so. The Applicant submits that this error was compounded by the fact that the Applicant was threatened at gunpoint by members of the police force.

The Respondent

[48] The Respondent notes that the Applicant required a Spanish interpreter at his refugee hearing, but that his affidavit was sworn in English before a commissioner of oaths. No certificate of translation accompanied the Applicant's affidavit.

No section 96 claim

[49] The Board was correct in determining that the Applicant's fear of persecution from drug traffickers, who the Applicant alleges are corrupt police, simply means that he is a victim of crime. Thus, the Applicant is precluded from a section 96 claim because he lacks a link between the fear of persecution and a convention ground. As noted in *Kang v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1128, [2005] F.C.J. No. 1400 at paragraph 10, "victims or potential victims of crime, corruption or personal vendettas, generally cannot establish a link between fear of persecution and Convention reasons." The Respondent submits that the fact that the Applicant's alleged persecutors are also government officials does not change his claim into one of persecution based on a Convention ground.

Properly considered evidence

[50] The Respondent submits that the Board's reasons demonstrate that it was aware of the documentary evidence and documents adduced by the Applicant. Consequently, the fact that the Board did not refer to each piece of evidence in its reasons is not fatal to its decision. Rather, a

tribunal is presumed to have considered each piece of evidence unless the contrary is shown. See *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598.

State Protection

[51] The onus is on the Applicant to rebut the presumption of state protection. To do so, the Applicant must adduce clear and convincing evidence of the state's inability to protect him. See *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74, and *Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] F.C.J. No. 399 at paragraphs 17-19, 28, 30.

[52] The Respondent submits that the Board did not err in finding that the Applicant's burden extended to seeking protection past the local police. The Federal Court of Appeal has held that an applicant must exhaust all possible recourses in their home country prior to seeking international protection. See *N.K. v. Canada (Minister of Citizenship and Immigration)*(1996), 143 D.L.R. (4th) 532, 206 N.R. 272. Mexico has both political and judicial institutions and bodies that are capable of protecting its citizens. Accordingly, the refusal of some police officers to act does not necessarily make the state unable to protect. See *Kadenko, supra*.

[53] Furthermore, the actions of one police officer do not relieve the Applicant of the burden of seeking further state protection. Indeed, harassment by one officer does not: a) make the state an agent of persecution; b) serve as proof of the state's unwillingness to provide protection; or c) demonstrate the Applicant's inability to seek protection. See, for example, *De Baez v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 785, 236 F.T.R. 148 at paragraph 16 and *Soto v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1654, [2005] F.C.J. No. 2107 at paragraph 14.

[54] In this case, additional resources were available to the Applicant but he did not attempt to access these resources. Thus, the Board did not err in concluding that his failure to seek protection and assistance from these agencies meant a failure to rebut the presumption of state protection.

[55] The Federal Court found in *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, [2008] F.C.J. No. 182 at paragraph 9 that "the law is clear that individuals facing the sort of risk described by the Applicants have a duty to attempt to access such services before seeking international protection." The Federal Court of Appeal has also determined that the RPD can reasonably require applicants from Mexico to have sought redress from state agencies in order to rebut the presumption of state protection. See *Carrillo*, *supra*, at paragraphs 34 and 36.

An IFA existed

[56] The onus is on the Applicant to prove, on a balance of probabilities, that there is a serious possibility of being persecuted in the IFA, and that conditions in that part of the country are such that it would be unreasonable to seek refuge there. See *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, [2000] F.C.J. No. 2118 at paragraph 15.

[57] The Applicant has failed to demonstrate that the finding of an IFA in Mexico City was not open to the Board on the circumstances. The Applicant has not shown a serious possibility of being persecuted. Rather, he simply states that the drug traffickers will search for him everywhere. The Board made the reasonable finding that the cause for the Applicant's concern has dissipated, since he is no longer a truck driver for the same company or has access to the harbours.

[58] The Respondent submits that the Board's finding that the Applicant could reasonably relocate was also open to it. The Applicant did not discharge the burden of adducing probative and reliable evidence to show that his life and safety would be in jeopardy if he relocated on a temporary basis. Instead, the Board found that the Applicant was employable as a truck driver and could access therapy in Mexico City as needed.

ANALYSIS

[59] There are several problems with the Decision but the determinative issues are state protection and internal flight alternative.

[60] The Board accepted as credible the Applicant's evidence that he had sought the protection of the police on April 30, 2008 in Guadalajara and again on May 14, 2008 in Zapapan. On the first occasion the police refused to make a report because the Applicant was complaining of corruption against a high ranking police official. On the second occasion the police told the Applicant he was a liar and made it clear that he would receive no help from them.

[61] Notwithstanding these efforts by the Applicant, the Board felt he had still not done enough to secure state protection before coming to Canada and that he should have sought help from various alternative agencies who offer assistance to members of the public to deal with corrupt officials.

[62] What the Board felt the Applicant should have done leaves out of account several accepted facts about the situation in which the Applicant found himself. After he had been to the police in Guadalajara, the Applicant was beaten by three policemen who told him he should not have gone to the police. Also, on May 14, 2008, the Applicant was intercepted by two police officers who put a gun to his head and told him he had better cooperate and assist them with the transportation of illicit drugs. When he reported this incident, he was told he was a liar.

[63] As a result, the Applicant found himself – literally – with a gun pointed at his head if he did not cooperate with the corrupt police, and there were clear indications from the police in large cities that he would receive no protection from them.

[64] Notwithstanding this immediate danger from corrupt police, the Board expected that the Applicant should have turned to those organizations who deal with corrupt police officials.

[65] It seems to me that the protection that such organizations offer must be assessed against the severity of the threat that any applicant faces. In this case, the Applicant faced death, and that threat was immediate. A gun had been pointed at his head and he had been told the police would not protect him. In fact, it was the police who had pointed the gun at his head and issued the threats.

[66] With such an immediate threat, it is difficult to see how alternative institutions could reasonably provide the Applicant with any protection. I believe that this is what Justice Tremblay-Lamer was referring to in *Zepeda* when she pointed out, on the facts of that case, that the alternative institutions offered no protection *per se*, unless there was evidence to the contrary, and that it is the police force that has the primary responsibility to protect a nation's citizens. On the facts of the present case, the police force was not only unwilling to protect the Applicant, it was also the perpetrator of the threat, and that threat was immediate and deadly. It was not just that the police refused to accept his report or to help him; the police threatened to arrest him and put him in jail.

[67] Under such circumstances, I think it was entirely unreasonable for the Board to expect that the Applicant could have countered such a threat by going to alternative institutions that deal with corrupt police and other state officials.

[68] Rather than deal with the immediate threat faced by the Applicant, the Board confined itself to the usual formulations about the presumption of state protection and the fact that Mexico is a democracy. As cases in this Court have shown, Mexico's ability to protect its own citizens is not invariably accepted. Much depends upon the facts and the evidence adduced in each case. In the present case, in my view, the Board did not engage with the primary issue, which was the immediate threat faced by the Applicant. In the face of such an immediate and deadly threat, I do not think that accessing alternative institutions was a reasonable possibility. The Board failed to conduct the kind of analysis that Justice Tremblay-Lamer in *Zepeda* says is appropriate in this kind of case.

[69] This problem was exacerbated by the Board's failure to refer to compelling evidence that contradicted its own conclusions about the ability of the Mexican state to provide adequate protection. See *Cepeda Gutierrez*. Although the onus was upon the Applicant to rebut the presumption of state protection, the Board in this case appears to have left out of account the Applicant's own evidence concerning the threats he faced and the nature of the protection he needed. This was evidence that the Board had accepted as credible. In *Lopez v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No.1733 at paragraph 21 the Court said that "conducting a state protection analysis in the absence of a determination as to the nature of the persecuting agent risks short circuiting a full assessment of the claim." In my view, a similar problem arises on the present facts where the Board appears to have mischaracterized the immediacy of the risks faced by the Applicant and to have neglected a *Zepeda* analysis.

[70] A similar failure can be seen in the Board's handling of the IFA issue. The Board felt that the Applicant would not be pursued to Mexico city because "[h]e is no longer driving a truck for the same company and, therefore, does not have the access to the harbours, which is why the claimant believes he was targeted." In addition, the Board felt that "even if he were pursued, and the Board does not find this likely, the Board believes that police protection would be reasonably forthcoming to the claimant in the Federal District."

[71] These conclusions, in my view, are based upon a misconception of the threat which the Applicant faced. The Applicant had been beaten by the police and told that he should not have attempted to report police corruption. The police had also placed a gun to his head and told him that he had better cooperate. Everything the Board says about IFA and protection in the Federal District is premised upon the Board's own inadequate assessment of the immediate threat which the Applicant faced and the source of that threat. The Applicant was threatened by the police and, in addition to not making his truck available to transport illicit drugs for corrupt police officers, he has twice attempted to report police corruption and he has been beaten by the police and told he should not have done that. What is more, the Applicant provided unquestioned evidence that he was still being pursued. Since the Applicant has been in Canada, the police have visited his mother in an attempt to find him, and his mother has also received threatening phone calls. This suggests a strong continuing interest in the Applicant by corrupt police which the Officer failed to address.

[72] In addition, the Board seems to have made the same mistake outlined in *Martinez*, *supra* and *Emma Georgina Astoraga Favela et al. v. The Minister of Citizenship and Immigration*, IMM-174-09, order rendered by Deputy Judge Frederick Gibson on August 28, 2009. In *Favela*, Justice

Gibson, citing Justice Dawson in *Martinez*, *supra*, found a reviewable error where the Board identified Mexico City, Monterey and Tijuana as viable IFAs "notwithstanding the Applicant's experiences in Guadalajara, without citing any evidence that might have established that the situation existing in the three metropolitan areas identified was qualitatively different from that prevailing in Guadalajara." In the present case, the Applicant has faced police threats in Guadalajara and Zapopan, two large cities. There is no evidence to show why the situation in Mexico City would be any different, or why the Applicant would be any safer in Mexico City. See *Martinez, supra* at paragraph 12.

[73] In addition, in the Board's analysis of IFA and protection in the Federal District, I see no acknowledgement or awareness of the source and immediacy of the threat that the Applicant faces, despite the Applicant's evidence to the contrary. Consequently, I do not believe that the Board's conclusions on these issues can be reasonable. See *Cepeda Guiterrez*, *supra*.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application for judicial review is allowed. The Decision is quashed and the matter is referred back to another Board member for reconsideration.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2393-09
STYLE OF CAUSE:	LEONARDO MACIAS BARAJAS v. MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 3, 2009
REASONS FOR ORDER:	RUSSELL J.
DATED:	JANUARY 7, 2010

APPEARANCES:

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Manuel Mendelzon	FOR THE RESPONDENT

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