

Federal Court



Cour fédérale

Date: 20091126

Docket: IMM-1762-09

Citation: 2009 FC 1215

Ottawa, Ontario, November 26, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**MARIA ADRIANA TORRES MARTINEZ
CANDIDO JULIAN TORRES MARTINEZ
ANGEL ADRIAN TORRES TORRES**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] In June 2007, Ms. Torres Martinez was on a sidewalk with her son Angel, who was then nine months old, when she was approached by two men. One of them tried to make off with her bag, to distract her, while his accomplice tried to take the baby. Fortunately, they did not succeed. She went to the police, but she remembered only that one of the assailants had a moustache.

[2] Several disconcerting events occurred over the next few days. A “photographer” came to Ms. Torres Martinez’s door and offered to photograph her baby free of charge. Fearing that this might be related to the attempted kidnapping, she went to her mother’s home. When she returned, a neighbour told her that someone had come to her door again to take photographs of her son. She also received several bizarre telephone calls.

[3] Ms. Torres Martinez and her son left Mexico and came to Canada on July 17. Her husband Candido joined them on August 5. They all claimed refugee protection in Canada.

[4] After Ms. Torres Martinez arrived in Canada, her sister-in-law gave her the name of a Mr. Hernandez who had threatened Mr. Torres Martinez’s brother. Later, Ms. Torres Martinez saw a photograph of this Mr. Hernandez. She recognized him as one of the men who had tried to kidnap her son. She amended her PIF, describing Mr. Hernandez as “Ugo” instead of giving his family name.

[5] The Refugee Protection Division (RPD) of the Immigration and Refugee Board (the panel) rejected their claim. The panel concluded that the account was not credible and accordingly rejected the claim for refugee protection. This is an application for judicial review of that decision.

STANDARD OF REVIEW

[6] The standard of review for findings of credibility is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

ANALYSIS

[7] I am of the opinion that the application for judicial review must be allowed.

[8] First, the panel concluded that the applicant was not credible based on the fact that she said the attempted kidnapping took place in June 2006. The panel noted that Angel had not yet been born in June 2006. When Ms. Torres Martinez was questioned about this, she acknowledged that she had been mistaken: the events in question took place in June 2007. She explained her mistake by saying that she was confused because she was recounting her story and the sequence of events as they related to her pregnancies. Rejecting that sensible explanation, as the panel did, was not reasonable.

[9] Second, the panel was of the opinion that the fact that the applicant stated that she had filed complaints twice with the police while her husband claimed to have filed six complaints undermined the applicant's credibility. It seems to me to be plausible that Mr. Torres Martinez would have filed six complaints without him or his wife lying: he went to the police twice with his wife, as she asserted, and four other times with his brother, whom they believed to have been the target of separate threats. It is unreasonable to conclude from this that Mr. and Ms. Torres Martinez are not credible.

[10] Third, the panel drew negative conclusions regarding Ms. Torres Martinez's credibility from the fact that she used several names to refer to Mr. Hernandez (Ugo, Eduardo and Lalo) and did not know a lot of details about his life. I do not see what the importance is of knowing Mr. Hernandez's given name. Ms. Torres Martinez did not know that Mr. Hernandez was a former police officer, although that was stated in an article she submitted to the panel. However, while that article stated only that Mr. Hernandez was involved in criminal activities, Ms. Torres Martinez added that this referred to drug trafficking. She stated that her brother-in-law had given her that information. I do not see how these small details could reasonably have affected Ms. Torres Martinez's credibility.

[11] Fourth, the panel did not analyze whether state protection was available and whether there was an internal flight alternative. The panel suggested that once Ms. Torres Martinez had discovered Mr. Hernandez's identity, she could have gone back to the police, but went no further. The panel did not analyze whether, in view of that information, Mexico was able to protect Ms. Torres Martinez or there was an internal flight alternative. It should have done that.

ORDER

FOR THESE REASONS,

THE COURT ORDERS that

1. The application for judicial review is allowed.
2. The matter is referred back to the panel for rehearing. The panel will consider whether state protection is available and whether there is an internal flight alternative.
3. There is no serious question of general importance to be certified.

“Sean Harrington”

Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1762-09

STYLE OF CAUSE: Maria Adriana Torres Martinez et al. v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 18, 2009

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: November 26, 2009

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