

Federal Court



Cour fédérale

**Date: 20100409**

**Docket: IMM-2407-09**

**Citation: 2010 FC 363**

**Ottawa, Ontario, April 9, 2010**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**GERARDO MARINHO ENRIQUEZ PALACIOS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Mr. Gerardo Marinho Enriquez Palacios arrived in Canada in 2006 from Mexico. He claimed refugee protection, alleging that he had been an eye-witness to a murder in Acapulco and was being threatened by one of the perpetrators. A panel of the Immigration and Refugee Board heard and dismissed his claim in 2009. The Board found that Mr. Enriquez Palacios had failed to prove that it was objectively unreasonable for him to seek the protection of state authorities in Mexico.

[2] Mr. Enriquez Palacios argues that the Board erred in its analysis of the issue of state protection. He asks me to order another panel of the Board to reconsider his claim. I agree that the Board erred and will grant this application for judicial review.

[3] Mr. Enriquez Palacios raised a number of issues. Given my conclusion about the issue of state protection, I need not deal with the others. The issue is whether the Board's conclusion that Mr. Enriquez Palacios had failed to prove an absence of state protection was unreasonable.

## II. Analysis

### (a) The Board's decision

[4] Mr. Enriquez Palacios testified that he had been threatened after he had spoken to police about the murder he had witnessed. These threats continued even after he left Acapulco. In 2006, he was abducted and beaten. He moved around to find a safe place to live, but the threats continued. At that point, he fled to Canada.

[5] Mr. Enriquez Palacios stated that he did not go to police to report the abduction and beating because he did not trust the police. In Mexico, many police officers are corrupt.

[6] Based on this testimony, the Board concluded that there was no evidence that it was objectively unreasonable for Mr. Enriquez Palacios to report his mistreatment to the police. The Board acknowledged problems with corruption in Mexico. However, it also observed that the state

is attempting to curb dishonesty in its police forces. In conclusion, the Board stated: “There is certainly no reason, in the evidence in this case, which would show why the claimant could not have approached the authorities to talk about what protection might be available.”

(b) Was the Board’s conclusion on the issue of state protection unreasonable?

[7] Refugees are people who have a well-founded fear of persecution and are unable or, because of fear, unwilling to avail themselves of the protection of their state of nationality (*Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 96(a)). Therefore, a person who is unwilling to approach the police out of fear of the consequences may still be a refugee.

[8] At his hearing, Mr. Enriquez Palacios explained why he was afraid of approaching the police. He said that the police had threatened him when he was reluctant to provide information about the killing. In addition, through his lawyer, he had filed a denunciation with the police complaining about the death threats he had received. Shortly thereafter, he was abducted and beaten. His abductors told him that if he went to the police again, he would be killed. He stated: “I was too scared to do anything and I really didn’t want to contact the police”.

[9] The Board characterized Mr. Enriquez Palacios testimony as amounting to a “general statement that corruption exists within the police in Mexico”. In fairness, Mr. Enriquez Palacios’ evidence was not simply a general condemnation of the police. He gave detailed testimony about threats directly from the police, death threats received after he had provided police with a statement,

particulars of his abduction and beating after filing a complaint about those death threats, and the final threat to kill him if he spoke to the police again.

[10] The Board erred when it stated that there was no evidence supporting Mr. Enriquez Palacios' claim that he could not obtain state protection. It is possible that the Board did not believe Mr. Enriquez Palacios' testimony on that question. However, it did not give any explanation for rejecting it.

[11] Accordingly, I find that the Board's conclusion on the issue of state protection, the ground on which Mr. Enriquez Palacios' refugee claim failed, was unreasonable. It does not fall within the range of possible acceptable outcomes based on the facts and the law.

### III. Conclusion and Disposition

[12] The Board failed to respond to Mr. Enriquez Palacios' explanation for being afraid to contact the police. Therefore, its conclusion that he had failed to provide any evidence justifying his decision not to seek police protection was unreasonable. I must, therefore, allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that**

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

“James W. O’Reilly”  
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Judge

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

**DOCKET:** IMM-2407-09

**STYLE OF CAUSE:** PALACIOS v. MCI

**PLACE OF HEARING:** Calgary, ALTA

**DATE OF HEARING:** November 19, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** April 9, 2010

**APPEARANCES:**

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