

Federal Court



Cour fédérale

Date: 20100412

Docket: IMM-3257-09

Citation: 2010 FC 374

Ottawa, Ontario, April 12, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

CARLOS CHAVEZ GONZALEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Carlos Chavez Gonzalez claims that he is at personal risk from a former lover and current Member of Parliament in Mexico. He seeks refugee protection in Canada on the ground that the state of Mexico is unable to protect him.

[2] A panel of the Immigration and Refugee Board rejected Mr. Gonzalez' refugee claim on the basis that he did not make a sufficient effort to avail himself of the protection the state of Mexico

offers. Further, the Board concluded that Mr. Gonzalez could find a safe place to live in Mexico; *i.e.*, he had an “internal flight alternative” (IFA).

[3] Mr. Gonzalez argues that the Board’s conclusions relating to state protection and IFA are unreasonable and asks me to order another panel of the Board to reconsider his claim. However, I can find no grounds for overturning the Board’s decision and, must, therefore, dismiss this application for judicial review.

[4] While Mr. Gonzalez raised two issues on his application for judicial review, I will only deal with the first, state protection, because I believe the Board’s decision can stand on that ground alone. The issue is whether the Board’s conclusion that Mr. Gonzalez had not discharged the onus on him to show an absence of state protection was reasonable.

II. Analysis

(a) Factual background

[5] Mr. Gonzalez explained that he met a man named Juan Carlos at a cinema in March 2007. They began a physical relationship. Juan Carlos was a member of the Federal Parliament. He promised to help Mr. Gonzalez in his advocacy on behalf of gays in Mexico by spear-heading legislative initiatives.

[6] Mr. Gonzalez broke off the relationship when he found out that Juan Carlos was married and had children. However, Juan Carlos fervently wanted to continue to see Mr. Gonzalez; Mr. Gonzalez refused.

[7] Over the ensuing months, Juan Carlos arranged to have Mr. Gonzalez picked up by his bodyguards, threatened to rape Mr. Gonzalez, had his bodyguards follow him and throw a rock through his aunt's window with the words "I found you" on it, kidnapped Mr. Gonzalez, tied him up for three days, and threatened him with a knife.

[8] Mr. Gonzalez complained to the police about Juan Carlos after the first incident, when he was picked up by bodyguards and threatened by Juan Carlos. His aunt also called the police after the rock was thrown through her window.

[9] On the first occasion, the police told him there was nothing they could do because he had not been injured. They told him to come back if something else happened. Mr. Gonzalez was not satisfied with that response, so he asked to speak with a senior officer. He got the same answer. The police could not do much after being called by his aunt because they had no idea who had thrown the rock.

(b) The Board's analysis of state protection

[10] The Board concluded that Mr. Gonzalez had failed to show that he made reasonable efforts to seek state protection. In particular, there were a number of state agencies to whom Mr. Gonzalez

could have complained, including the Public Ministry, the Attorney General, the Federal Investigative Agency, and the Secretariat of Public Administration. In addition, there are state organizations charged with advancing human rights, including the rights of gays, such as the National Human Rights Commission.

[11] Based on the availability of these various avenues of redress, the Board concluded that Mr. Gonzalez had failed to rebut the presumption that state protection was available to him in Mexico. Further, since Mexico is a functioning democracy, the burden on a refugee claimant from that country is relatively high.

(c) Was the Board's conclusion on state protection reasonable?

[12] Mr. Gonzalez identified several areas of concern with the Board's analysis.

- (i) The burden on a claimant is to make reasonable efforts, not to exhaust all possible avenues of redress. The Board expected Mr. Gonzalez to do too much.
- (ii) The state bodies mentioned by the Board are not appropriate for the type of protection he was seeking.

- (iii) The Board did not take account of Mr. Gonzalez' unique circumstances; *i.e.*, that he was complaining about the conduct of a high level public official, making state protection less forthcoming.

[13] Regarding the first submission, the Board clearly stated that the question was whether Mr. Gonzalez made a reasonable effort to avail himself of state protection. While it identified many possible avenues of recourse, it certainly did not impose a burden on Mr. Gonzalez to seek them all out. I do not see any error on the Board's part in articulating the burden on a claimant.

[14] As for the second argument, Mr. Gonzalez suggests that the bodies referred to by the Board might have been appropriate for complaints about the police, but not in respect of a public official such as Juan Carlos. The Board referred to a wide array of state agencies and referred to documentary evidence describing their mandates. Mr. Gonzalez did not point to any error on the Board's part in its treatment of this evidence.

[15] Regarding the third point, Mr. Gonzalez points to the decision of Justice Michael Kelen in *Farias v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1035, and suggests that the same analysis should apply here. In *Farias*, the female claimant alleged abuse on the part of a senior government official with whom she had an intimate relationship in Hidalgo, Mexico. The official was married. He began to abuse the claimant physically and verbally. She sought police protection but the police told her that they would not respond because of the abuser's public stature. Her lawyer told her it would be impossible to make a complaint against him. In finding that the claimant had not discharged the burden on her to rebut the presumption of state protection, the Board did not

specifically address whether a person alleging abuse by a high-ranking public official could obtain state protection. Justice Kelen found that the Board's analysis was too general and, therefore, was unreasonable.

[16] Is the situation here the same as in *Farias*? I do not believe so. Here, the police did not fail to respond because of Juan Carlos' position, and there was no evidence before the Board suggesting it would be impossible to do so. True, the police did not respond they way they should have. However, I cannot find the Board's conclusion – that the singular failure of the police to respond was insufficient evidence of a lack of state protection – was unreasonable in light of the evidence before it.

III. Conclusion and Disposition

[17] The Board applied the correct test on state protection, analyzed the evidence relating to the state apparatus available in Mexico, considered Mr. Gonzalez' personal circumstances, and concluded that he had not discharged the burden on him to show inadequate state protection. I cannot find its decision unreasonable and must dismiss 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 dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3257-09

STYLE OF CAUSE: GONZALEZ v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: April 7, 2010

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

DATED: April 12, 2010

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