

Federal Court



Cour fédérale

Date: 20100414

Docket: IMM-2449-09

Citation: 2010 FC 408

Toronto, Ontario, April 14, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**JORGE ALBERTO GARCIA CARREON
CONCEPCION BRAVO DIAZ
LUIS ENRIQUE GARCIA
JOSE ALBERTO GARCIA BRAVO
JORGE ALBERTO GARCIA BRAVO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants' refugee claims were rejected by the Refugee Protection Division of the Immigration and Refugee Board. The Board found that the family's youngest son, Luis, could safely return to the United States, where he was born. This finding has not been challenged. The other family members are Mexican citizens. Their claims were rejected based on the availability of an internal flight alternative for the family in the Federal District.

[2] For the reasons that follow, I am satisfied that the Board's decision was reasonable. As a consequence, the application for judicial review will be dismissed.

Analysis

[3] The family claims to fear individuals associated with a gang leader by the name of Toribio Gargallo. The principal applicant was a police officer in Veracruz, and had arrested Gargallo in 1990. As a result, he claims that Gargallo threatened to harm him and his family. Gargallo and several members of his gang were killed by police in 1991, allegedly on orders of the former Governor of Veracruz.

[4] The principal applicant says that after Gargallo's death, he and his family continued to face threats from members of Gargallo's gang. After shots were fired at the family's house in March of 2002, the family moved to the state of Puebla, where his wife's sister lived. Later that same month, the principal applicant left Mexico for the United States, leaving his family behind. The family later joined him in the U.S. and the family came to Canada in 2007.

[5] The Board found it implausible that members of the Gargallo gang would be interested in looking for the applicants in the Federal District, given that the family had not lived in Mexico since 2004. Furthermore, there was no evidence that gang members has ever approached any of the many members of the applicants' extended family remaining in Mexico in effort to locate the applicants.

[6] The Board also found that there was insufficient evidence before it to show that the Gargallo gang, assuming that it still existed, had any reach outside of the States of Veracruz and Oaxaca. This was a conclusion that was reasonably open to the Board on the record before it.

[7] Contemporaneous newspaper reports of Gargallo's death indicate that he "ruled like a feudal lord in the small farm towns around the city of Cordoba", which is located some 200 miles from Mexico City. There was no documentary evidence before the Board to indicate that the Gargallo gang continued to exist, or that it ever had any reach beyond Veracruz and Oaxaca. Nor was there any evidence that the Gargallo gang was ever affiliated with any of the drug cartels that have proliferated throughout Mexico.

[8] While the principal applicant says that the gang could find him anywhere, his evidence on this point consisted of nothing more than the bald assertion that this was so. The burden was on the applicants to adduce sufficient evidence to demonstrate that there is no internal flight alternative available to them in their home country. It was open to the Board to weigh the evidence before it and to find that the applicants had failed to adduce sufficient evidence to discharge the burden on them. It was also reasonable for the Board to find it implausible that members of the gang would have any on-going interest in finding the family in the Federal District given that there was no evidence of any attempts to locate the applicants since 2004.

[9] The Board's internal flight alternative finding was determinative. As I have concluded that this finding was reasonable, it follows that the application for judicial review is dismissed.

Certification

[10] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2449-09

STYLE OF CAUSE: JORGE ALBERTO GARCIA CARREON ET AL v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 13, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

DATED: April 14, 2010

APPEARANCES:

Geraldine MacDonald FOR THE APPLICANTS

Adrienne Rice FOR THE RESPONDENT

SOLICITORS OF RECORD:

Geraldine MacDonald FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada