

Federal Court



Cour fédérale

**Date: 20100922**

**Docket: IMM-666-10**

**Citation: 2010 FC 947**

**Toronto, Ontario, September 22, 2010**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**RICARDO RAFAEL MONTAGNER PEREZ  
ELODIA VAZQUEZ ALVARADO  
PRICILA ALEJANDRA MONTAGNER VAZQUEZ  
MARIA JOSE MONTAGNER VAZQUEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**RERASON FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 of a decision of the Refugee Protection Division of the Immigration and Refugee Board that the applicants were neither Convention refugees nor persons in need of protection.

[2] The decision of the Board was made because it found that Ricardo Rafael Montagner Perez, the principal applicant, had “failed to rebut the presumption of state protection with clear and convincing evidence.” Despite able submissions from counsel for the applicants, I cannot find that the Board erred in its assessment of the availability of state protection or that it ignored, misconstrued or misapprehended evidence, as was submitted by the applicants.

[3] The applicants are a family from Mexico. The principal applicant owned a store in Veracruz City, Mexico. In November 2008 members of Los Zetas, a criminal organization involved in drug trafficking, came to the store and threatened to kill him. Los Zetas targeted him because they believed that he had given information about the gang to federal officials.

[4] Soon afterwards they kidnapped him at gunpoint, drove him to an unknown location, beat and tortured him, and then dropped him on the outskirts of town. They warned the principal applicant not to speak to the police because the police worked for them. The gang members took his vehicle and forced him to sell his business and to give them the proceeds. The applicants hid at a friend’s house and then fled to Canada and made a claim for refugee protection.

[5] The Board found that although the principal applicant was a victim of crime, it was a personal vendetta and there was no link to any of the Convention grounds. That finding is not challenged.

[6] The Board determined that the applicants were not persons in need of protection under section 97 of the Act because they failed to demonstrate that there was not adequate state protection in Mexico. The applicants made no attempt to seek state protection before leaving Mexico and seeking protection in Canada.

[7] In most cases a person seeking protection must provide evidence that he sought protection and that it was not forthcoming; however, he is not required to seek state protection where it is objectively reasonable to presume that state protection would not be forthcoming. As was stated in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 “it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state merely to demonstrate that ineffectiveness.”

[8] Where the agent of persecution is not the state but a third party, and the state is a democratic one, there is a presumption that the protection of the state will be available to a victim of persecution if that protection is sought. I agree with Justice Tremblay-Lamer’s observation in *Zepeda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 491 that there is a spectrum of democracies and that in the case of Mexico, decision-makers must engage in a full assessment of evidence that appears to suggest that Mexico may be unable to protect its citizens. The applicant submits that the Board erred in this respect and placed an undue emphasis on the fact that Mexico is a democracy. I cannot agree.

[9] The Board's reasons make it clear that it did not simply accept that Mexico's status as a democracy meant that it could protect its citizens. Rather, the Board engaged in a detailed analysis of the current situation in Mexico. While the Board noted that Mexico was a democracy and that accordingly the burden of proving that it could not provide state protection would be high, it did not dwell on this point but rather engaged in the type of fulsome assessment contemplated by Justice Tremblay-Lamer.

[10] I do not accept the applicants' submission that the Board placed too much emphasis on the principal applicant's failure to seek alternate state protection. They rely on *Zepeda* as well for this submission. However, in *Zepeda*, although Justice Tremblay-Lamer disagreed with the Board's suggestion that alternate institutions should have been contacted if the applicants were concerned with police corruption, she did so because the police force was the only institution mandated with the protection of the nation's citizens, not the institutions the Board was proposing. Here the Board properly examined whether the applicants could have consulted different levels of police, not civilian or administrative organizations as in *Zepeda*.

[11] The principal applicant submits that the Board erred in failing to properly consider that he had been warned not to go to the police and failed to appropriately consider his explanation that he did not think the authorities could help him. In my view, the Board did take his explanation into consideration. It examined the evidence before it that there was police corruption and that there had been some infiltration of the police by Los Zetas. However, the Board found that the police force was not in a state of collapse, that there was ample evidence that those corrupted by Los Zetas and

other organizations were being weeded out and that the level of protection the applicants were seeking amounted virtually to 24 hour armed protection from the police – something that was unavailable and which was not required in order to show that state protection was available.

[12] The Board concluded that the applicants did not make diligent efforts or take all reasonable steps to obtain state protection, and that it was not objectively reasonable for the applicants not to approach federal police authorities for protection.

[13] I am not convinced that the Board ignored, misconstrued, or misapprehended evidence in a manner which rendered the decision unreasonable. In my view, the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. Accordingly, this application must be dismissed.

[14] Neither party proposed a question for certification; there is none.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application is dismissed; and
2. No question is certified.

"Russel W. Zinn"

---

Judge

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

**DOCKET:** IMM-666-10

**STYLE OF CAUSE:** RICARDO RAFAEL MONTAGNER PEREZ  
ELODIA VAZQUEZ ALVARADO  
PRICILA ALEJANDRA MONTAGNER VAZQUEZ  
MARIA JOSE MONTAGNER VAZQUEZ v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 20, 2010

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

**DATED:** September 22, 2010

**APPEARANCES:**

Dov Maierovitz FOR THE APPLICANTS

Kevin Doyle FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Gertler, Etienne LLP FOR THE APPLICANTS  
Toronto, Ontario

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