

Federal Court



Cour fédérale

Date: 20101125

Docket: IMM-156-10

Citation: 2010 FC 1166

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, the 25th day of November, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

**Luis Alberto ORTEGA ORTEGA,
Nayeli ORTIZ MARTINEZ**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated December 17, 2009, wherein the panel determined that the applicants were not “Convention refugees” or “persons in need of protection” within the meaning of sections 96 and 97 respectively of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The applicants are Mexican citizens. The principal applicant, Mr. Ortega Ortega, alleged that he was harassed and threatened with death by Sergio Tovar, from whom he had borrowed MXN\$40,000 in August 2006, promising to pay the money back in December 2006. The male applicant paid back \$10,000, but Tovar had increased the interest, and, in January 2007, the male applicant was forced to sign an acknowledgement of debt stating that he owed Tovar \$60,000. When the time came for the male applicant to pay, Tovar became aggressive. Feeling that their lives were at risk, the applicants moved several times within Mexico, but Tovar found them each time.

[3] The male applicant filed a complaint only once with the Public Prosecutor's office and alleged that the police would not have accepted the complaint because he had had no evidence. Subsequently, the principal applicant was assaulted, and his attacker, armed with a gun, fired into the air. Nevertheless, the male applicant did not file a complaint because, according to him, the police required overwhelming evidence and would not have assisted him. The female applicant was also assaulted but did not file a complaint for the same reason.

[4] The principal applicant left Mexico on March 7, 2008, and came to Montréal. He made a claim for refugee protection on April 7, 2008. The female applicant left Mexico on December 16, 2008; she claimed refugee protection in Canada that same day.

[5] After having stressed that the male applicant's credibility was not generally in issue, the panel rejected the claim for refugee protection on the ground that, had the applicants sought it, state protection in Mexico would have been adequate. The panel rejected the applicants'

explanations that the State would not have assisted them and found that there were state agencies other than the Public Prosecutor's office, such as the Attorney General of the Republic and Human Rights Commission. The panel referred to the documentary evidence to determine that anyone could file a complaint in Mexico, where this type of complaint was admissible.

[6] The standard of review is reasonableness (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, paragraph 51, and *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, paragraph 59). The applicants are challenging the panel's reasons pertaining to issues dealing with the assessment of the evidence, an aspect that is clearly within the panel's jurisdiction and regarding which the Court should not substitute its own view unless the decision were found to be arbitrary or to lack transparency.

[7] The applicants claimed that the documentary evidence showed that the Mexican police were corrupt and involved with organized crime and that the Mexican Parliament did nothing to improve the chaotic security situation. They contended that the State had no control over its territory, since drug trafficking had corrupted the police, courts and military. Thus, the applicants submitted that state protection was not available and that no entity could protect them against Tovar. The applicants cited various documents in support of their claim. However, only one of these documents was part of the documentation before the panel at the time of its decision. Consequently, any references by the applicants to document MEX42974.E, *Mexico: State Protection (December 2003–March 2005)* and to the 2005 Amnesty International report, which were not before the panel, cannot be taken into account.

[8] The applicants cited the document that was part of the documentary evidence before the panel (Document 10.1, May 2004) to try to show that the Mexican justice system was slow and that the police were ineffective when investigating complaints. The applicants claimed that the panel should have mentioned this document in its decision. However, it is well established that the panel need not mention or analyze each item of evidence before it, when its conclusion is otherwise reasonable in light of the evidence as a whole (see *Hassan v. Canada (M.E.I.)* (1992), 147 N.R. 317 (F.C.A.)).

[9] In my opinion, the panel did not err in its conclusion on state protection. I find that the passage from Document 10.1 quoted by the applicants, while it notes that Mexico's justice system is not always the most effective, does not contradict the conclusion of the panel, which, citing various documents from the National Documentation Package, determined that the police accepted such complaints as those of the applicants. The panel found that the applicants had failed to show that they had made sufficient efforts to obtain state protection, which does not seem to be an unreasonable conclusion given that they filed only one single complaint.

[10] For all of these reasons, the application for judicial review is dismissed.

[11] No question is certified.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dated December 17, 2009, is dismissed.

“Yvon Pinard”

Judge

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-156-10

STYLE OF CAUSE: Luis Alberto ORTEGA ORTEGA, Nayeli ORTIZ
MARTINEZ v. MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 20, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** PINARD J.

DATED: November 25, 2010

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