

Federal Court



Cour fédérale

Date: 20101201

Docket: IMM-2681-10

Citation: 2010 FC 1214

Ottawa, Ontario, December 1, 2010

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**JESUS MANUEL NINO GARCIA,
SONIA BEATRIZ MATA HERNANDEZ
and JESUS ABRAHAM NINO MATA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Refugee Protection Division of the Immigration and Refugee Board found that the applicants had an internal flight alternative in Mexico City and therefore denied their claim for refugee protection under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. The applicants submit that in so doing, the Board engaged in speculation and ignored evidence. The applicants have not convinced me that the Board erred as they allege and for the reasons that follow, this application is dismissed.

[2] Jesus Manuel Nino Garcia worked as a security officer for the port of Salina Cruz in the state of Oaxaca, Mexico. The drug trafficking gang Los Zetas attempted to move drugs through the port. On November 15, 2007, he was approached by four men on the way to work, who identified themselves as members of Los Zetas. Without him disclosing any personal information, the men knew his name and information about the port. They asked Mr. Garcia questions about the port, requested that he authorize certain loads to come through the port illegally, and threatened him.

[3] Mr. Garcia did not report the incident to the authorities. He says that from his experience the police and military were unable and unwilling to combat Los Zetas, and that if a complaint became known to Los Zetas, they would kill him. He said that the manager of the port, Mr. Bernstein, had been threatened and did not receive protection from Los Zetas, although he admitted that Mr. Bernstein was not subsequently harmed by Los Zetas.

[4] Shortly after he was first approached, Los Zetas contacted Mr. Garcia and attempted to bribe him to allow them to move loads through the port. He refused and subsequently received at least ten more threatening phone calls. Around March or April of 2007, his wife, Ms. Hernandez, received a call on her private cell phone demanding that she pressure her husband to comply with the demands, threatening to kill her and the minor applicant, and stating the name of the preschool the minor applicant attended. The minor applicant was subsequently moved to a different school, but Ms. Hernandez received a second call stating that the caller knew the minor applicant had changed schools and gave the name of the new school.

[5] The applicants became scared and left Salina Cruz, staying in Villa de Tututepec and Vera Cruz, moving around to avoid being located by Los Zetas and supporting themselves by using their savings. The applicants say that they realized that Los Zetas have a criminal network throughout Mexico and could pursue their enemies throughout the country. Accordingly, the applicants fled to Canada and sought refugee protection.

[6] The Board accepted the applicants' identities and found that they were credible, and generally believed their allegations in support of their claim. However, the Board found that they had a viable internal flight alternative (IFA) in Mexico City.

[7] The applicants submit that the Board engaged in speculation when it found that it was unlikely that Los Zetas would target the applicants in Mexico City. They ask that the Board's decision be overturned because it did not consider that Los Zetas may want to kill Mr. Garcia to send a message to other port employees. However, the applicants did not present evidence in this regard, and I accept the submission of the respondent that absent evidence, the applicants are asking the Court to engage in speculation as to the motivation of Los Zetas. Further, the Board considered the fact that Mr. Bernstein, a senior port employee who was also threatened, was never harmed and continued to serve in his position. This is strong evidence that in a similar situation, Los Zetas did not kill an uncooperative port employee in order to send a message.

[8] I also reject the applicants' submission that the Board ignored evidence of Los Zetas' *modus operandi* of tracking down its enemies. Rather, it determined that those targeted by Los Zetas are typically individuals who have spoken out against them or reported on their activities. The evidence

the applicants point to as demonstrating Los Zetas' pattern of threatening phone calls leading up to concrete action refers to a journalist, and is accordingly not inconsistent with the Board's finding regarding the profile of individuals killed by Los Zetas and the fact that Mr. Garcia did not fall within that profile.

[9] I do not accept the applicants' submission that the Board ignored the fact that they lived in hiding after Mr. Garcia left his job or that this situation was not sustainable. The Board did not suggest that they continue to remain in hiding in Tututepec and Vera Cruz, as they had done before fleeing to Canada. The Board merely noted that during this time they had not received further threats from Los Zetas. This was a finding of fact, not challenged by the applicants. What the Board did find was that the applicants could live sustainably in Mexico City given Mr. Garcia's prior residence and employment there, his family members living there and his strong educational and employment credentials. The Board determined that the applicants could sustain themselves in Mexico City and would not be at risk there. This finding was not unreasonable.

[10] The applicants lastly submit that the Board's finding that Los Zetas would not be able to locate the applicants if they moved to Mexico City was unreasonable. They note that the Board found that state protection would not have been forthcoming for them and they say that given the close relationship between state protection and IFA, the decision was unreasonable. The applicants say that there was evidence before the Board that Los Zetas have corrupted the authorities throughout Mexico and that there is no point in seeking state protection, an indication that Los Zetas would be able to locate the applicants outside of Salina Cruz via connections with corrupt law enforcement officials.

[11] The applicants note that they are legally obliged to keep their address up to date with the government and that since the voters list is available on the black market and would contain their address, it would be likely that Los Zetas would be able to locate them. The applicants cite a passage from *Cejudo Lopez v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1341, regarding addressing contradictory evidence, and submit that the Board failed to realize the importance of the fact that the applicants' current address would have to appear on their Voter Registration Cards. The applicants also cite the case of *Cruz Martinez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 399, in which, according to the applicants, the Court overturned a similar Board decision. The applicants submit that the only reasonable interpretation of evidence demonstrating that (a) the voters list may be available in bulk and (b) the voters list contains the current address for all registrants, was that Los Zetas would be able to locate the applicants anywhere in Mexico. The applicants say the Board's decision in this respect was lacking in justification and transparency and was unreasonable. They also cite *Silva Fuentes v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1115, in which Justice Pinard overturned a decision of the Board that found that the applicants had an IFA in Mexico City from Los Zetas.

[12] In my view, in this case, the Board offered a reasonable analysis of why it did not find Los Zetas were likely to track the applicants using the Voter Registration Cards or Federal Electoral Institute database. As the Board noted, there was no evidence presented by the applicants or included in the Research Directorate documentation indicating that Los Zetas, or any other criminal organization, had ever tracked an individual using this information.

[13] The facts in *Silva Fuentes* are significantly different than those at hand. There the applicants had been pursued by the gang that threatened them, even after a gap of five years. Further, Mr. Silva Fuentes had a personal history of standing up to the drug gang and as such fell within the description in the documentary package of someone likely to be targeted elsewhere in Mexico. The situation of Mr. Garcia is not comparable. He did not match the profile and there was no evidence that Los Zetas had any continuing interest in him.

[14] The *Cruz Martinez* case is also distinguishable. In that case the applicant was fleeing from the federal police, and accordingly the database, to which the federal police had access, was of greater importance. Finally, as noted by the respondent, in that case the Board did not provide the comprehensive analysis of the cards and database that was offered here.

[15] Finally, I do not accept that the Board made a finding that there was no state protection available in Mexico, as is stated by the applicants; rather, it accepted the testimony that Mr. Garcia did not report the incidents because he was afraid this would put himself and his family in danger. The Board's finding was clearly based on Mr. Garcia's own subjective point of view, and specifically related to Salina Cruz. Accordingly, this finding did not render the Board's very distinct IFA analysis unreasonable.

[16] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2681-10

STYLE OF CAUSE: JESUS MANUEL NINO GARCIA, ET AL. v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: November 24, 2010

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

DATED: December 1, 2010

APPEARANCES:

Shepherd I. Moss FOR THE APPLICANTS

Susan Jane Bennett FOR THE RESPONDENT

SOLICITORS OF RECORD:

SHEPHERD I. MOSS FOR THE APPLICANTS
Barrister & Solicitor
Vancouver, British Columbia

MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Vancouver, British Columbia