

Federal Court



Cour fédérale

Date: 20110106

Docket: IMM-2415-10

Citation: 2011 FC 4

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 6, 2011

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

**FELIPE DE JESUS MORENO CORONA
CECILIA CORTES JIMENEZ
DANIEL ANTONIO MORENO CORTES**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Felipe de Jesus Moreno Corona (the principal applicant) and Cecilia Cortes Jimenez and Daniel Antonio Moreno Cortes under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision made by a member of the Refugee Protection Division of the Immigration and Refugee Board (the panel). The

panel determined that the applicants were not “Convention refugee[s]” or “person[s] in need of protection” under sections 96 and 97 of the Act.

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[2] The applicants are Mexican citizens. The principal applicant worked as a truck driver for a company whose business included delivering merchandise for the company Mabe.

[3] On February 8, 2006 the principal applicant’s pickup truck was allegedly hijacked by three individuals who apparently stole merchandise worth 250,000 pesos as well as various personal documents belonging to the applicant, including his voter registration card. One of these individuals purportedly identified himself as a member of the judicial police. The hijackers seemingly left the applicant stranded and threatened to kill him if he reported them.

[4] The principal applicant claims that he filed a complaint with the police so that his boss could prove to Mabe that its merchandise had been stolen. He also says that his boss came with him when he filed the complaint but that he was the only one who spoke to the police. He apparently did not denounce the judicial police as hijackers as he was afraid that they would find out that he had reported them.

[5] Following this, the applicant purportedly received a number of phone calls from these same people, threatening him and his family and telling him that they knew where he lived and worked.

The calls allegedly continued even though the applicant and his family moved twice, to Huauchinango and to Queretaro.

[6] The principal applicant came to Canada on October 18, 2007, and made a refugee claim at the airport. His wife and son arrived on November 1, 2007, and made their refugee claims the same day. The claims of his wife and son are based entirely on the principal applicant's story.

* * * * *

[7] As the panel found that section 96 of the Act did not apply, its analysis was based solely on paragraph 97(1)(b) of the Act.

[8] The panel did not find the applicant to be entirely credible and decided that, in any case, the applicant had not proven, on a balance of probabilities, that state protection was inadequate in Mexico. The panel noted specifically that the applicant did not exhaust all possible domestic remedies before seeking international protection. The panel particularly emphasized that there were several services available to Mexican citizens to complain about corruption, including a phone "hotline", an Internet site and the ability to complain in person. The panel found inadequate the applicant's explanation that he had not attempted to avail himself of those services because he knew other people who had done so without obtaining any results.

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[9] Two questions are at issue:

- a) Was the panel's credibility finding unreasonable?
- b) Did the panel err when it found that state protection was adequate in Mexico and that the applicant had not made adequate efforts to avail himself of that protection?

[10] The standard of review to be applied to findings of credibility is reasonableness, according to Justice Beaudry in *Auguste v. Canada (Citizenship and Immigration)*, 2009 FC 1099, at paragraph 6 (following the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 47). The standard of review to be applied to findings on the question of state protection is also reasonableness, according to Justice Russell in *Montenegro Buitrago v. Canada (Citizenship and Immigration)*, 2009 FC 1046, at paragraph 14.

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[11] If we turn our attention first to the question of state protection, the applicant claims that he made an adequate effort in seeking it and that he gave a good explanation as to why he did not do more. He submits that the panel erred both in finding that his filing of a complaint was insufficient and in not taking into account his explanation that he was afraid of taking other steps because of the risk to his family in a society where the police are corrupt. The applicant alleges that the panel did not consider the documentary evidence concerning corruption in Mexico and, furthermore, that it erred in finding that the government's measures to encourage victims to report crimes provided effective protection against the risk of revenge.

[12] As noted by the respondent, while accepting the fact that the applicant had filed a complaint, the panel found that his efforts in seeking state protection were inadequate. In *Campos Navarro v. Canada (Citizenship and Immigration)*, 2008 FC 358, at paragraph 17, Justice de Montigny specified that "...the state must at least be offered a real opportunity to intervene before one can conclude that it is unable to provide the protection required by one of its citizens." In this case, the applicant did not indicate in his complaint that the hijackers could be members of the judicial police. He also did not go further and exhaust all of the domestic remedies that he was aware of.

[13] I agree with the respondent that it is not enough that the applicant rely on his subjective fear concerning the ineffectiveness of these measures (see *Sanchez v. Canada (Citizenship and Immigration)*, 2008 FC 134, at paragraph 9). It is, in any case, obvious from the panel's decision that it did explicitly take the documentary evidence into account. What it found was that state protection did exist and that the applicant had not done enough to seek it out. As was noted by Justice Edmond Blanchard in *Perez Burgos v. Canada (Citizenship and Immigration)*, 2006 FC 1537, state protection does not have to be perfect and the claimant must provide clear and convincing evidence of the inability of the state to protect him.

[14] It is, therefore, my conclusion that the panel's finding on the question of state protection falls within the range of possible, acceptable outcomes. In these circumstances, it is therefore not necessary to dispose of the arguments of the parties on the question of credibility.

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[15] For the foregoing reasons, the application for judicial review is dismissed.

[16] I concur with counsel that there is no question for certification arising.

JUDGMENT

The application for judicial review of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Board dated March 22, 2010, is dismissed.

“Yvon Pinard”

Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2415-10

STYLE OF CAUSE: FELIPE DE JESUS MORENO CORONA, CECILIA CORTES JIMENEZ, DANIEL ANTONIO MORENO CORTES v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 29, 2010

REASONS FOR JUDGMENT AND JUDGMENT: Pinard J.

DATED: January 6, 2011

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