

Federal Court



Cour fédérale

**Date: 20110224**

**Docket: IMM-4945-10**

**Citation: 2011 FC 228**

**Vancouver, British Columbia, February 24, 2011**

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

**BETWEEN:**

**VICENTE ZARATE ARIAS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] It is well-settled that there is a presumption that state protection is available to an applicant and that applicants have the onus of providing clear and convincing evidence that state protection is not reasonably forthcoming. State protection need not be perfect, as long as the state makes serious efforts to protect its citizens (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1; *Zalzali v. Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605, 27

A.C.W.S. (3d) 90 (CA); *Villafranca v. Canada (Minister of Employment and Immigration)* (1992), 150 N.R. 232, 37 A.C.W.S. (3d) 1259 (FCA); *Smirnov v. Canada (Secretary of State)*, [1995] 1 F.C. 780, 52 A.C.W.S. (3d) 398 (TD)).

## II. Background

[2] The Applicant, Mr. Vicente Zarate Arias, a Mexican citizen, alleged he was falsely convicted in Mexico of assisting a felon to escape because the police believed he had taken a cell phone video recording of officers beating up a suspect. Recognizing that each case must be examined on its own merits, when Mr. Zarate Arias appealed his conviction, the Mexican appeal court overturned the conviction.

[3] The Refugee Protection Division (RPD) found that state protection was available to Mr. Zarate Arias. The RPD also found that Mr. Zarate Arias' sexual orientation was not the motivating factor for the police in its specific pursuit to obtain his cell phone video recording.

[4] The Respondent Minister seeks an order dismissing Mr. Zarate Arias' application for judicial review.

## III. Issue

[5] Has the Applicant raised a fairly arguable case that the RPD erred?

#### IV. Analysis

##### A. *Standard of Review*

[6] The standard of review with respect to the RPD's finding of state protection is one of reasonableness. The Supreme Court of Canada has held that the decisions of the RPD continue to warrant considerable deference (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339).

##### B. *State Protection – General Principles*

[7] The Federal Court of Appeal has held that the presumption that state protection is available "... applies equally to cases where an individual claims to fear persecution by non-state entities and to cases where the state is alleged to be a persecutor..." (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 157 A.C.W.S. (3d) 153, at para. 54; leave to appeal to Supreme Court of Canada dismissed).

##### C. *State Protection through the Courts*

[8] With respect to the single incident from which all the circumstances and repercussions to Mr. Zarate Arias arose, Mr. Zarate Arias' argument that the RPD erred in finding that state protection is available to him in Mexico, does not distinguish between the Mexican judicial system which exonerated him and the actions of corrupt police authorities.

[9] Mr. Zarate Arias erroneously argues that the RPD could not find the judicial system, which overturned his conviction, to be fair and impartial because of police corruption, police abuse and

false evidence given to the lower court. The RPD reasonably found that the court system worked to assist Mr. Zarate Arias because it had annulled his conviction for lack of evidence.

#### *D. Police Corruption Considered*

[10] The RPD did not minimize or ignore the events Mr. Zarate Arias experienced. The RPD detailed his experiences and concluded that, in his specific case, state protection was available to him through the court system. Mr. Zarate Arias was represented by a lawyer who told him to contest the charges in court and he was ultimately successful. The RPD found Mr. Zarate Arias' fear that the charges would be resurrected to be purely speculative [underlining added].

[11] Further, the RPD specifically considered the allegations of police abuse and corruption. The RPD reviewed the processes in place in Mexico to allow a citizen to complain about police behaviour. The RPD also reviewed the efforts by the Mexican government to purge corruption. The RPD noted that Mr. Zarate Arias did not file a complaint, even after his acquittal [underlining added].

[12] In Mr. Zarate Arias' case, his successful appeal to the appeal court in Mexico demonstrated that the RPD had reasonably concluded that he had failed to rebut the state protection presumption (*Villafranca*, above).

#### *E. Sexual Orientation Considered*

[13] Mr. Zarate Arias argues that the RPD did not properly consider his sexual orientation in assessing the effectiveness of state protection in Mexico and that the RPD's analysis was "pro-

forma” and “boilerplate”. Contrary to these assertions, the RPD specifically considered Mr. Zarate Arias’ circumstances including his sexual orientation in assessing whether state protection is available to him.

[14] The RPD found that state protection was granted to Mr. Zarate Arias through an appeal court in Mexico. The RPD found that any discrimination he faced was secondary to the officer’s objective of obtaining the video.

[15] It is well-settled that the RPD is not required to refer to all the evidence in its reasons for decision (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2004 F.C. 333, 129 A.C.W.S. (3d) 576).

[16] The RPD’s decision is reasonable and does not warrant intervention by this Court.

[17] For all of the above reasons, the Applicant’s application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the Applicant’s application for judicial review be dismissed. No certified question of general importance for certification.

“Michel M.J. Shore”

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Judge

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

**DOCKET:** IMM-4945-10

**STYLE OF CAUSE:** VICENTE ZARATE ARIAS v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** February 23, 2011

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

**DATED:** February 24, 2011

**APPEARANCES:**

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