

Federal Court



Cour fédérale

**Date: 20110519**

**Docket: IMM-6401-10**

**Citation: 2011 FC 581**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, May 19, 2011**

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

**BETWEEN:**

**RICARDO JORGE IRIGOYEN TORRES**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Preliminary**

[1] An internal flight alternative (IFA) is only taken into account once the applicant's credibility has been accepted:

[5] . . . After all, state protection and IFA (the subjects she is mostly interested in) only become issues once the Applicant's story is accepted (i.e. his credibility is accepted) and his objective and subjective fear is established. . . .

*(Bokhari v Canada (Minister of Citizenship and Immigration)*, 2005 FC 574, 139 ACWS (3d) 126).

[2] In identifying IFAs, the Immigration and Refugee Board (Board) must take all of the evidence into account, including the applicant's testimony at the hearing and the documentary evidence. The existence of an IFA may be determinative in itself; however, consideration of all of the evidence must be reflected in the Board's decision concerning the regions proposed as viable

## II. Judicial proceeding

[3] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision by the Refugee Protection Division (RPD) of the Board dated October 15, 2010, determining that the applicant is not a Convention refugee as defined at section 96 of the IRPA or a person in need of protection under section 97 of the IRPA.

## III. Facts

[4] The applicant, Ricardo Jorge Irigoyen Torres, was born on March 5, 1976, and is a Mexican citizen.

[5] Mr. Torres submits that he worked as a taxi driver. He states that on September 20, 2008, when he was returning home at or about 9 p.m., he was intercepted in his work vehicle by two individuals. They allegedly forced him to drive them into the centre of the city of Monterrey to

extort other taxi drivers. He states that before letting him go, the two individuals threatened him with a weapon, stole his wallet and demanded that he pay them a ransom of 500 pesos a week.

[6] Mr. Torres alleges that after this assault, he filed a complaint with the police department. He states that, the next day, he received a call on his cellphone in which he was issued death threats. During this call issuing death threats, the persecutors allegedly represented themselves as members of Los Zetas. Mr. Torres states that he later received other calls of the same nature, the last of which was on December 19, 2008.

[7] Mr. Torres submits having taken steps to protect his family by moving three times, in particular in the cities of Guadalupe and Monterrey.

[8] The applicant arrived in Montréal on January 29, 2009, where he claimed refugee protection the day he arrived.

#### IV. The decision sought to be reviewed

[9] The RPD concluded that the refugee protection claim should not be allowed because there was no link with the reasons set out at section 96 of the IRPA or with the ground of torture set out at paragraph 97(1)(a) of the IRPA, since there was no involvement of a state agent or of a person acting on behalf of or with the consent of a state agent. Consequently, the RPD conducted its analysis in accordance with paragraph 97(1)(b) of the IRPA.

[10] Regarding all comments on the applicant's credibility, the RPD took the following stance:

[TRANSLATION]

[9] Although many questions were raised during the hearing regarding the credibility of the applicant's allegations and the efforts he made to obtain the protection of the authorities in his country, the panel identified the internal flight alternative as the determinative issue in this case.

[11] Regarding the IFA, the RPD pointed to and examined certain points of the applicant's testimony at the hearing in which he stated the following:

- The applicant testified that when he stayed in Guadalupe and Monterrey, he received death threats via his cellphone, but that he stopped receiving them once he got rid of it;
- He then returned to live at home, and received no further threats;
- The RPD then stated in its reasons that the applicant failed to submit evidence showing that his persecutors were willing and able to track him down everywhere in Mexico;
- The RPD also considered the applicant's testimony in which he stated that aside from his fear related to his problems with Los Zetas, there was no obstacle making it unreasonable for him to relocate to one of the proposed IFAs.

(Decision at paragraphs 12 to 14).

[12] Consequently, the RPD rejected Mr. Torres' claim.

## V. Issue

[13] Did the RPD err in finding that a viable IFA existed for the applicant?

## VI. Relevant statutory provisions

[14] The following provisions of the IRPA apply in this case:

**Convention refugee**

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

**Person in need of protection**

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

**Définition de « réfugié »**

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**Personne à protéger**

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes

auxquelles est reconnu par  
règlement le besoin de  
protection.

#### V. Submissions of the parties

[15] The applicant submits that the RPD erred in fact and in law in finding that there was an IFA and erred in failing to take all of the documentary evidence into account. According to the applicant, the RPD's decision results from an erroneous assessment of the evidence and the facts, especially the country's social and political context.

[16] The respondent submits that the RPD's decision is well founded in fact and in law, is reasonable and contains no error warranting the intervention of this Court. According to the respondent, the evidence clearly shows that the applicant's presumed persecutors had no motivation to search for him everywhere in Mexico.

#### VI. Standard of review

[17] In matters concerning IFAs, the standard is reasonableness (*Corona v Canada (Minister of Citizenship and Immigration)*, 2010 FC 508, at paragraph 5).

#### VII. Analysis

[18] The criteria to be met for a finding of an IFA are well established in the case law (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 109 DLR (4th) 682(CA)). The RPD must first determine whether the claimant has a viable internal flight alternative, then assess whether it is objectively reasonable for the claimant to seek refuge

by moving to another part of the country before claiming refugee status abroad. To establish the existence of these two criteria, the RPD examined and reiterated some passages from the applicant's testimonial evidence and found that there was an internal flight alternative, that is, in the cities of Mexico D.F., Veracruz and Monterrey (Decision at paragraph 12).

[19] This statement by the RPD that Monterrey, Veracruz and Mexico D.F. are safe places where the applicant could go live is problematic because it is not supported by the documentary evidence, which the RPD also did not analyze, or by the applicant's testimony.

[20] First of all, the applicant testified that he had already tried to move three times, in particular with his family to the city of Monterrey, and, according to his testimony, at that time he continued to receive death threats from his persecutors on his cellphone:

[TRANSLATION]

Q. : (Inaudible). And then, the second place?

R. : I rented a friend's house. (Inaudible). The place is called Valler del Maiz.  
[BY THE INTERPRETER] V-A-L-L-E-R del Maiz; M-A-I-Z. The Villa de Chapultepec neighbourhood.

Q. : Is that a city?

A: No. The city is Monterrey, Monterrey, Nuevo León. Monterrey, Nuevo León  
(Hearing transcript (HT), file of the panel (FP) at page 125).

[21] Furthermore, Monterrey is the city where the presumed members of Los Zetas forced the applicant to drive them to extort money from other taxi drivers in September 2008 (Personal Information Form (PIF), FP at page 21). These two elements in the testimonial evidence suggest



the presence of Los Zetas in the city of Monterrey. The RPD does not address that in its decision at all.

[22] The documentary evidence filed in the record is not mentioned anywhere in the RPD's decision. According to some excerpts of this evidence, ". . . the US government has stated that Los Zetas is 'the most technologically advanced, sophisticated and dangerous cartel operating in Mexico'" (RESPONSES TO INFORMATION REQUESTS (RIRs), MEX103396.FE, Mexico: The presence and structure of Los Zetas and their activities, Research Directorate, Immigration and Refugee Board of Canada, Ottawa) [FP at page 86]. This group is widely present throughout Mexico:

. . . Los Zetas are present in 13 Mexican states and in 43 cities in the US . . . The area they cover extends from El Paso to the US/Mexico border, south through the state of Veracruz and east through the state of Tabasco, and into the Yucatan peninsula (ibid.). According to NPR, their territory crosses through the State of Chiapas and extends to Guatemala (2 Oct. 2009). Some sources note that Los Zetas have bases in the states of Tamaulipas (NPR 2 Oct. 2009; Agencia EFE 30 Jan. 2010), Zacatecas, Aguascalientes, San Luis Potosí and Guanajuato (Mural 29 Jan. 2010). [Emphasis added.]

(RIRs, below, FP at pages 86 to 87).

[23] By identifying the city of Veracruz as an IFA, the RPD's decision is inconsistent with the information contained in the documentary and testimonial evidence. The Court is certainly not here to re-weigh the evidence (*Linares v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1250, at paragraph 49); however, the Court does have jurisdiction to refer the application back to another member when the finding does not result from the evidence having been reasonably taken into account.

[24] The RPD did not explain how the three places identified reasonably constituted viable IFAs so as to be consistent with the evidence (*Martinez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 550). The RPD could not reasonably state that it accepted the applicant's credibility and then make the findings set out in its decision. If the RPD doubted the applicant's credibility, it had to provide its reasons in its decision.

#### VIII. Conclusion

[25] It is clear that the RPD did not reasonably review all of the evidence submitted to it, including the documentary evidence in particular. In its reasons, the RPD deals almost exclusively with the testimony of the applicant, who can only provide a subjective opinion of the danger he faces. The objective evidence (documentation packages on country conditions) was ignored, despite its relevance to the hearing before the RPD. Given the facts of this case, this Court is justified in intervening. For these reasons, the application for judicial review is allowed and the matter is referred back to a differently constituted panel for redetermination.

**JUDGMENT**

**THE COURT ORDERS** that the application for judicial review be allowed and the matter be referred back to a differently constituted panel for redetermination. No serious question of general importance is certified.

“Michel M.J. Shore”

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Judge

Certified true translation  
Sarah Burns

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

**DOCKET:** IMM-6401-10

**STYLE OF CAUSE:** RICARDO JORGE IRIGOYEN TORRES  
v MINISTER OF CITIZENSHIP AND  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 11, 2011

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

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