

Immigration and Refugee Board  
Refugee Protection Division



Commission de l'immigration et du statut  
de réfugié

Section de la protection des réfugiés

RPD File # / No. dossier SPR VA3-04443  
VA4-01881  
VA4-01882  
VA4-01883

Private Proceeding  
Huis clos

Claimant(s)

Demandeur(s) d'asile

Date(s) of Hearing

July 6, 2005

Date(s) d'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Videoconferencing held in

Vancouver, British Columbia

Fait par vidéoconférence à

Date of Decision

July 29, 2005

Date de la décision

Panel

Tita De Rousseau

Tribunal

Claimant's Counsel

Robert Gertler  
Barrister & Solicitor

Conseil du demandeur d'asile

Refugee Protection Officer

R. Go

Agent de la protection des réfugiés

Designated Representative

Lucina Janette Olivares Ortiz for  
Maria Fernanda Sanchez Olivares and Angeles Jazmin Olivares Ortiz

Représentant désigné

Minister's Counsel

Nil

Conseil du ministre

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The claimants, \_\_\_\_\_ and \_\_\_\_\_ are citizens of Mexico and travelled to Canada on their own valid Mexican passports.<sup>1</sup> The adult male claimant arrived on September 16, 2003 and his wife and daughters followed on Dec. 12, 2003.

The Designated Representative for the minor children, who were not present at the hearing, is their mother, the female claimant.

**ALLEGATIONS**

The claimants all relied on the narrative of the adult male claimant and did not each make separate allegations.<sup>2</sup>

The adult male claimant, hereinafter referred to simply as the claimant, alleged that he fears a certain \_\_\_\_\_ Police. The female claimant had a relationship with this individual in 1994-95 before she met the claimant, and had a daughter, \_\_\_\_\_ (one of the minor claimants) with him. The claimant alleged that after he started living with the female claimant in 2000, the \_\_\_\_\_ harassed him and the female claimant, and threatened to kidnap \_\_\_\_\_ out of anger at the mother's new relationship. The claimant was assaulted in \_\_\_\_\_ 2002 by the \_\_\_\_\_ and threatened with death. The family moved from J \_\_\_\_\_ to Mexico City but the harassment continued, and in \_\_\_\_\_ 2003, the claimant was again assaulted. This led him to flee Mexico in September, leaving his wife and children behind to follow 3 months later.

<sup>1</sup> Contained in Exhibit 2.

<sup>2</sup> Exhibit 1.1 (principal claimant), Exhibit 1.2 (wife), Exhibit 1.3 and 1.4 (daughters).

**DETERMINATION**

The claimants are not Convention refugees, nor persons in need of protection. They were not credible witnesses and the panel finds that there is adequate state protection available to persons such as them in Mexico.

**ANALYSIS**

The claimants established their identities satisfactorily through their passports and other reliable documentation.

The female claimant testified that she had a relationship which started when she was 17, lasted one year and resulted in the birth of her daughter. The panel accepts that part of her testimony, which is supported by the birth certificate of [redacted].<sup>3</sup> However, her allegation that the father of her child is a [redacted] in the [redacted] Police is not supported by any corroborating evidence. The father is not named on the birth certificate, nor is there any other documentation regarding [redacted] father. The female claimant testified she never requested nor received any support from the [redacted] and does not have anything to acknowledge his paternity.

While the panel accepts she had a relationship before her current common-law relationship with the male claimant, it finds her evidence regarding the [redacted] is not credible. She was asked how she knew he was a police officer. She never saw him in a uniform, he did not drive a vehicle with any insignia and she did not ever accompany him or meet him at a police station. She testified she did see a black shield, that he was armed (although she could not describe his weapon) and he talked about his narcotics cases. She testified that he was stationed in Mexico City but travelled throughout the country. Her family never met him.

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<sup>3</sup> Exhibit 4, page 13&14.

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When she became pregnant and told him of her pregnancy in 1995, he wanted her to abort the baby. That is when she learned he was married and decided to leave him. She moved from the apartment he had rented and paid for her back to her mother's home. Her mother showed no curiosity about the father of her child "because she is an ignorant person," and no action was taken to obtain support for the child. This all occurred in

While they lived together, the [redacted] insulted her and forced sexual relations but she did not make any complaints to the authorities because she loved him. After their separation, she did not see him until 1996, after the birth of the baby. He then accosted her and took her to a motel where he forced himself on her. She alleged he harassed her on several other occasions, but she never went to the police or sought medical attention because she was afraid of him and his influence as a police officer.

In 2000, the female claimant met the male claimant and he moved into her mother's place with her. In 2002, the [redacted] assaulted the male claimant. In his PIF, the claimant stated that he tried to lay assault charges, but the police refused to lay charges against a [redacted] Police officer. However, in oral testimony, the female claimant denied this, stating that he went to the police only after the second assault. The male claimant said the [redacted] had a weapon and threatened him, so despite the fact that there were several witnesses to the assault, he did not report it. There is a material inconsistency in the claimants' accounts with regard to making police reports, and the panel finds this inconsistency impugns the credibility of both claimants. The issue of whether or not the male claimant sought the assistance of the police after being assaulted is a matter central to his allegation that there is no state protection available to him in Mexico.

The family decided to move to Mexico City after the first assault. The male claimant was questioned as to why, if they knew the [redacted] was stationed in Mexico City and lived there with his wife, they would move closer rather than further away from him. The family moved in with the male claimant's family, which, on the face of it, is an obvious place for someone to look for them. He explained that the only support he had in Mexico was there with his family, and he felt safe in a city of 23 million people. He did not think the [redacted] knew he was from

Mexico City, despite his claims that he was confident the [redacted] through his police connections, could find him anywhere. It is not credible that if the claimants feared persecution by the [redacted] who they believed was a [redacted] police officer with access to police information allowing him to track people throughout the country, they would chose to move into the city in which he lived. Presumably, the [redacted] knew the male claimant's name since he had been harassing him for two years, and could easily track his family. If the claimants were making an attempt to hide, it makes no sense that they would move to Mexico City and the claimant would continue his employment with [redacted] there, which he had held since 1993. The panel therefore does not find the claimants' evidence regarding an assault to be credible, and does not find their purported attempt to hide in Mexico City to be credible.

The claimant testified that on [redacted] 2003, he was accosted again by the [redacted] in Mexico City, and badly beaten. His PIF indicates he went to the police this time, but they refused to lay a charge. He also went to the hospital for treatment of his injuries, and provided a medical report to confirm.<sup>4</sup> This medical report is inconsistent with the claimant's testimony regarding his injuries. In the PIF, he states that he was viciously beaten, left tied up and naked in a ravine, and when rescued by a passer-by the next day, he appeared dead. In fact, he stated that he thinks the Commander did not bother him again after that because he probably assumed he was dead. Yet the medical report, allegedly written on [redacted] the same day of the assault, and not the day after when the claimant was rescued and went to the doctor, simply states he was attacked by 2 individuals, beaten and had momentary loss of consciousness. He had facial wounds and skin scrapes, and bruises and scrapes to his lower limbs. There is no indication he was hospitalized or treated for anything more serious than scrapes and bruises, which is inconsistent with the vicious assault the claimant alleges. There is no copy or other corroboration of the alleged police report. Therefore, while the panel is mindful of the fact that corroboration is not necessary to confirm all the evidence to establish its credibility, given the lack of credibility and inconsistencies throughout the evidence, it finds the lack of corroboration that the claimant was attacked by a [redacted] of the [redacted] police is a serious flaw in his claim. The claimant may have suffered an injury on J [redacted] hat occurred, as set out by the

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<sup>4</sup> Exhibit 5.

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physician, as a result of a beating by two individuals, but it is not credible that the was involved.

The claimant then decided to leave Mexico. He left his children and wife, who was allegedly the primary target of the and was pregnant, and came to Canada with his brother, despite the fact that he allegedly feared the intended to kidnap He explained he left his family behind because his brother wanted to accompany him, and he did not have sufficient funds for the whole family. The panel notes the female claimant had a valid passport<sup>5</sup> at this time and could have left with him. Instead, she stayed in Mexico City with her daughters, living with her siblings, and joined the claimant in Canada 3 months later.

The panel did not find this course of action at all credible. First it is not credible that the would pursue the female claimant some years after their relationship ended when he demanded that she get an abortion. The violent aggression against her and her new "spouse" was very sporadic. It is not clear what the wanted of her at this point – he had rejected the child, and was himself married. The revenge factor against the male claimant was allegedly the reason he pursued them, but it stretches the panel's credulity that it would go on for so many years after a short one-year relationship, which ended in 1996.

Documentary evidence<sup>6</sup> indicates that protection is available in Mexico to women threatened with domestic violence by spouses who are police officers. It therefore follows that there is also protection available when the complainant is a former girl friend. There is detailed information on various avenues open to persons who want to file charges even if their local police are uncooperative. Administrative proceedings against a public servant can be initiated. The Human Rights Commission can issue a recommendation for charges to be laid. In the where the claimants lived at the time of the second alleged assault, authorities can send a request to the Mexican government to initiate investigation. The Public Prosecutor will take reports, as will both family and criminal courts. It is clear that there are options open to persons who feel threatened by a police officer, to have their complaints investigated and acted

<sup>5</sup> Exhibit 2.2.

<sup>6</sup> Exhibit 3, Index numbers 5.7 and 5.8.

upon, and that the Mexican government has put in place protections for person making such complaints. The panel therefore finds that there is adequate state protection available for person fearing persecution by police officers who are acting outside their professional capacities. That protection may not be perfect, but as the Court noted in *Villafranca*,<sup>7</sup> a guarantee of perfect protection is not possible.

In summary, the panel has concluded that the claimants were not credible in their account of their alleged fear of persecution at the hands of a [redacted] of the [redacted] Police. Their actions in not taking the reasonable steps available to them to report his actions to the authorities, their failure to establish that they took reasonable steps to avoid being found by him, the fact that ten years have elapsed since the [redacted] s affair with the female claimant, and their failure to depart Mexico when able to do so, taken with the inconsistencies and implausibilities throughout their evidence, lead the panel to find them not credible in their allegations of a well-founded fear of persecution in Mexico.

As the minors base their claims entirely on those of their parents, the same determinations are made with regard to their claims.

#### CONCLUSION

Therefore, the claimants, [redacted] and [redacted] are not Convention refugees as there is no more than a mere possibility they would face persecution for any of the enumerated grounds on return to Mexico.

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<sup>7</sup> *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

As there is no other evidence before the panel, it makes the same credibility finds with regard to the section 97 factors of the *Immigration and Refugee Protection Act*<sup>8</sup> in concluding that there is not a reasonable possibility of a risk to the claimants lives, a risk to them of cruel or unusual treatment or punishment or a danger of torture. They are not persons in need of protection.

"Tita De Rousseau"

Tita De Rousseau

July 29, 2005

Date

<sup>8</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.