

State Protection

Even if I had found a nexus, which I did not, I would still find that the claimant is not a person in need of protection. I am satisfied, within a balance of probabilities that she would not be harmed if she returns to Mexico. Reliable documentary evidence satisfies me that state protection was and is available in Mexico for victims of police corruption.

Mexico is a functioning democracy,⁷ and thus the presumption of state protection applies. The claimant can rebut this presumption by providing "clear and convincing" evidence that the state of Mexico is unable or unwilling to protect her.⁸ For the reasons that follow, I find that the claimant failed to rebut this presumption.

In oral testimony, the claimant testified that [redacted] and a cohort forced their way into her house in [redacted] 2003. She had left her parents' house in Mexico City and moved to [redacted] ([redacted] hours drive from Mexico City) in [redacted] 2003. They threatened her with a gun and told her that they would kill her if she denounced them. She was afraid to report the threats to the police because [redacted] is a police officer. When asked by the RPO whether she reported [redacted] and his cohort to the state or federal judicial police, the claimant replied that she considered it, but decided not to because she believed that the police in Mexico are connected and would act to protect

⁷ Exhibit R-1, National Documentation Package, revised November 26, 2004.

⁸ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689.

one another. The RPO asked her how she knows this, to which she replied she had read about it.

Documentary evidence that I find credible and trustworthy does not support the claimant's opinion regarding protection. Mexico has a stable government and is in control of its territories. It has a national as well as state and local police forces and an independent judiciary. Accordingly, Mexico is governed by the rule of law. There are legislative, enforcement and correctional institutions and arms of the government to deal with police corruption and other criminal matters. It is known that victims of corruption and crime are entitled to state protection in Mexico.⁹

The panel recognizes that police corruption and abuse of power in Mexico continues to be problematic. The panel also recognizes that crime and corruption within police ranks are widespread. However, the documentary evidence shows that Mexico is making serious efforts to address these problems.¹⁰ When President Fox took office in 2001, the New York Times reported that the "nation's attorney general fired more than 1,400 of 3,500 federal police officers for corruption".¹¹ Further, Mexico restructured the PGR office in 2002. The PGR (Attorney General's Office) is making significant inroads

⁹ *Supra*, footnote 7, item 2.1, United States Department of State, Country Reports on Human Rights Practices 2003, February 25, 2004.

¹⁰ Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

¹¹ *Supra*, footnote 7, tab 7.4, Response to Information Request, number MEX39623.E, September 11, 2002.

prosecuting corrupt public officials and fighting organized crime. Victims of corruption and organized crimes can report offences directly to the nearest Public Ministry office, when the local police might be involved. When victims are ignored or their claims are not processed, they have recourse to report the offence directly to the Internal Comptroller of the PGR.¹²

The claimant has a burden to show that she made a determined effort to seek state protection. I find that she did not make a determined effort or even a reasonable effort. In oral testimony, she testified that [redacted] and his cohort threatened her again, to leave Mexico. Threats were made four times from [redacted] 2003 before she left in [redacted] 2004. She did not make any effort to report any of the threats to the local, state or federal police. I find no documentary evidence that shows corrupt police officers are linked and work together across jurisdictions, similar to large criminal organizations that have a national or international presence. Thus, I find no objective basis to the claimant's fear. I considered that the claimant did not try, not even once, to access the police and other state protection that was and is available in Mexico. I find that it is unreasonable for her not to have made any effort whatsoever before seeking international protection. I find it is unreasonable for the claimant not to have taken any meaningful steps to access the protection of the state of Mexico that was and is available to her.

¹² Ibid., tab 7.2, Response to Information Request, number MEX39540.E, September 20, 2002.

I find the documentary evidence much more persuasive than I do the claimant's opinion. I find that the claimant did not make a determined effort¹³ to avail herself of the state protection available in Mexico before fleeing to Canada. Thus, it would not be unreasonable for her to return to Mexico to seek protection there. The panel recognizes that a citizen is not entitled to perfect protection.¹⁴ What is necessary is that the state be reasonably forthcoming with serious efforts to protect. Canada's protection for the claimant is not necessary.¹⁵ I am not convinced within the preponderance of probability category,¹⁶ as I must be, that the state of Mexico would not be reasonably forthcoming with serious efforts to protect the claimant, if she were to return to Mexico and approach the state for protection.

Conclusion

For the above reasons, I reject this claim for refugee protection and find that the claimant is not a Convention refugee and not a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

"B. Wong"

B. Wong

DATED at Toronto this 22nd day of March, 2005.

¹³ Canada (Minister of Citizenship and Immigration) v. Kadenko (1996), 143 D.L.R. (4th) 532 (F.C.A.).

¹⁴ *Supra*, footnote 10, at 132-133.

¹⁵ Szorenyi, Gabor v. M.C.I. (F.C., no. IMM-2817-02), O'Keefe, November 25, 2003, FC 1382.

¹⁶ Xue, Jian Fei v. M.C.I. (F.C.T.D., no. IMM-4477-99), Rothstein, October 23, 2000.



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉS)

s.19(1)

IN PRIVATE
HUIS CLOS
TA4-02932

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

March 3, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

March 22, 2005

DATE DE LA DÉCISION

CORAM

Bing Wong

CORAM

FOR THE CLAIMANT(S)

No Counsel

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

Y. Rafat

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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a 28-year-old citizen of Mexico, is seeking refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act¹ (IRPA).

As the claimant was not represented by counsel, the panel ensured that the following procedural safeguards were in place. She was given ample time before the commencement of the hearing to confer with a Refugee Protection Officer (RPO) who explained to her the procedures at the hearing and what onus she had to meet. The Convention grounds and the meaning of the consolidated grounds were explained to her. She was given an opportunity to review her Personal Information Form (PIF).² She indicated that she was confident in proceeding without the help of counsel and affirmed that she understood the explanations and instructions provided by the RPO.

Allegations

The claimant alleges as follows:

She fears ' ', the cousin of her ex-boyfriend, by reason of her being a member of a particular social group, namely victims of a corrupt police officer. She also fears her parents by reason of her being a bisexual woman. In addition, she claims to be a person in need of protection because she would be subjected personally to a danger of

¹ Immigration and Refugee Protection Act, S.C. 2001, c. 27.

² Exhibit C-1.

torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment in Mexico.

In 2003, after discovering that she is a bisexual woman, she tried to break off her eight-year relationship with , her boyfriend. He did not want to let her go and threatened to tell her parents about her bisexuality. She countered, but not in seriousness, to go to the authorities to report his illegal drug trafficking activities with his cousin, a corrupt Mexico City police officer. When learned of her counter threat, he and a cohort broke into her house in 2003 and threatened her with a gun. He told her to leave the country, or he would kill her. He visited her again four more times between 2003 before the claimant was able to save sufficient money to come to Canada in 2004.

Determination

The determinative issues in this case are nexus and whether the state of Mexico is willing and able to protect the claimant from a corrupt policeman.

I am satisfied by reason of a certified copy of her passport³ that the claimant is who she claims to be and that she is a citizen of Mexico.

I find that the claimant is not a Convention refugee, as she does not have a well-founded fear of persecution for a Convention ground in Mexico. I also find that the

³ Exhibit R-2, copy of passport in Citizenship and Immigration Canada (CIC) documents.

claimant is not a person in need of protection in that her removal to Mexico would not subject her personally to a risk to her life or to a risk of cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that her removal to Mexico will subject her personally to a danger of torture. My reasons follow.

Analysis

I find the claimant to be a generally credible witness. She answered questions in a straightforward manner and her oral and written (PIF narrative)⁴ testimony was fairly consistent as well as her background information given at the port-of-entry (POE).⁵ I believe she is a bisexual woman who fears that her parents might find out. I also believe that she had a relationship with , and that threatened her. However, I also believe that state protection is available for victims of corrupt police officers.

Nexus

In a number of cases, the Trial Division has held that victims of crime, corruption⁶ or vendettas generally cannot establish a link between their fear of persecution and one of the grounds in the definition of Convention refugee. I find that such circumstances apply in the instance case.

⁴ Exhibit C-1, Personal Information Form and narrative.

⁵ *Supra*, footnote 3, Schedule 1.

⁶ Leon, Johnny Edgar Orellana v. M.C.I. (F.C.T.D., no. IMM-3520-94), Jerome, September 19, 1995; Calero, Fernando Alejandro (Alejandro) v. M.E.I. (F.C.T.D., no. IMM-3396-93), Wetston, August 8, 1994; Vargas, Maria Cecilia Giraldo v. M.E.I. (F.C.T.D., no. T-1301-92), Wetston, May 25, 1994.