

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 VA3-02106
VA3-03294

Private Proceeding
Huis clos

Claimant(s)

Demandeur(e)s d'asile

Date(s) of Hearing

Date(s) de l'audience

June 10, 2004

Place of Hearing

Lieu de l'audience

Toronto, Ontario

Videoconferencing held in

Fait par vidéoconférence à

Vancouver, British Columbia

Date of Decision

Date de la décision

July 6, 2004

Panel

Tribunal

Fred Hitchcock

Claimant's Counsel

Conseil du demandeur d'asile

Richard Addinall
Barrister & Solicitor

Refugee Protection Officer

Agent de la protection des réfugiés

Nil

Designated Representative

Représentant désigné

Nil

Minister's Counsel

Conseil du ministre

Nil

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These are the reasons for the decision of the Refugee Protection Division with respect to the refugee protection claim made by _____ and his wife

_____ . The hearing for these claims were held pursuant to the *Immigration and Refugee Protection Act (Act)*.¹ This was a videoconference hearing with the claimants and their counsel in Toronto, Ontario, and the Presiding Member and the interpreter in Vancouver, British Columbia.

The principal claimant, _____ is a citizen of Mexico. He claims to have a well-founded fear of persecution due to being a member of a particular social group; namely family. In addition, he claims to be a person in need of protection because he would be subjected personally to a risk to his life or to a risk of cruel and unusual treatment or punishment.

The co-claimant, _____, is a citizen of Mexico. She claims to have a well-founded fear of persecution due to being a member of a particular social group "gender/abuse", as stated in section 10, page 12 of her Personal Information Form (PIF). She also claims to be a person in need of protection because she would be subjected personally to a risk to her life or to a risk of cruel and unusual treatment or punishment in Mexico.

ALLEGATIONS

Both claimants provided oral testimony on the date of the hearing, and I note that _____ has adopted the narrative of her husband's, _____ narrative.

Both claimants were asked at the beginning of the hearing whether they had any changes or amendments to make in respect to details contained in their PIFs² and they replied "no" and stated that all of the contents of the PIFs were true and correct to the best of their ability.

The principal claimant, _____, provided most of the oral testimony. He was fairly consistent with his narrative although he had a few dates confused.

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

² Exhibits 1.1 and 2.1.

He states he met his wife, during 1999 and they were married on 2, 1999 in Mexico. The agent of persecution for both claimants is a previous boyfriend of by the name of both claimants state, is possessive and obsessed with After became involved in a relationship with the principal claimant and married him in 1999, became very jealous and was making telephone threats to their residence on a regular basis.

However, it was not until , 2001 when stated outside his house he was confronted by three men who assaulted him. He states these individuals were wearing police uniforms of the local police. He states in his narrative,

The said to me that I was not a man; that I was a homosexual and they were coming to give me a lesson so I would learn to be a man. They started laughing and they were making jokes between them. They said they had done a good job; that I should remember the lesson well because the next time they would kill me.

The claimant states he did not seek police protection after this physical confrontation. He states he assumed these individuals were representing even though they did not at any time use his name.

The claimant states on 2001, while he was walking from his residence to his work place and arrived close by. In the narrative he states,

... van stopped, and three men got out and pulled me in. They tied up my arms and legs and beat me so hard that I lost consciousness. They raped me there in the van and I lost consciousness again. They left me in a deserted area. I was half-naked with my shirt on. I walked to the road. A passing car picked me up and took me to .

I went to a doctor the same day and was given something for the pain; however, I was also in pain spiritually and emotionally and the doctor could not help me with that.

I went to the police station in / with my wife four days later and tried to explain what had happened. The police said that they could not take the report unless we could produce some kind of proof of what had happened.

When I asked the doctor for a certificate to take to the police he refused because he said he did not want to get involved in these kinds of problems and the police does not protect honest people.

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The claimant was asked the name of this doctor and he states he could not remember. He was asked again if, in fact, that he went back to the doctor for a second time to try to obtain a medical report was it not somewhat unusual that he could not recall the name of the doctor? The claimant states due to his emotional state he cannot recall the name of this doctor. I noted that in s testimony (the claimant's wife) that she stated that she could remember that the doctor's name might have been but she was not certain whether that was his first or last name. She states she was the one that took the prescription to get medication for her husband. She states because he was in such an emotional state it was not unusual that he could not recall the name of the doctor.

The principal claimant stated in his narrative and in his oral testimony that he and his wife tried to make a report at another police station and states in his narrative,

But when we got there and told them what happened they were laughing in our faces. They were saying things such as "why do not you show me your ass" and suggested that my wife and I provoked all of these problems. We were very depressed when we got home. We had tried to look for help with the authorities.

The claimant states that when they first went to report this offence it was at the Police Station and the second time they tried to report the same offence was to a Police Station. The claimant alleges that is a highly influential person in and that he has businesses in cattle ranches and clothing stores. Both claimants state that has influential friends and has connections with the police. For this reason, they believe that the police would not take their complaints seriously or follow up with a formal investigation. The principal claimant, states in his narrative,

On 2001, I went to the house of my wife's parents to pick her up. showed up again and said that had to go with him. We refused. He took a bottle of alcohol from his truck and threatened me with it. intervened, going between us, and he hit her in the head leaving her with a wound in the forehead. There was so much blood that I was screaming and angry. got scared and started running. 's parents came out and we went inside the house with them. We were afraid to go out again and we called a doctor to come to the house.

On 2001 I took my wife to look for a psychologist because both of us were badly depressed. We could not see one that day so we had to go back home. As we were returning home and another two men came up to us and started to push and beat us. screamed in order to attract the attention of other people in the area. A car drove by and and the other man ran away. We went home as

quickly as we could. was screaming at us that the next time he
would kill us.

I note in the principal claimant's oral testimony that he appeared to have the dates completely confused on the above two assaults from In the assault of 2001, the claimant made no mention whatsoever of his wife's parents and instead stated it was 2001 that her parents had witnessed the assault and had called the police.

When the claimant was questioned by counsel in redirect, the claimant states he made an error and that he was confused of the dates and what had occurred. I believe this might be possible; however, I had concerns with the principal claimant's testimony that when was hit by , even though the blow was intended for that when a doctor was brought to the house to give stitches to his wife's forehead that he states they did not advise the doctor what had occurred and how she received the injury. I asked the claimant whether they attempted to obtain a medical report from the doctor in respect to this serious injury and they stated no and again repeated that neither the doctor asked them what had occurred nor were they forthcoming in giving him any information as to 's assault on with the liquor bottle.

However, the claimants stated they did obtain a medical report when they had to take for emergency medical help because of bleeding from her vagina. A medical report was obtained and included in Exhibit 6. In fact, there were two reports in respect to, first, of a pelvic ultrasound report basically showing that was pregnant and of the subsequent medical report from the Clinic, dated , 2001, showing receipt for the medical procedure of the claimant receiving an abortion. There is no reference in either of these reports as to the claimant having been physically attacked by and that attack having any effect on the resulting abortion that had performed on her on 2001.

The claimants stated that they made no police report in respect to the two assaults by on and 2001. They state they did not make any formal complaint pertaining to these assaults due to the way they were allegedly treated by police when they attempted to make formal complaints previously.

After had her abortion operation the claimants began to make plans to leave the country. They have friends that had knowledge of Canada and cattle ranching. The principal claimant states he came to Canada on April 30, 2001 and came later on July 26, 2001. The principal claimant, stated that after the attack of 2001 by , they

went into hiding at family and friend's places nearby. I note that this was not included in the narrative of his PIF.

The claimant states since 2001 until he left on 2001, they had no further contact from nor did I have any contact from after he left Mexico on 2001 until left on 2001. They both stated this is likely because they were in hiding and Raul could not find them.

I note that made her refugee claim soon after she arrived in Canada, whereas the principal claimant did not make his claim until five months after he arrived in Canada. He states they were short of funds to obtain a lawyer and he believed it was more important for his wife to make her claim first since she only had a two-week visiting visa whereas he had a six-month visa.

Though I have had concerns as to the credibility of the circumstances, as mentioned, both in the written and oral evidence, I find that the determinative issues are mainly state protection and Internal Flight Alternative (IFA).

Protection

There is a presumption that the state is capable of protecting its citizens. The onus is on the claimant to establish "clear and convincing proof"³ of the state's inability to provide protection. The claimants have an obligation to approach the state for protection, unless it is objectively reasonable for them not to have sought protection from the authorities. As mentioned above, the claimants did attempt to make a formal complaint to the police after the attack on on 2001, and the claimants state that when they went to both the Police and four days later the Police in that the police refused to take a formal complaint and pursue an investigation against Thereafter, the other attacks against them, the claimants stated they made no effort whatsoever to seek state protection.

I asked the principal claimant, whether he was aware of what government department that one could make formal complaints about corruption in the police and he stated that he was aware of this option but he stated in his oral testimony, "You can go to the police

³ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th), 1, 20 Imm. L.R. (2d) 85.

chief but they are all corrupt and connected to the Mafia." He further stated that he was aware of other government departments to report police corruption but he had no confidence that his complaint would be taken seriously, as he stated, *"Everybody is connected to everybody."*

Evidence of protection being offered is adequate but not necessarily perfect is not "clear and convincing proof" of the state's inability to protect.⁴

As no government can guarantee the protection of all of its citizens at all times, where a state is in effective control of its territory, has military, police, and civil authority in place, and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify a claim that the victims are unable to avail themselves of protection.⁵

When the state in question is a democratic state the claimant must do more than simply show that he or she went to see some members of the police force and that his or her efforts were unsuccessful. While the claimant may not have been aware of the protection available to him or her in Mexico there is onus on them to investigate the possibilities of protection in Mexico before seeking protection in another country.

There is no satisfactory evidence that Mexico is in a state of complete breakdown. The documentary evidence indicates that Mexico is a functioning democracy with the rule of law and judicial system and a police force. Although the country reports indicate that crime is a problem and the police can be inefficient or even corrupt in some instances, this material does not suggest that Mexico is unable or unwilling to protect its citizens.

Indeed, the documents filed in evidence⁶ by the Refugee Protection Officer, enumerate several initiatives under the direction of President Vicente Fox and under the government of Mexico City aimed at combating criminality.

In cases where complaints are ignored or not processed by the authorities, one has recourse to the office of the Internal Controller of the *Procuraduría General de la República*

⁴ *Zalzali v. Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (F.C.A.); (1991), 14 Imm. L.R. (2d) 81; 126 N.R. 126 (F.C.A.).

⁵ *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

⁶ Exhibit 4, standard disclosure package.

(PGR). According to the documentary evidence, the PGR was reorganized in 2001 in order to deal with internal corruption and to better cope with drug trafficking and organized crime, and that those found to be involved in internal corruption have been suspended, dismissed and, in some cases, imprisoned.⁷

I am, therefore, satisfied that officials in Mexico have taken measures to deal with corruption of the police and judicial system and that there is no objective basis for the claimant to have refrained from vigorously seeking protection on that basis.

I have also given consideration to counsel's references of objective country documents included in his package of Exhibit 5.

Counsel, in particular, has made reference to the issue of IFA. Both claimants state that they could not move to other parts of Mexico, such as Mexico City, Guadalajara, or other major cities as would be seeking their whereabouts through the entire country. They gave examples that if seeking employment they would have to give personal details of themselves such as a voter's card and address and, therefore, it would be easy for with his connections to police, to pay corrupt police to obtain details of where the claimants might be living.

On Page 113 of counsel's package it states,

In practical terms, the centralization of intelligent information gathering can be seen in the recent establishment of a national identity card, a national registry vehicle, a national electoral card with the holder's picture on it, and the creation of a cabinet of national security, a national security agency, and a super agency established to fight rising crime.

Given the potential for abuse by public officials, these developments have been denounced by lawyers and human rights organizations.

Page 114 of the same report states,

What these examples show is a well developed capability on the Mexican government's part to keep close surveillance over private citizens, including foreigners. While this can be interpreted as an inefficient way of ensuring the country's national security it also has the potential to infuse fear and apprehension among the average citizen who may find himself/herself as the object of unwanted government attention.

⁷ Exhibit 4, *Response to Information Request MEX40139.E*, October 8, 2002.

I agree that the contents of the documents quoted above that authorities in Mexico communicate with other parts of the country to seek individuals that are wanted by the police. However, I have not been persuaded by the claimant's explanation that if the claimants were to return to Mexico in 2004, which is over three years since the last attack by , that would continue to be so obsessed with the female claimant, and wanting revenge on her husband, that he would continue to be seeking their whereabouts throughout the entire country of Mexico.

If, in fact, the claimants returned to Mexico and resided in a major city, such as Mexico City or and they were, by chance, located by and in any way threatened, I believe they would have an obligation to approach the state for protection.

I do not accept that due to s alleged high profile in the city of Agua Caliente that in other major cities throughout Mexico that he would automatically have influence with corrupt police that would result in formal complaints not being taken by the police. Also, as mentioned above, there are higher authorities that the claimants could go to to seek protection if their complaints were not being taken seriously by Police.

Therefore, I find that the principal claimant, does not have a well-founded fear of persecution for a Convention ground in Mexico. Though I have accepted that he has a nexus to a Convention ground, I find that state protection and an IFA (in major cities, i.e., Mexico City and Guadalajara) would be available to him if he returns to Mexico.

I also find that is not a person in need of protection because he would be subjected personally to a risk to his life or of cruel and unusual treatment or punishment in Mexico. I believe it would be reasonable for he and his wife, if they were to return to Mexico, to move to other major cities within that country and that state protection would be available to them.

In respect to the co-claimant, I also find that she does not have a well-founded fear of persecution by reason of a Convention ground. Though I find she has a nexus to a Convention ground, as being a victim of domestic abuse, I find that if she returned to Mexico that she would have an IFA (in major cities, i.e., Mexico City and Guadalajara) available to her and that state protection would be forthcoming.

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I have taken into consideration the *Gender Guidelines*⁸ in respect to her claim and I find, like her husband, if she returned to Mexico and again was in any way ever threatened by or individuals connected to him she also would have an obligation to seek protection from the police. If this was not forthcoming there are other avenues open to her to seek state protection from a higher level of the government.

Also, I do not find that either of the claimants, nor
, have substantial grounds to believe that their removal to Mexico would subject them personally to a danger of torture.

"Fred Hitchcock"

Fred Hitchcock

July 6, 2004

Date

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⁸ Guidelines Issued by the Chairperson Pursuant to section 65(3) of the *Immigration Act*, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(b) of the *Immigration and Refugee Protection Act*.