



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

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

IN PRIVATE
HUIS CLOS
TA3-22393

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

February 22, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

March 3, 2005

DATE DE LA DÉCISION

CORAM

Bing Wong

CORAM

FOR THE CLAIMANT(S)

Hart Kaminker
Barrister and Solicitor

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

A. Jung

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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a 25-year-old citizen of Mexico, is seeking refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act¹ (IRPA).

Allegations

The claimant alleges as follows:

He fears _____, an official in the _____ office, by reason of his membership in a particular social group, namely victims of assaults and death threats by a corrupt public official. In addition, he claims to be a person in need of protection because he would be subjected personally to a danger of torture or to a risk to his life or to a risk of cruel and unusual treatment or punishment in Mexico.

The claimant is a bisexual. He ran afoul of _____ after he started dating _____'s son, _____, in 2003. The claimant had been dating _____'s daughter, _____ for four years previously. _____ tried to discourage the claimant's homosexual relationship with his gay son. _____ dispatched judicial agents who physically assaulted him.

_____ threatened to kill the claimant and his family. The claimant was kidnapped and sexually molested. He did not report this to the police or any other state officials. He fled Mexico City, traveling to other states in Mexico, before fleeing to Canada in 2003.

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

Determination

The determinative issues are whether the claimant has an objective basis for the fear claimed. In addition, the panel considered whether the claimant was able to rebut the presumption that the state is unable or unwilling to provide protection.

I am satisfied by reason of a certified copy of his passport² that the claimant is who he claims to be and that he is a citizen of Mexico.

I find that the claimant is not a Convention refugee, as he does not have a well-founded fear of persecution for a Convention ground in Mexico. I also find that the claimant is not a person in need of protection in that his removal to Mexico would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that his removal to Mexico will subject him personally to a danger of torture. My reasons follow.

Analysis

The claimant must establish that his fear is reasonable, i.e., is justified considering the objective situation.³ In other words, he must establish that his fear of persecution has a valid basis.⁴ The subjective fear relates to the existence of a fear of persecution in the mind of the claimant. The objective basis requires that there be a valid basis for the fear.⁵

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

³ Naredo v. Canada (Minister of Employment and Immigration) (1990), 11 Imm. L.R. (2d) 92 (F.C.T.D.).

⁴ Lai v. Canada (Minister of Employment and Immigration) (1989), 8 Imm. L.R. (2d) 245 (F.C.A.).

⁵ Rajudeen v. Canada (Minister of Employment and Immigration)(1984), 55 N.R. 129 (F.C.A.).

For reasons that follow, I find that the claimant has a subjective fear. An objective analysis of that fear, in light of the situation in Mexico, persuades me that his fear is not well-founded, i.e., that it lacks an objective basis.

Credible and trustworthy documentary evidence that I refer to below satisfies me that state protection is available in Mexico for victims of death threats and assaults by a corrupt public official. Accordingly, for the reasons that follow, I find that there is no objective basis for his fear.

State Protection

Reliable documentary evidence satisfies me that state protection was and is available in Mexico for the claimant.

Mexico is a functioning democracy,⁶ 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 him.⁷ For the reasons that follow, I find that the claimant failed to rebut this presumption.

The claimant testified that he and [redacted] had a relationship that lasted about 45 s.19(1) days before he left Mexico on [redacted], 2003. In that period, [redacted] sent two judicial agents to dissuade him from continuing a homosexual relationship with his son. They attacked the claimant, causing him to suffer a concussion that required medical attention.

⁶ Exhibit R-1, National Documentation Package, revised November 26, 2004.

⁷ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689.

The panel asked the claimant how he knew his attackers were federal judicial agents. He explained that [redacted] was a high-ranking official in the Attorney General's office. When asked by the Refugee Protection Officer (RPO) whether he reported his assault to the police, the claimant replied he did not because he was afraid. He also testified that he did not make a denunciation of his attackers with the Public Ministry or any other state authority.

The claimant also testified that he was abducted by three men on [redacted] 2003. The claimant, through his original PIF narrative, stated that the date of his abduction was on [redacted], 2003. The [redacted] date is impossible because he was already in Canada on July 28, 2003. Thus, the panel allowed an amendment to the PIF to change the date to [redacted], 2003, instead of [redacted] 2003. At the same time, a further PIF amendment was allowed at line 21 of the PIF narrative, the change being from "raped" to "sexually molested". The panel allowed these changes in consideration of the difficulties the claimant had with the English language when he completed his PIF.

In oral testimony, the claimant testified that his three abductors tore off his clothes, molested and physically assaulted him. He was told to end his relationship with [redacted]. He said he knew that [redacted] sent these men because one of them wore a T-shirt with the name of the [redacted] office on it. He was left naked and abandoned in an isolated place. He found a telephone and called the police, and a police car was dispatched and brought him to the police station. Instead of helping him and

s.19(1) taking his report, he testified that he was put in a cell until his father was able help obtain his release. He further testified that he went back to the police station the next day to make a denunciation, but was told that it was “a street conflict” and to forget about it when he tried to tell the officer that _____ was involved. He testified that he was made to sign a declaration that he did not recognize any of his attackers.

Documentary evidence that I find credible and trustworthy does not support the claimant’s opinion regarding state protection. The panel recognizes that corruption by public officials and police in Mexico continues to be problematic. However, the documentary evidence shows that Mexico is making serious efforts to address the problem.⁸ Mexico has a stable government and is in control of its territories. It has a national as well as 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 different levels of government to protect victims of death threats and assaults by a corrupt public official aided by a few corrupt policemen. It is known that victims of assaults and death threats are entitled to state protection in Mexico.⁹

⁸ M Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

⁹ Supra, footnote 6, item 2.1, United States Department of State, Country Reports on Human Rights Practices 2003, February 25, 2004.

The documentary evidence shows that the Attorney General's office in 2001 had fired more than 1,400 of 3,500 federal police officers for corruption and prosecuted 357 of them.¹⁰ It also shows that Mexico restructured the Federal Attorney General's (PGR) office in 2002 to deal with the problem of public corruption. The PGR is making significant inroads prosecuting corrupt public officials and fighting organized crime. Victims of corruption and organized crimes could 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.¹¹

The claimant testified that he did not go to the PGR for help when the panel asked whether he made efforts to file a report at the Public Ministry when he was abducted and physically assaulted on two separate occasions. He explained that it would be pointless since _____ is a _____ in the _____ office.

Documentary evidence shows that state protection is available to victims of assaults by a federal judicial police officer. There are procedures for charging a police officer with assault (particularly sexual assault) in Mexico.¹² Article 51 of the Organic Law of the Federal Attorney General's Office (PGR) states that officers of the Public Ministry and of the Federal Judicial Police are required to follow specific guidelines in

¹⁰ *Supra*, footnote 6, tab 7.4, Response to Information Request, MEX39623.E, September 11, 2002.

¹¹ *Supra*, footnote 6, tab 7.2, Response to Information Request, MEX39540.E, September 20, 2002.

¹² *Supra*, footnote 6, tab 9.4, Response to Information Request, MEX38204.E, February 4, 2002.

order to preserve “the legality, the efficiency, the professionalism and the honesty in their functions”. They are forbidden to inflict, tolerate or allow acts of torture or any other cruel, inhuman or degrading treatment or sanctions. Officers have five days to respond to complaints filed against them, and their case may be subjected to an internal investigation and hearing.

I find the documentary evidence much more persuasive than I do the claimant’s opinion. The claimant has a burden to show that he made a determined effort to seek state protection. I find that he did not make a determined effort. I am guided by the Federal Court in Baez,¹³ that the claimant ought to have made additional effort to seek protection when the local police officers did not provide the protection he sought:

...The actions of some police officers do not obviate the need to seek protection from the authorities. Discrimination by some police officers is not sufficient proof of the state’s unwillingness to provide, or inability on the part of the claimants to seek protection.

I find that the claimant did not avail himself of the state protection available in Mexico before fleeing to Canada. Thus, it would not be unreasonable for him 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

¹³ Baez, Maria Beatriz Arguello De v. M.C.I. (F.C.T.D., no. IMM-3208-02), Dawson, June 26, 2003, 2003 FCT 785.

¹⁴ *Supra*, footnote 8, at 132-133.

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

not convinced within the preponderance of probability category¹⁶ as I must be that the state of Mexico would not be reasonably forthcoming with serious efforts to protect the claimant, if he were to return to Mexico and approach the state for protection.

Conclusion

For the above reasons, I reject this claim to 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 3rd day of March, 2005.

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