

CANADA / JUDGMENT

MA8-05810

COURT

Refugee Protection Division

DECIDED

27 October 2011

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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. / No de dossier de la SPR : MA8-05810 MA8-14753 MA8-14754 MA8-14755 Private Proceeding Huis clos Claimant(s) Demandeur(e)s d'asile XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX Date(s) of Hearing Date(s) de l'audience September 9, 2011 Place of Hearing Lieu de l'audience Montréal, Quebec Date of Decision Date de la décision October 27, 2011 Panel Tribunal Me Maria De Andrade Claimant's Counsel Conseil du demandeur d'asile Carlos Hoyos-Tello Tribunal Officer Agent du tribunal N/A Designated Representative Représentant désigné XXXXXXXXXXXXX Minister's Counsel Conseil du ministre N/A

- [1] The principal claimant, XXXXXXXXXXXXXXXXXXXX, a citizen of Mexico, is claiming refugee protection in Canada under section 96 and subsection 97(1) of the Immigration and Refugee Protection Act¹ (IRPA). He is accompanied by his spouse, XXXXXXXXXXXXXXXXXXXX, and their minor children, XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXX, also Mexican citizens. They are basing their refugee protection claims on that of the principal claimant. Designated representative
- [2] The male claimant, XXXXXXXXXXXXX, was appointed designated representative for his minor children. He informed the panel that he accepted his role and that he understood his responsibilities. SUMMARY OF FACTS
- [3] The claimants are from the city of XXXXXXXX, in the state with the same name, in Mexico. In XXXX 2006, the male claimant became a XXXXXXXX with the company "XXXXXXX," a XXX XXXXXXXX.
- [4] His problems began on XXXX, 2007. A man named XXXXXXXX sought the male claimant's cooperation in the purchase of XXXXXXXX a week using false credit cards. He told the male claimant to think about his offer and that he would come back for his decision.
- [5] On XXXX, 2007, XXXXXXXX showed up at the business to find out what the male claimant's intentions were concerning his offer. The male claimant refused to cooperate and told him that he had informed his boss and that the police would be notified if he insisted. XXXXXXXX called him a rat and threatened to retaliate.

- [6] On XXXXX, 2007, while he was returning home, the male claimant was stopped by two individuals, who blindfolded him and forced him into a car. As they were driving, the male claimant was beaten and received death threats. After the blindfold was removed, the male claimant recognized XXXXXXXXXX, who threatened to kill him if he did not go along with his plan and to retaliate against his spouse if he told the police. The male claimant was released in front of his home. After telling his spouse what had happened, and fearing for his life, the male claimant left Mexico in order to protect himself. He arrived in Canada on October 2, 2007.
- [7] The male claimant returned to Mexico in XXXXXX 2007, after his spouse informed him that his attacker had been caught by the police. The male claimant returned to his XXXX job with XXXXXXXXXX.
- [8] On XXXX, 2008, while he was near the store, XXXXXXXXXX called out to him. He insulted him, called him a rat and told him that because of him, he had spent a few months in prison. The male claimant returned to the business and informed his boss of what had just happened. His boss told him that he would close the store temporarily.
- [9] Fearing for his life, the male claimant left Mexico again. He arrived in Canada on April 22, 2008, and claimed refugee protection when he arrived.
- [10] For her part, the female claimant left Mexico with the children on XXXX, 2008, after being threatened.

DETERMINATION

- [11] The panel determines that the claimants are not "Convention refugees" or "persons in need of protection" under subsection 97(1) of the IRPA.

ANALYSIS

- [12] The reasons invoked by the claimants in support of their refugee protection claims lead the panel to conclude that the claimants were victims of the rampant criminality in Mexico. The courts have indicated numerous times that being a victim of a criminal act and experiencing fear of reprisals motivated by vengeance are not equivalent to a ground of persecution within the meaning of section 96 of the IRPA.
- [13] Since the state was not involved in the harm feared, the claims were reviewed under paragraph 97(1)(b) of the IRPA. It must be determined whether the claimants' return to Mexico would subject them "personally" to the risks listed there. Identity
- [14] The panel is satisfied as to the claimants' identities and citizenship. Copies of their Mexican passports were entered in the file as Exhibit A-2.2 Credibility

- [15] The panel is of the opinion that the claimants are credible and trustworthy witnesses. The principal claimant testified directly, without trying to dodge the questions asked. Numerous pieces of material evidence were filed in support of the facts related, and the claimants made reasonable efforts to corroborate the essential allegations of their narrative.
- [16] The principal claimant submitted exhibits P-93 and P-104 confirming his job with "XXXX XXXXXX". He submitted as P-155 a photocopy of an excerpt from a newspaper to confirm that he was assaulted by one XXXXXXXXXX on XXXXXX, 2007. The evidence on file shows that XXXXXXXX, who was suspected of making purchases using fake bank cards,⁶ was arrested by the police.
- [17] Aside from the information in the Personal Information Form (PIF), the claimants stated at the hearing that they were afraid their attacker would find them and that he would take revenge because the principal claimant refused to go along with his plan. They believed that their attacker was a member of an organized group with ties to the police and, because of the rampant impunity in Mexico, they were not certain that he would be arrested again.
- [18] Although their testimony was found to be credible, their attacker's alleged ties to the police were pure conjecture. However, the panel is of the opinion that they are plausible given the widespread criminal activity in Mexico.
- [19] The psychological report entered in the file refers to the difficult situation faced by this family in relation to a kidnapping and threats because the principal claimant refused to be an accomplice in his attacker's criminal activity.
- [20] For a claim to be allowed under subparagraph 97(1)(b)(ii), the claimants must establish that the risk they face is different from the [translation] "generalized risk" faced by all or part of the Mexican population.
- [21] In this case, the panel is of the opinion that the claimants did not discharge their burden of proof in this regard.
- [22] The Federal Court has referred to the difficulty of establishing what makes a "personalized risk" different from a "generalized risk" that could give rise to a claim under paragraph 97(1) (b) of the IRPA. Addressing the integral elements of that provision, the Court has stated that claimants must demonstrate the existence of a risk that is personal "but also that such risk 'is not faced generally by other individuals in or from that country.'"⁷
- [23] The documentary evidence states that insecurity is widespread in Mexico because of criminal activities tied to organized groups. Weapons and drug trafficking, money laundering, kidnapping for ransom and even the extortion of money are only a few examples of the crimes committed by criminal groups in Mexico. The documentary evidence highlighting the crime problems tied to criminal gangs states the following: ... Other sources also note their involvement in assaults, rapes, homicides, kidnappings and extortions (Desde la red 12 Mar. 2009), contraband and auto theft (La Jornada 18 Feb. 2005), and, in the north of the country, in gun smuggling (US Apr. 2006, 116).⁸ (The panel's

emphasis) ... considers Los Zetas to be "the most dangerous drug-trafficking organization in Mexico" and that its members are "the most feared" criminals in the country (NPR 2 Oct. 2009). An article published in a daily newspaper of Quito (Ecuador), *El Comercio*, describes Los Zetas as [translation] "the most violent" organization because it executes and kidnaps its enemies (1 Feb. 2010). Cited in an article published by CNN, a DEA official stated that Los Zetas are "the No. 1 organization responsible for the majority of the homicides, the narcotic-related homicides, the beheadings, the kidnappings, the extortions that take place in Mexico" (CNN 6 Aug. 2009). ... The Los Zetas network consists of thousands of members, including both men and women, who "operate a range of illicit businesses," such as charging other groups for passage through their territory, to gun and drug smuggling, and money laundering (ISN 11 Mar. 2009). They are also involved in human smuggling and kidnapping for ransom (*ibid.*; NPR 2 Oct. 2009). An article published by NPR indicates that oil siphoning is also part of their activities (*ibid.*)⁹

- [24] Despite Mexico's crackdown on criminal organizations, the security situation in Mexico seems to have worsened.¹⁰
- [25] At the hearing, the male claimant submitted Exhibit P-19,¹¹ a Mexican newspaper showing that other criminals carried out plans similar to that of XXXXXXXX, to obtain XXXX and resell them.
- [26] That newspaper article and the information in the package lead the panel to conclude that these are criminal activities that likely target a considerable number of XXXXXXXXXX or any other type of business that XXXXXXXXXX; therefore, they constitute a large enough subgroup that the risk faced by these merchants can be considered [translation] "prevalent or widespread"¹² in Mexico and, accordingly, be described as a "generalized risk."
- [27] Recently, the Federal Court¹³ has stated that although a claimant may have been targeted personally, which is the situation in this case, the risk is still generalized insofar as the risk faced by the claimant is similar to that faced by other citizens.
- [28] In this case, the male claimant was targeted because of the type of job he had and because his attacker, whose activities included buying XXXX with false credit cards, needed an accomplice. This collaboration was necessary, no matter the identity of the person with the sales job. Exhibit P-19 demonstrates that in Mexico, other criminals have engaged in comparable activities with other merchants who operate similar businesses.
- [29] In *Prophète*,¹⁴ Justice Tremblay-Lamer stated the following: ... While a specific number of individuals may be targeted more frequently because of their wealth, all Haitians are at risk of becoming the victims of violence.

- [30] Similar to the arguments made in Chavez Fraire,¹⁵ counsel pointed out in this case that the risk that the claimants would face should they return is different from the "generalized risk" faced by the Mexican population. Their attacker, according to the arguments presented, will try to seek revenge because the principal claimant refused to cooperate with him and because he believes that he was imprisoned for a few months because of a report made by the male claimant.
- [31] In Chavez Fraire, the claimant feared a criminal group called "Los Zetas". He alleged that the risk he faced was different because he had reported their criminal activities to the authorities and because this group would try to seek revenge. However, Justice Zinn stated: "That risk did not become personalized simply because the applicant fell into the group of those who were enemies of Los Zetas." Justice Rennie made similar statements in Flores Romero Damian,¹⁶ in which a claimant sought to resist the extortion of which he was a victim by reporting it to the police. The fact of filing a complaint does not make him unique, or does not bring him within a unique or discreet subgroup of the general population.
- [32] As mentioned, the documentary evidence states that in Mexico, criminal groups engage in various types of crime and that the XXX market seems to be of particular interest to them. In this case, the panel is of the opinion that this is a situation that is likely to recur frequently enough for the risk to be described as a "generalized risk."

CONCLUSION

- [33] For these reasons, the panel, after examining the claimants' personal situation, concludes that they did not establish that they would be personally subjected to the risks set out in paragraph 97(1)(b) of the IRPA if they returned to Mexico.
- [34] Consequently, the panel determines that the claimants, XXXXXXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXX, are not "Convention refugees" or "persons in need of protection."
- [35] The panel rejects their refugee protection claims. Maria De Andrade Me Maria De Andrade October 27, 2011 Date IRB translation Original language: French 1 Immigration and Refugee Protection Act, S.C. 2001, chapter 27:
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.

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
 - (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 Exhibit A-2: Immigration documents, in a bundle. 3 Exhibit P-9: Two letters from the director of XXXXXXXXXXXX, in a bundle. 4 Exhibit P-10: The claimant's business cards. 5 Exhibit P-15: Excerpt from the newspaper XXXXX, XXXXX.com, XXXXX, 2007. 6 Exhibit P-15: Excerpt from the newspaper XXXXX, XXXXX.com, XXXXX, 2007. 7 *Osman José Paz Guifarro v. (Minister of Citizenship and Immigration)*, 2011 FC 182, *Prophète, Ralph v. M.C.I (F.C., No. IMM-3077-07)*, Tremblay-Lamer, March 12, 2008; 2008 FC 331, paragraph 23, confirmed by *Prophète, Ralph v. M.C.I. (F.C.A., No. A-168-08)* Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31. 8 Exhibit A-1: National Documentation Package on Mexico, April 20, 2011, Tab 7.11. MEX103272.FE October 7, 2009. The presence and activities of the Mara Salvatrucha (MS) and the Mara 18 in Mexico, specifically in Mexico City, including the measures taken by the government to fight the Maras and the protection available to their victims (2004-September 2009). 9 *Idem*, Tab 7.6. MEX103396.FE. March 5, 2010. The presence and structure of Los Zetas and their activities. 10 *Ibidem*, Tab 7.8. British Broadcasting Corporation (BBC). March 24, 2009. "Q&A: Mexico's Drug-Fuelled Violence." <http://news.bbc.co.uk/2/hi/americas/7906284.stm>. 11 Exhibit P-19: Newspaper article from XXXXX, dated XXXX, 2011. 12 *Osorio v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1459. 13 *Damian Flores Romero v. (Minister of Citizenship and Immigration)*, 2011 FC 772. 14 *Prophète, Ralph v. M.C.I (F.C., No. IMM-3077-07)*, Tremblay-Lamer, March 12, 2008; 2008 FC 331, paragraph 23, confirmed by *Prophète, Ralph v. M.C.I. (F.C.A., No. A-168-08)* Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31. 15 *Cesar Alejandro Chavez Fraire v. (Minister of Citizenship and Immigration)*, 2011 FC 763. 16 *Supra*, footnote 9.

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