

CANADA / JUDGMENT

MA8-05699

COURT

Refugee Protection Division

DECIDED

14 February 2012

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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. / N° de dossier de la SPR : MA8-05699

MA8-05700

Private Proceeding

Huis clos

Claimant(s)

Demandeur(e)s d'asile

XXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXX

Date(s) of Hearing

Date(s) de l'audience

January 25, 2012

Place of Hearing

Lieu de l'audience

Montréal, Quebec

Date of Decision

Date de la décision

February 14, 2012

Panel

Tribunal

Me Marie-Josée Hadaya

Claimant's Counsel

Conseil du demandeur d'asile

Me Alain Joffe

Tribunal Officer

Agent du tribunal

Linda Doutre

[Filing of documents]

Designated Representative

Représentant désigné

XXXXXXXXXXXXXXXXXXXX

Minister's Counsel

Conseil du ministre

N/A

[1] The claimant, XXXXXXXXXXXXXXXXXXXXXXXX, and her daughter, XXXXX XXXXXXXXXXXXXXXXXXXX, are citizens of Mexico. They are claiming refugee protection under section 96 and paragraph 97(1)(b) of the Immigration and Refugee Protection Act (IRPA).

[2] The principal claimant was appointed the designated representative of her daughter XXXX, who is 17 years old.

FACTS

[3] At the hearing, the principal claimant stated the following facts.

[4] From 1993 to 2001, she lived in a common-law relationship with XXXXX in Mexico City. During their life together, she was subjected to physical and psychological abuse.

[5] The claimant XXXXX was born of that relationship.

[6] In 2001, the claimant left her home with her daughter and sought shelter at her mother's home in the state of Colima.

[7] [Translation] "A year later," after leaving XXXX (in 2002), the claimant learned that he had allegedly married another woman in 2001. However, in her Personal Information Form (PIF), the claimant stated that she found out about this at the end of 2005.¹ XXXXX now allegedly has two other children with that woman.

[8] For several years, the claimants lived peacefully. However, on XXXXXXXX, 2007, XXXX went to the claimant's home and demanded to see XXXX. The claimant alleged that she noticed at the time that XXXX was looking at XXXX [translation] "in a very strange way."²

[9] On [translation] "XXXXXXXX or XX, 2007," XXXXX began calling the claimant [translation] "once a week" to "ask her if he could take XXXX in his truck" (he worked as a XXXX for a XXXXX company). The claimant refused this [translation] "inappropriate" request because "my daughter's place is at school" and not in a truck.

[10] It is important to note that the principal claimant stated that it was at this point that she began to suspect that something was [translation] "not normal"-in her words, "a light went on in my head."

[11] On XXXXXXXX, 2008, XXXX came to see XXXX. The principal claimant let him in. She then left to run an errand. When she came back, after XXXX had left, XXXX told her that XXXX had asked her to sit in his lap. He then [translation] "touched" her in an "inappropriate" manner-the claimant confirmed to the panel that the touching was of a sexual nature. On this point, see also question 31, paragraph 20 of the claimant's PIF.³

[12] The claimant then had an argument with XXXX. She systematically refused to allow XXXX to have contact of any kind with him.

[13] Towards the end of XXXXX 2008, the claimant learned from XXXX that XXXX had intercepted her in the street in order to see her and take her home with him.

[14] The claimant then decided to leave Mexico.

[15] On XXXXX, 2008, the claimant telephoned XXXX to get his consent for XXXX to obtain a passport. She made him believe that XXXX [translation] "had won a trip to Guatemala because of her good grades in school." In exchange for his permission, she [translation] "promised" him that XXXX would spend a few days with him after she returned from her trip. XXXX gave his consent.

[16] On XXXX, 2008, the claimants left Mexico for Canada. Some time later, they claimed refugee protection.

[17] The principal claimant fears that if she returns to Mexico, XXXXX could hurt or kill her [translation] "because I separated him from his daughter," whom he wanted back at any cost.

[18] The principal claimant also fears [translation] "for XXXX, who is still a minor," because it would be "terrible for her to find herself in a situation where she realizes that instead of being protected by her father," who is allegedly a "sexual deviant," "she has to run away from him."

[19] It should be noted that at the hearing, the panel granted the request of the principal claimant and her counsel that XXXX not be present at the hearing-the claimant wanted to be able to testify freely about the incidents her daughter was allegedly a victim of, because her daughter was 12 years old when they occurred and she [translation] "doesn't remember anything."

DETERMINATION

[20] Given that the facts presented in support of the claim for refugee protection are not credible, the refugee protection claims are therefore dismissed.

ANALYSIS

Identity

[21] The panel is satisfied as to the identity of the claimants; copies of their respective Mexican passports were entered on the record as Exhibit A-2,4 in a bundle.

Credibility

[22] At the hearing and when rendering its decision, the panel took into consideration the Chairperson's guideline entitled Women Refugee Claimants Fearing Gender-Related Persecution.

[23] The panel finds the principal claimant's allegations that her daughter was the victim of [translation] "indecent or incestuous behaviour" from XXXXX to be not credible.

[24] In support of this conclusion, the panel cites the following examples.

[25] During her testimony before the panel, the claimant stated that XXXXX had been her common-law partner for [translation] "7 or 8 years," from 1993 to 2001. She also told the panel that throughout the course of their relationship, they had lived in Mexico City.

[26] The claimant went on to explain to the panel that because of XXXXXX abuse, she took her daughter XXXX and left him in 2001 to go live with her mother.

[27] The panel then asked the claimant a few questions to find out how the issue of custody of their daughter XXXXX was allegedly settled after the separation.

[28] The claimant replied that XXXX had always been a [translation] "bad father." Even though XXXXX was his daughter, he was apparently never interested in her and he had supposedly never taken care of her needs or paid attention to her.

[29] Furthermore, the claimant specified that XXXX had never had or shown any interest whatsoever in looking after XXXXX or having her with him-not during his relationship with the claimant and not afterward.

[30] The panel then questioned the claimant as to why the content of her written statements in her Personal Information Form (PIF) did not match what she had just told the panel at the hearing.

[31] More specifically, the panel pointed out to the claimant that in question 3 of her PIF, she did not mention XXXXX name, even though he had allegedly been her common-law spouse for several years. The question explicitly asked her, as part of her family history, to relate the details of that common-law relationship, how long it lasted and the name of her common-law spouse.⁵

[32] The panel also asked her why, in the chronology of her work experience,⁶ she did not state that she was living in Mexico City in the years 1998 and 1999, as she told the panel at the hearing, but rather that she was [translation] "without work" in the state of Colima.

[33] With regard to her failure to describe her common-law relationship, the claimant had no response other than [translation] "I don't remember."

[34] With respect to her work history, which put her not in Mexico City but rather in the state of Colima in 1998 and 1999, she stated: [translation] "I think it is a mistake; I was definitely not in Colima."

[35] The panel then questioned the claimant to find out whether she had sought to obtain an official document confirming that she did in fact have legal custody of XXXXX, either through a lawyer or a mediator from the national system for integral family development (the DIF), in order to protect herself in case XXXXX decided to contest this custody arrangement in the future.⁷

[36] On this matter, the panel shared with her its expert knowledge, acquired in the course of its refugee protection cases from the opportunities to see official and legal documents granting legal custody to one of the parents in spousal conflicts. Such documents may be issued by the Court, established by mutual agreement or through mediation before the DIF.

[37] The claimant was again at a loss for how to respond. She stated that she had [translation] "not thought" of that, given that XXXX "did not want to fight for XXXXX" and that he had "never taken any steps" or showed any interest whatsoever in having custody of their daughter during their entire life together.

[38] The panel then confronted the claimant with the fact that in her PIF, she had stated the opposite. It referred the claimant to her narrative, in which she reports that XXXX had put pressure on her to prevent her from leaving him. She wrote:

[translation]

I told him a number of times he had to change, or else I would leave with my daughter. However, he told me not to try it because he would come looking for me to take my daughter away from me [emphasis added by the panel].⁸

[39] The claimant was at a loss. She replied to the panel as follows: [translation] "Those were terrible things he did to me; you're right. Those were the threats he made so I would stay afraid."

[40] Nevertheless, the claimant was unable to provide any justification to explain the fact that she did not mention these [translation] "threats to take away my daughter" to the panel when the panel specifically asked her whether, prior to their separation, XXXXX had tried to pressure her by threatening to take XXXX away and gaining legal custody of her.

[41] All of these responses are unsatisfactory. The panel attaches no credibility to the principal claimant's statements that she lived for a number of years with a violent common-law spouse named XXXXX.

[42] If that had been the case, the panel is of the opinion that the claimant's versions of the main facts of the relationship that she gave throughout her statements would have matched.

[43] First, she would not have failed to mention the existence of this XXXXX and her common-law relationship with him under the question that specifically asks for her family history.

[44] The panel is of the opinion that if the claimant had indeed had a turbulent relationship with a certain XXXXX for several years that involved threats to her physical safety, she would have certainly mentioned this relationship when filling out her PIF. Under the circumstances, it is highly improbable that she would not [translation] "remember" that information, as she claimed at the hearing, since it is precisely the fact that XXXX allegedly began to show a particular interest in the daughter born of that past relationship that is at the root of the principal claimant's fear of returning to her country.

[45] In addition to this finding, the claimant also contradicted herself when she wrote, in response to the question on the PIF about her work history, that she had been without work in the state of Colima in 1989 and 1999. She committed the same [translation] "mistake" when she filled out her form at the time of submitting her initial refugee protection claim.⁹

[46] Together, those [translation] "mistakes" lead the panel to conclude that the claimant's allegations about her life with XXXXX in Mexico City from 1993 to 2001 are not credible.

[47] It should be noted this last conclusion by the panel is confirmed by the fact that the claimant gave conflicting statements about the interest or lack of interest that XXXXXX allegedly showed, while he and the claimant were living together, in [translation] "keeping" XXXX if the claimant were to leave him.

[48] The claimant also had no satisfactory response to give the panel to explain why, on this point, she first said one thing and then the opposite. The best she could do was to retract the content of her testimony on this point at the hearing (that XXXX had never shown any interest in fighting for XXXX) and maintain that the opposite version written in her PIF (that XXXX had threatened to fight her for custody of XXXX every time she wanted to leave him) was the correct one.

[49] The panel is of the view that if the claimant had in fact lived with that man for all those years, her statements as to whether he was interested in fighting to [translation] "keep" XXXX with him if the claimant were to leave him would have been consistent. They would not have been, as they were in this case, all over the map.

[50] The panel reiterates the fact that the claimant did not live, as she alleged, for a number of years with a violent man named XXXX. Furthermore, she was never the object of threats or conflict of any kind from this man with regard to the custody of her daughter XXXX.

[51] In her testimony at the hearing, the claimant was clear: the first incident that raised her suspicions and made her fear for XXXXX integrity was the one that followed XXXXX visit on XXXXXXXX, 2007 (on XXXXXXXX or XX, 2007). On that occasion, XXXX allegedly asked the claimant if he could take XXXX in his truck, and he then repeated this request [translation] "on a weekly basis."

[52] The claimant explained that because she knew that XXXX was a [translation] "very morbid," "violent and sexually aggressive," man who had an "attitude toward the little one that was uninterested, that was not that of a father" because "he did not ask me if XXXX was eating well, if she had enough to eat," but rather whether he could "take her in his truck." She found that request [translation] "inappropriate" and suspicious. She alleged that she began to [translation] "be afraid."

[53] The claimant then allegedly had her worst fears confirmed when XXXX [translation] "told" her "things" that XXXX had done to her, namely sexual touching. On this point, see paragraph 20 of the claimant's narrative.¹⁰

[54] The panel questioned the claimant to find out why, in the narrative about her problems, she had not reported that fact, which she described as [translation] "inappropriate" and troubling, and which was at the root of all her fears. When the claimant referred, in her PIF, to the visit of XXXXXXXX, 2007, when XXXX [translation] "looked at XXXX in a very strange manner," she made no reference to XXXX [translation] "strange" request to take XXXX in his truck.

[55] The claimant began by saying that she thought she had mentioned that in her PIF, only to finally conclude that she was [translation] "confused."

[56] The panel then read to the claimant the following excerpt from her interview with the immigration officer when she claimed refugee protection:¹¹

[translation]

79. You stated in your form that you are afraid of returning to Mexico because you fear physical and psychological abuse and because you are afraid that your daughter runs the risk of physical and sexual abuse from her father, Mr. XXXXXXXXXXXX XXXX. Is this still true? Yes.
80. Tell me briefly the reason for these fears. He does not live with us but his behaviour toward the little one, practically in the last year, he was very jealous and for example he wanted her to sit in his lap. It was not very fatherly behaviour.

...

88. Did your daughter talk to you about this? She said things like, I don't like when dad talks to me like that, he says he loves me but I don't believe him.

[57] In light of this passage, the panel wanted the claimant to explain why, when she was given more than one opportunity after the officer's questions to give the concrete facts concerning XXXXX inappropriate sexual behaviour and gestures toward XXXX, she merely referred to his allegedly asking her to [translation] "sit in his lap" and concluded that this was [translation] "not fatherly behaviour."

[58] The panel also asked the principal claimant to explain why, when the officer explicitly asked her what XXXX had told her about what her father had done to her, she completely failed to mention the explicit incidents that XXXX allegedly told her about in XXXX 2008 and that she included in her PIF (the touching and the incident in which XXXX allegedly tried to take XXXX to his home without the knowledge of the principal claimant).¹²

[59] The only response the claimant gave was: [translation] "When I came to Canada, I was very anxious. When the officer asked me to be specific, I was. When a person has been humiliated there is shame. I stated my greatest fear in getting XXXX away from her father."

[60] It should be noted that the claimant's counsel argued that his client's omissions during the interview with the immigration officer concerning XXXXX [translation] "incestuous" behaviour could be readily justified by the fact that the officer asked her to be [translation] "brief."

[61] The panel also asked the principal claimant several questions aimed at explaining how she was able to convince XXXXX to give his consent to take XXXXX out of the country.

[62] According to the documentary evidence¹³ and this was also confirmed by the claimant because XXXX was a minor, her father's consent was required for her to obtain a passport.

[63] The claimant stated that she convinced XXXX to allow XXXX to leave Mexico by telling him a [translation] "lie." She [translation] "succeeded" in getting him to believe that XXXX had "won a trip to Guatemala because of her good grades in school." According to the claimant, XXXX was completely fooled, since the claimant promised him that when she returned, XXXX would spend a few days with him (see also question 31 of the claimant's PIF, paragraph 25).¹⁴

[64] The panel then indicated to the claimant that her testimony at the hearing did not match the statements she had made on this subject during her interview with the immigration officer. In fact, the officer's report indicates that XXXX knew that the claimant and XXXX were in Canada, because the principal claimant had told him that they were both vacationing in Canada on a trip that XXXX had won for her performance at school.¹⁵

[65] The claimant replied that the immigration officer must have recorded her statements incorrectly, because she never said that XXXX knew that she and XXXX were on vacation in Canada, and she never told the officer that the trip that XXXX won for her good grades was to Canada. On the contrary, [translation] "I told him [the officer, note by the panel] that it was a trip to Guatemala."

[66] So, the panel wondered how the claimant managed to take XXXX out of the country simply by promising to [translation] "let him have XXXX for a few days" in the future. Basically, the panel does not understand how the claimant could have convinced XXXX with such a promise when she had systematically refused all of XXXXX requests to spend time alone with XXXX since XXXXXX 2007. The claimant stated [translation] "it's because I lied to him. And I asked God to help me." Therefore, XXXX allegedly gave his consent without even asking to see any papers (or checking with the school) to confirm that XXXX had in fact won a trip to Guatemala.

[67] Finally, the panel asked the claimant whether she had any official written authorization (legal or notarized) from XXXX father that would allow her to take XXXX out of Mexico for a specific period for a vacation.

[68] Although the panel may presume that XXXX father did in fact give his consent for a passport to be issued seeing as she was issued a passport,¹⁶ there is no evidence in the file that would corroborate that the claimant had the right to legally take XXXX out of the country for a determinate or indeterminate period-and this is all the more relevant given that the claimant testified that she did not have any document granting her legal custody of XXXX.

[69] The claimant replied that she [translation] "didn't know about all that" and that she had "no document to that effect." The only thing she knew was that XXXX allegedly [translation] "gave his consent" for the passport.

[70] The panel finds all of these explanations unsatisfactory. Overall, the principal claimant is not a credible witness. Her daughter was never a victim of sexual touching or of inappropriate or improper behaviour from XXXX.

[71] If she had, it would have been reasonable for the claimant to present the important facts on which she based her decision to [translation] "take XXXX away from her father" and ask the Canadian authorities for protection at the first opportunity (during her interview with the immigration officer).

[72] More specifically, the panel would have expected the claimant to give priority, in her list of reasons that allegedly caused her to fear XXXX, to the fact that XXXX had told her that XXXX had touched or had had sexual contact with her and that he had even tried to take her to his home, without the knowledge of the principal claimant, to get what he wanted.

[73] The panel finds the claimant's allegations that she did not reveal those facts to the officer due to [translation] "anxiety" and "shame" to be not credible.

[74] A reading of the officer's notes shows that regardless of that anxiety and shame, the claimant wrote in the form she filled out when claiming refugee protection, without embarrassment or beating around the bush, that she was afraid that XXXX would be [translation] "sexually abused by her father" XXXX.¹⁷ She also subsequently confirmed this to the officer.¹⁸

[75] Moreover, the examples that the claimant gave the immigration officer to justify her claim that she was afraid-on the one hand, that XXXX allegedly told her that she did not like the way her father was talking to her and what he was saying and, on the other hand, that XXXX was supposedly jealous and that he wanted XXXX to sit in his lap-raise several doubts in the panel's mind. These examples do not really amount to much compared to those that the claimant reported later in the proceedings of her claim when she wrote her PIF and testified at the hearing. This leads the panel to find the claimant's allegations that XXXX [translation] "had touched XXXX in an inappropriate manner" not credible.

[76] Since the claimant had already told the officer the worst-that she feared that her daughter XXXX would be sexually abused by her father XXXX-there was no reason for her to remain silent about the facts on which she based that accusation, and even less reason to give the officer, as examples of XXXXX inappropriate behaviour, inconclusive facts in this regard, when there were allegedly others that were far more telling.

[77] Thus, saying that XXXX allegedly told XXXX that he loved her or that he wanted her to sit on his lap has nothing to do with the fact that he allegedly tried to touch her sexually.

[78] The panel cannot help but be surprised by the fact that the claimant, in order to illustrate that XXXX wanted to sexually abuse her daughter XXXX, gave as an example the fact that XXXX allegedly said to XXXX, who at the time was 12 years old, that he loved her and that he wanted her to sit on his lap. This is far less satisfactory than if she had brought up the touching that XXXX supposedly engaged in with XXXX. This finding leads the panel to conclude that that the claimant's allegations lack credibility.

[79] The fact that the immigration officer asked the claimant to be brief in her responses is not a satisfactory explanation for why the claimant completely failed to mention that XXXX was the object of [translation] "inappropriate touching" by XXXX.

[80] This fact alone would have been more direct, more telling and more succinct than all the other examples that the claimant gave the officer. It also would have had been more relevant and carried more weight given that the claimant was trying to show that XXXX allegedly intended to sexually abuse XXXX.

[81] The panel also cannot give any credibility to the claimant's testimony that she succeeded in taking XXXX out of Mexico [translation] "because I lied to XXXX."

[82] The panel finds that the claimant's testimony on this point is no more reliable than the rest of her allegations, since the "lie" in question changed from what she told the immigration officer on her arrival in Canada-that XXXX knew that she was on vacation with XXXX in Canada because she told him that XXXX had won a trip to Canada-to what she later stated in her PIF and at her hearing before the panel-that she led XXXX to believe that the trip was to Guatemala.

[83] The panel rejects the claimant's response, which lays the blame for that error on the immigration officer; the officer allegedly omitted to write down what she allegedly said, which was that XXXX believed that she and XXXX were on vacation not in Canada but in Guatemala, because she had told him that XXXX had [translation] "won a trip to Guatemala."

[84] In the absence of any evidence to the contrary, the immigration officer, in carrying out his duties, is presumed to have acted with all of the professionalism and ethical responsibility that his job requires. In this case, there is nothing to suggest, as the claimant alleged, that the immigration officer with whom she met did not write down in his report the responses given by the claimant, or that he omitted to include the reference [translation] "to Guatemala," as she allegedly "told" him.

[85] Furthermore, one only has to read the officer's notes to see that the he appears to have been careful to report everything that transpired during his interview with the claimant. His notes, which are more than seven pages long, record not only the questions asked and the answers given by the claimant, but also what he was planning to do after the interview-see the last three pages of his report.¹⁹

[86] The panel also has a lot of trouble reconciling the claimant's allegation that XXXX was a [translation] "morbid," "perverted," a "sexually abusive" and tenacious man, who allegedly behaved like a [translation] "fool" when he believed, without any problems or suspicion, the [translation] "lie by the claimant," who would have had him believe that XXXX had won a trip to Guatemala as a way of obtaining the legal consent required from him for the authorities to issue a passport for XXXX -all this in return for a future promise to [translation] "take XXXX to him for a few days when she returned from Guatemala."

[87] It is difficult to believe that XXXX trusted the claimant based on a simple verbal promise, without taking the trouble to demand even a minimal guarantee, since he so badly wanted to see XXXX, when his requests to take XXXX [translation] "in his truck" had been systematically refused by the claimant since XXXXXX 2007.

[88] The panel concludes that XXXX was never in danger because of the behaviour of her father XXXX. It does not consider, as the claimant alleged, that XXXX had or sought to have sexual relations with his daughter XXXX.

[89] Finally, the panel finds the claimant's allegation that XXXX is [translation] "prepared to go to any lengths" to be with XXXX to be not credible.

[90] If this had in fact been the case, the panel is of the opinion that as XXXX father, XXXX would have taken legal steps to get what he wanted. He would have had no trouble making the case, by legal means, that as her father, he had the right to see his daughter and to stay in contact with her- by asserting his visitation rights, among other things.²⁰

[91] In addition, the panel cannot help but point out that it is also surprised, given the circumstances of the case-the conflict between XXXX and the principal claimant because the latter refused to allow him to have contact with XXXX-and the allegations by the claimant that XXXX [translation] "would go to any lengths to get XXXX back," that the claimant, who alleged that she has no official document concerning the custody of XXXX, never made an effort to legally confirm her right to custody, which she has exercised in practice since 2001.

[92] It is therefore surprising, not to say not credible, that the claimant did not seek to take legal steps to ensure that the custody of XXXX would not be subject to XXXXX whims and threats-especially if, as the claimant maintained most recently, the version contained in her PIF was correct and XXXX had begun to threaten that he would [translation] "take [XXXX] away" from her while she was still living with him.²¹

[93] For all of these reasons, the panel does not consider the claimant's allegations to be true-that is, that if she were to return to Mexico, XXXX would do everything in his power to get XXXX back in order to abuse her.

[94] This conclusion by the panel is confirmed by the behaviour of the claimant who, while she was living in Mexico, never turned to the authorities to ask for protection from XXXX.

[95] The panel considers that the claimant would not have remained inactive if her daughter XXXX had actually been subjected to sexual touching or incest by XXXX.

[96] The panel rejects the claimant's explanation that [translation] "even if I did think of going to the authorities, I was afraid that the situation would only benefit XXXX," who would have then "taken advantage of his strength" to "do us even more harm."

[97] In circumstances of this case, the principal claimant had nothing to lose and everything to gain by turning to the authorities. In fact, contrary to her assertions, there is nothing in the evidence that would allow the panel to conclude that XXXX had [translation] "strength," "power" or "contacts" of any kind to "do even more harm" to the claimants in the event that the principal claimant had decided to report him to the authorities. If he had such influence, it would be reasonable to believe that he would have made use of it well before this (since XXXXXX 2007) to get what he wanted from the principal claimant and XXXX.

[98] Because Mexico has instituted a number of measures that would have allowed the claimant and her daughter to protect themselves and to obtain justice vis-à-vis XXXX, a violent and twisted man, it therefore would have been reasonable to expect the principal claimant to have taken at least some steps on behalf of herself and her daughter to report XXXX to the authorities in her country.

[99] Thus the principal claimant could have sought an initial remedy from the federal prosecutor's office in her state, where criminal complaints are made. This would have allowed her to make a formal report to the prosecutor in the state of Colima about the touching or indecent behaviour (or any other offence of a sexual nature) that threatened the safety and integrity of her daughter XXXX. All of these offences are punishable in all of the states of Mexico and are under the jurisdiction of the state prosecutor.²²

[100] Furthermore, if the claimant believed that XXXX could use his power and contacts throughout Mexico because of corruption, she would have tried to file a complaint with the Office of the Attorney General (PGR). It is the PGR that handles the investigation of crimes at the national level or crimes that take place in Mexico-federal crimes, including corruption.²³

[101] Finally, the claimant could have tried to appeal to the DIF or a lawyer, who would have certainly been able to shed some light on the conflict with the father of her child-among other things, by initiating legal proceedings to strip XXXX of his parental authority if he posed a real danger to the integrity and safety of his daughter, who was 12 years old at the time.

[102] For all of these reasons, the panel determines that the inaction of the principal claimant most probably is explained by the fact that her daughter was never the victim of sexual touching by XXXX.

CONCLUSION

[103] For all of these reasons, the refugee protection claims are dismissed.

Marie-Josée Hadaya

Me Marie-Josée Hadaya

February 14, 2012

Date

IRB translation

Original language: French

REFUGEE PROTECTION DIVISION / GENDER-RELATED PERSECUTION / WOMEN / DOMESTIC VIOLENCE / SEXUAL ABUSE / CREDIBILITY / FEMALE / DAUGHTER / MINOR / NEGATIVE / MEXICO

1 Exhibit P-1: Personal Information Form (PIF), question 31, paragraphs 15 and 16.

2 Idem, paragraph 17.

3 Supra, footnote 1.

4 Exhibit A-2: Immigration documents in a bundle.

5 Exhibit P-1: PIF, question 3.

6 Idem, question 7.

7 Exhibit A-1: National Documentation Package on Mexico, September 30, 2011, Section 5.11, MEX43266.E. February 16, 2005. Divorce law and practice, including separation agreements, custody, property dispositions, consent requirements, related issues from women's perspectives and in relation to spousal and child abuse, and legal requirements for taking children abroad by one parent (Replaces MEX27356.E of 22 August 1997 and MEX41510.E of 20 May 2003).

8 Exhibit P-1: PIF, question 31, paragraph 12.

9 Exhibit A-2: Immigration documents, IMM 5474, question 7, Occupations.

10 Exhibit P-1: PIF, question 31.

11 Exhibit A-2: Immigration documents in a bundle.

12 Exhibit P-1: PIF, question 31, paragraphs 19, 20 and 22.

13 Exhibit A-1: National Documentation Package - Mexico, September 30, 2011, Section 14: Exit/Entry and Freedom of Movement.

14 Exhibit P-1: PIF, question 31.

15 Exhibit A-2: Immigration officer's notes, questions 83 and 84.

16 Exhibit A-2: Immigration documents in a bundle.

17 Exhibit A-2: IMM 5474 question 3A and 3B.

18 Idem, Immigration officer's notes, question 79.

19 Exhibit A-2: Immigration officer's notes, p. 7.

20 Exhibit A-1: National Documentation Package on Mexico, September 30, 2011, Section 5.11, MEX43266.E. February 16, 2005. Divorce law and practice, including separation agreements, custody, property dispositions, consent requirements, related issues from women's perspectives and in relation to spousal and child abuse, and legal requirements for taking children abroad by one parent (Replaces MEX27356.E of 22 August 1997 and MEX41510.E of 20 May 2003).

21 Exhibit P-1: PIF, question 31, paragraph 12.

22 Exhibit A-1: Section 2.4, Canada. February 2007. Immigration and Refugee Board of Canada (IRB). Mexico: Situation of witnesses to crime and corruption, women victims of violence and victims of discrimination based on sexual orientation, page 5; Section 7.10, 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); Section 9.4, MEX101374.E. June 5, 2006. Procedures followed to file a complaint with the Federal Prosecutor's Office (Procuraduría General de la República, PGR) and to obtain copies of a filed complaint (May 2006).

23 Idem, Section 2.4, page 5; ection 9.5, MEX101237.E. June 1, 2006. Protection afforded to witnesses before and after trials including, but not limited to, formal witness protection programs; reports on the situation of persons who testify as witnesses before and after a case has gone to trial (2004 - 2006).

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