

CANADA / JUDGMENT

MA7-04366

COURT

Refugee Protection Division

DECIDED

14 July 2008

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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 : MA7-04366 MA7-04367 MA7-04368 MA7-04369 MA7-04419 Private Proceeding Huis clos Claimant(s) Demandeur(e)s d'asile XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX Date(s) of Hearing Date(s) de l'audience June 3, 2008 Place of Hearing Lieu de l'audience Montréal, Quebec Date of Decision Date de la décision July 14, 2008 Panel Tribunal Me Michel Jobin Claimant's Counsel Conseil du demandeur d'asile Me Gisele Barraza Tribunal Officer Agent du tribunal N/A Designated Representative Représentant désigné XXXXX XXXXX XXXXX Minister's Counsel Conseil du ministre N/A

[1] These are the reasons for decision in the claims for refugee protection filed by XXXXX XXXXX XXXXX, his wife, XXXXX XXXXX XXXXX, and their children, XXXXX XXXXX, XXXXX XXXXX and XXXXX XXXXX XXXXX, citizens of Mexico. They are claiming protection from the Canadian authorities as persons in need of protection because they allege that they would be subjected to a risk to their lives or to a risk of cruel and unusual treatment within the meaning of section 97 of the Immigration and Refugee Protection Act (the Act).

ALLEGED FACTS

[2] According to the Personal Information Forms (PIFs) submitted in support of their claim for refugee protection, the principal claimant was born on XXXXX 1971. His wife, XXXXX, was born on XXXXX 1980. They married on XXXXX, 1999, and have three children.

[3] The claimant wrote in his narrative at question 31 that he was threatened and constantly harassed by corrupt people who are complicit with the authorities and state officials. He could not perform his work properly because of the exaggerated pace of the work. He spoke to his boss in XXXXX 2007 and was ordered to continue working. He also talked to the labour manager, who told him to mind his own business.

[4] The claimant discussed this with his colleagues and thought about forming a union. He believed that someone had reported him. In XXXXX 2007, his boss told him that he was fired. He went to the labour relations board to find out about his rights, and a board inspector was sent to the business. The claimant was summoned by the authorities on XXXXX of that year. In the meantime, the claimant allegedly received a threatening call

from his supervisor. As he was leaving the labour relations board office, he was threatened by three people, who allegedly punched him. He complained to the authorities because he recognized the attackers. The next day, he returned to the authorities to confirm the facts.

- [5] He decided to leave Mexico after hiring a lawyer to handle his case. The claimants left their country, Mexico, on XXXXX, 2007, with passports issued XXXXX, 2007, and indicated their intent to claim protection from Canadian authorities when they arrived at the airport in Montréal. As for their fear of returning, the claimants, and the principal claimant in particular, claimed to fear certain people he worked with.

ANALYSIS

- [6] The refugee protection claimants are basing their claim on the fact that they are Convention refugees. They are also claiming protection as persons in need of protection because they would be subjected to a risk to their lives or to a risk of cruel and unusual treatment or punishment.
- [7] Having heard the testimony about all of the evidence, the panel concludes that there is no merit to the claim, given that the claimants are not credible with respect to their subjective fear. The panel is also of the opinion that an internal flight alternative exists in the claimant's case and that his failure to seek state protection greatly undermines his subjective fear.
- [8] At the beginning of the hearing, the presiding member asked some questions for clarification. The claimant stated that he feared the people he worked with. His problems supposedly date back to XXXXX, 2007, and he fears being beaten and that the problems could have repercussions on his family. When asked when he decided to leave his country, the claimant answered when I felt threatened and was fired by the company; he gave the date of XXXXX, which he later corrected to XXXXX. When asked to explain where he wanted to go, the claimant answered that he wanted to go to another country. He added that he did not try to move because he would have been found in any part of Mexico.
- [9] The claimant had few documents to support his narrative. He added that no one sent him the documents from Mexico. However, the claimants have been here since XXXXX 2007, which was several months before the hearing, and he was unable to provide any documents concerning his work or the labour relations board, where he allegedly filed a complaint. It is also curious that the claimant, who hired a lawyer in Mexico, did not give the lawyer the necessary documentation to support his claims. The claimant stated that he was unable to find him. The panel seriously doubts the claimant's answers, because a lawyer who wants to attract and retain a certain clientele must be well established.
- [10] The panel wanted to know whether the claimant had thought about bringing pay stubs to prove that he had indeed worked for the business indicated. The claimant stated, [translation] "I did not think that I would need them". The panel then asked whether he had received a work certificate following his dismissal. He answered that he did not, because he

was not entitled to one. To give weight to his answers, he added that he had asked his brothers to go to the company to obtain these documents, but he does not have them. The panel cannot accept the claimant's answers because, at the very least, he could have filed pay stubs or even a bank statement to support his statements.

- [11] With respect to the labour relations board, the claimant alleged that he filed a complaint against his former employer. Board authorities told him that they would investigate and that he would be called for future action. He went there on XXXXX, 2007. The claimant testified that the board authorities took notes on his case and that they were going to start looking into his complaint. The panel understands that the claimant claimed a lump sum due to him. The panel wanted to know what the outcome of this complaint was, and the claimant answered, [translation] "I was told that there was no news". He was unable to provide any further details.
- [12] With respect to an internal flight alternative, the claimant stated that he had previously thought about it. When the threats began in XXXXX 2007, he did not try to protect himself from the people who wanted to attack him. That is when additions were made to the narrative submitted. The panel notes that the claimant's narrative was declared to be truthful at the beginning of the hearing. During the hearing, the panel learned that the family had received threatening telephone calls. When asked when those threats began, the claimant answered in XXXXX 2007. He allegedly received more threatening telephone calls in XXXXX 2007. Asked why he had added this information during the hearing, the claimant stated that he was nervous when the process began and that he had not thought to mention these events. The panel cannot accept such answers from the claimant because, aside from the fact that the claimants submitted a narrative and that this narrative was reviewed in the presence of their lawyer, the presiding member asked at the beginning of the hearing whether everything had been translated from French to Spanish and vice versa, and was told that it had. The panel also asked whether they had any facts that they wanted to add, and they answered no. Therefore, the panel cannot accept such additions which, in the panel's opinion, the claimant made to bolster his situation. Similarly, the panel wanted to know whether the claimant had complained to the police after receiving these telephone calls. The claimant answered no. When asked to explain why he did not take this step, when he took the step of going to the labour relations board to demand that his labour agreement be respected, the claimant merely stated that the callers had told him not to file a complaint, because they would quickly find out about it. The panel cannot accept such an answer because, during his testimony, the claimant tried to modify and improve his narrative.
- [13] A contradiction was also noted with respect to the people who allegedly attacked the claimant. The panel asked the claimant who attacked him after he hired the lawyer on XXXXX, 2007. The claimant answered, [translation] "three people". One of those people allegedly worked for the business, and the claimant stated that he did not know the other two. However, the claimant clearly wrote in the narrative submitted that he knew the three attackers. This contradiction undermines the claimant's credibility once again. Still with

respect to this attack, the claimant did not go to the hospital, and his lawyer allegedly has all of the documents in his possession. Unfortunately, he was unable to talk to him.

- [14] The panel would like to conclude this section about the attacks and the threats because, according to the testimony, numerous threats were received during the months before they left. The claimant stated that he received approximately 25 threats, about 3 or 4 threats a week, before he left. Again, this important element is not mentioned in the narrative submitted; the claimant wrote only that he was beaten by three attackers. Again, the panel is led to believe that either the claimant did not provide his entire story or he is trying to improve the story he submitted by giving exaggerated testimony in order to bolster his narrative.
- [15] The panel and the claimants' lawyer asked for information regarding an internal flight alternative. Given that the claimants have family in the city of XXXXX, which is a 10-hour drive from their family home, the panel wanted to know how they could be found so far away. The claimant stated that the voter's card contains considerable information. The panel also pointed out to the claimant that he could have gone to Monterrey to live in peace. The claimant responded that anyone can be tracked using their voter's card and their social insurance number. He added that all of these numbers that can be used to track people in Mexico can be found online. The panel was dumbfounded at hearing this, because the panel has heard numerous cases from Mexico and has never heard the statement that anyone can be found in Mexico using a computer and the Internet. Again, the claimant's exaggerated testimony greatly undermines his credibility and the panel is of the opinion that the claimants could live in either Campeche or Monterrey, large Mexican cities where the claimant could relocate and find work easily, given that he has a specialized occupation as a XXXXX.
- [16] The panel will not comment on the fact that the claimant stated at the beginning of the hearing that the decision to leave was made in XXXXX 2007, but that they took a month to leave the country, despite the alleged threats against the family.
- [17] Since he is not credible, the claimant and, as a result, the other members of his family have not discharged their burden of proving that they have a well-founded fear of persecution in Mexico and that they are persons in need of protection because of a risk to their lives or a risk of cruel and unusual treatment or punishment.

CONCLUSION

- [18] The claimants did not discharge their burden of establishing that they have a well-founded fear of persecution in Mexico, their country of nationality. Consequently, for the reasons expressed above, the panel determines that the claimants, XXXXX XXXXX XXXXX, his wife, XXXXX XXXXX XXXXX, and their children, XXXXX XXXXX, XXXXX XXXXX and XXXXX XXXXX XXXXX, are not Convention refugees in accordance with section 961 and paragraphs 97(1)(a) and (b)2 of the Immigration and Refugee Protection Act (IRPA).

[19] Consequently, the panel rejects their claims for refugee protection. Michel Jobin Me Michel Jobin July 14, 2008 Date 1 The Immigration and Refugee Protection Act, S.C. 2001, c. 27, reads in part as follows:

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. 2 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. REFUGEE PROTECTION DIVISION / EMPLOYMENT / HARASSMENT / VICTIM OF CONFLICT / DELAY IN LEAVING THE COUNTRY / PRODUCTION OF DOCUMENTS / INTERNAL FLIGHT ALTERNATIVE / MALE / SPOUSE / CHILDREN / NEGATIVE / MEXICO

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