

CANADA / JUDGMENT

MB1-02816

COURT

Refugee Protection Division

DECIDED

9 October 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. / No de dossier de la SPR : MB1-02816 MB1-02817 MB1-02818 MB1-02819 Private Proceeding Huis clos Claimant(s) Demandeur(e)s d'asile XXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX Date(s) of Hearing Date(s) de l'audience October 1, 2012 Place of Hearing Lieu de l'audience Montréal, Quebec Date of Decision Date de la décision October 9, 2012 Panel Tribunal Roxane Cyr Claimant's Counsel Conseil du demandeur d'asile Me Mabel E. Fraser Tribunal Officer Agent du tribunal Annie Lemaine ?Filing of documents? Designated Representative Représentant désigné XXXX XXXX XXXX XXXX Minister's Counsel Conseil du ministre N/A

- [1] The claimants, XXXX XXXX XXXX XXXX, her husband, XXXX XXXX XXXX XXXX, and their children, XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX, all citizens of Honduras, are claiming refugee protection in Canada under section 96 and paragraph 97(1)(b) of the Immigration and Refugee Protection Act (IRPA).
- [2] XXXX XXXX XXXX XXXX is the designated representative of her two minor children, XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX. ALLEGED FACTS
- [3] The following is a summary of the claimants' allegations as they appear on their Personal Information Forms (PIFs).
- [4] The male claimant, who owned a XXXX XXXX XXXX XXXX, was approached in mid-XXXX 2010 by the maras, who extorted him. They demanded that he pay 5,000 lempiras as a war tax. Nearly 15 days later, on XXXX XXXX, 2010, the male claimant was approached again by the maras when he was at his office. They told the male claimant, at gunpoint, that he had to cooperate and that if he did not, his family could be killed. The male claimant, who had money on him that day, gave them 14,000 lempiras. The maras then told him he had better not report them because they knew everything about his family.
- [5] An aunt who XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX told the male claimant that the maras had infiltrated the police force and that he had no choice but to close his business and leave the country. Since they had no money at that time, the male claimant and his wife, the female claimant, changed their children's school. The male claimant then began to

liquidate his business merchandise so that he could shut down the business. Some individuals were then seen driving near the male claimant's business on motorcycles, as though they were looking for something. At that moment, the male claimant feared for his life and for the lives of his family members. On XXXX XXXX, 2010, the male claimant's business closed definitively. He then went to file a complaint with the police about the extortion. This complaint was taken by the police, and he was told that they would drive by his house, which, according to the male claimant, they never did. In XXXX 2010, the female claimant received a telephone call in which she was told that the mareros were going to kill her family because the money required had still not been paid. The claimants knew that other automotive garage owners had been killed by the maras for reasons related to extortion.

- [6] On XXXX XXXX, 2011, the claimants left Honduras and arrived in Canada on the same day, where they immediately claimed refugee protection.

ANALYSIS

- [7] The claimants' identities were established to the panel's satisfaction by means of copies of their passports, which are on file.¹
- [8] The panel is of the opinion that the claimants failed to establish that they feared persecution on one of the five Convention grounds. The claimants feared they would be killed by the maras, a criminal group that allegedly targeted the male claimant because he, XXXX XXXX, did not pay the war tax required by this criminal gang. The claimants' fear was therefore related to criminality, and the ground was financial gain, which has no nexus to one of the five Convention grounds.
- [9] Although the male claimant indicated that he feared the maras and the police officers who worked with them, the male claimant did not allege that he had been mistreated by police or that he had had any problems with them. The male claimant did not allege that he feared he would be subjected to torture. Therefore, the claimants' claim did not involve the state of Honduras or one of its agents as an agent of persecution. Consequently, the panel is of the opinion that the claim cannot be considered under paragraph 97(1)(a) of the IRPA.
- [10] After studying the documentary and testimonial evidence, the panel is of the opinion that the claimants would face a generalized risk if they returned to their country of origin, under paragraph 97(1)(b).
- [11] For the purposes of the analysis, the panel accepts the claimants' allegations as fact.
- [12] Questioned as to how the claimants' risk differed from the risk faced by the rest of the Honduran population, which is victimized by widespread endemic violence caused by criminal gangs such as the maras,² the male claimant, XXXX XXXX, stated that his case was different. He explained that because he had paid \$14,000 lempiras to gang members (528 dollars),³ he was identified as someone even wealthier than others who had a profitable

business. That was what characterized him and made him different from the others, and what also made his risk different.

- [13] The panel took the documentation on Honduras into consideration, particularly the information concerning the rampant criminality in that country.
- [14] Document P-17 is a recent newspaper article. It paints a picture of a country that has one of the highest murder rates in the world, due to an [translation] "explosive cocktail of endemic poverty, ultra-violent street gangs, fragile institutions and severe political crisis, as well as the terrible Mexican drug cartels, which have migrated to Central America".⁴ Express kidnappings make it possible for criminals to grab victims by taking control of their vehicle while they are driving; taxi drivers make for easy targets for the purpose of taking their savings.
- [15] Business owners are extorted, particularly XXXX XXXX XXXX XXXX, small business owners, and nightclub owners.
- [16] In fact, what arises from the documentation on business owners is that those who own small businesses open to the public, as well as those who operate transportation services, such as taxi and bus drivers, undergo substantial pressure at the hands of gangs, which extort them and kill them if they do not pay.⁵
- [17] Although the risk faced by the male claimant, XXXX XXXX, and the co-claimants can be personalized because he was targeted by the maras for extortion, the panel does not consider that his risk was different from that experienced by the large subgroup of business owners, of which the he was part.
- [18] The documentation does not support the allegations of the male claimant, XXXX XXXX, who stated that because he paid \$14,000 lempiras in one payment and because he was a XXXX XXXX XXXX, he was perceived as wealthy, which made his risk different.
- [19] The documentary evidence indicates that all business owners, especially those who are more vulnerable because they are open to the public, and not necessarily the wealthy ones, can be preyed upon by gangs.
- [20] Paragraph 97(1)(b), under which the claimants are claiming protection, contains exceptions whereby any person who alleges a fear of being subjected to a risk to his or her life or to a risk of cruel and unusual treatment or punishment must be subject to that risk "in every part of that country and [the risk] is not faced generally by other individuals in or from that country".⁶
- [21] The Federal Court determined in Paz Guifarro⁷ that refugee protection claims do not meet the requirements of subparagraph 97(1)(b)(ii) of the IRPA when the targeted persecution is due to the fact that a claimant belongs to a subgroup of people who are returning from another country or who are considered more fortunate for other reasons.

- [22] All of this occurs amid generalized violence that may be encountered by all Hondurans who are perceived as a quick source of illicit enrichment.
- [23] Generalized risk is a principle confirmed by the case law in *Prophète*.⁸ The Honourable Justice Tremblay-Lamer stated the following in that case: "The risk of all forms of criminality is general and felt by all Haitians. 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".
- [24] The Honourable Justice Shore of the Federal Court, in *Laurere Jean*,⁹ stated that "[t]he case law of this Court is clear and consistent that a generalized fear of crime caused by a situation prevailing throughout the country and affecting the entire population is not enough to justify granting the status of person in need of protection".
- [25] The panel applies these principles to cases involving Honduran claimants. The evidence speaks for itself with regard to the rampant criminality in that country, which seems, for all practical purposes, uncontrollable and endemic.
- [26] The panel reviewed the case law on the issue of generalized risk and, although aware that certain Federal Court decisions interpret generalized risk differently, the panel finds that most decisions concerning this notion support the analysis according to which, in a country where criminality is endemic, uncontrolled, related to organized crime and street gangs (which is the case here), and may be encountered by any citizen or a large subgroup of citizens, such as business owners, the risk is generalized.¹⁰
- [27] For these reasons, the panel finds that the claimants' claim cannot be allowed under paragraph 97(1)(b) of the IRPA. The claimants did not successfully discharge their burden of establishing a serious possibility of persecution on one of the five Convention grounds, nor did they establish that, should they return to Honduras, they would be personally subjected to a danger of torture, to a risk to their lives, or to a risk of cruel and unusual treatment or punishment.

CONCLUSION

- [28] For these reasons, the panel determines that XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXXare not "Convention refugees" or "persons in need of protection."
- [29] The claims are rejected. Roxane Cyr Roxane Cyr October 9, 2012 Date IRB translation Original language: French REFUGEE PROTECTION DIVISION / ENTREPRENEUR / EXTORTION / GANG / GENERALIZED RISK / FEMALE / SPOUSE / CHILDREN / NEGATIVE / HONDURAS 1 See Exhibit A-2. 2 See Exhibit P-17. 3 See Exhibit A-1: National Documentation Package on Honduras, June 8, 2012, Tab 1.2, The Europa World Year Book 2011. 2011. "Honduras," p. 2134-2150. London: Routledge, page 2141. 4 Exhibit P-17, page 60. 5 See Exhibit P-13. 6 See IRPA, paragraph 97(1)(b). 7 *Guifarro, Osman Jose Paz v. M.C.I.* (F.C., No.

IMM-3097-10), Crampton, February 15, 2011, 2011 FC 182. 8 Prophète, Ralph v. M.C.I. (F.C., No. IMM-3077-07), Tremblay-Lamer, March 12, 2008, 2008 FC 331. 9 Jean, Léonie Laurore v. M.C.I. (F.C., No. IMM-5860-09), Shore, June 22, 2010, 2010 FC 674, para. 32. 10 Alvarez Fuentes v. Canada (Citizenship and Immigration) (F.C., No. IMM-5166-11), Boivin, February 17, 2012, 2012 FC 218.

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