



RPD File No. / N° de dossier de la SPR : TA7-04670  
TA7-04671  
TA7-04672

Private Proceeding / Huis clos

2008 CanLII 49548 (I.R.B.)

## Reasons and Decision – Motifs et décision

<b>Claimant(s)</b>	XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX (a.k.a. XXXXX XXXXX XXXXX XXXXX)	<b>Demandeur(e)s d'asile</b>
<b>Date(s) of Hearing</b>	31 January 2008	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	31 March 2008	<b>Date de la décision</b>
<b>Panel</b>	Ken Atkinson	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Robert Blanshay Barrister & Solicitor	<b>Conseil(s) du / de la / des demandeur(e)s d'asile</b>
<b>Tribunal Officer</b>	Nil	<b>Agent(e) des tribunaux</b>
<b>Designated Representative(s)</b>	XXXXX XXXXX XXXXX	<b>Représentant(e)s désigné(e)s</b>
<b>Counsel for the Minister</b>	Nil	<b>Conseil du ministre</b>

The principal claimant (PC) is XXXXX XXXXX XXXXX, a twenty-seven-year-old male from Mexico. The second claimant, XXXXX XXXXX XXXXX, is a twenty-six-year-old female from Mexico. She is the common law spouse of the PC. The third claimant, XXXXX XXXXX XXXXX XXXXX, is a four-year old female from Mexico. She is the daughter of the PC and the second claimant. The PC has been appointed as the Designated Representative of his minor daughter. The second claimant and the third claimant rely on the Personal Information Form (PIF) narrative of the PC. They claim refugee protection pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.<sup>1</sup>

## ALLEGATIONS

The PC alleges that he is a XXXXX - XXXXX XXXXX who wrote XXXXX articles for a XXXXX called "XXXXX" XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. He states that he collaborated on the stories with a XXXXX named XXXXX XXXXX XXXXX. He maintains that he came into contact with a man in the City of XXXXX, who was known as XXXXX (the XXXXX). He says he initially purchased a XXXXX XXXXX gun and XXXXX rounds of XXXXX from XXXXX XXXXX. He alleges that he made three more purchases and then told XXXXX that he had a client who was willing to pay ten thousand US dollars for weapons. The PC maintains that XXXXX had contact with an organized crime gang known as "XXXXX", XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. He says that he did not have the money to complete this deal and he tried to "break off the deal". He maintains that XXXXX found out where he lived and continued to call him to complete the transaction. The PC says that he moved to the City of XXXXX in order to get away from these demands. On XXXXX, 2006, he states that someone broke into his house and "everything inside was turned upside down". He alleges that his neighbours told him that they observed four individuals in military uniforms enter the house. He maintains that he immediately went to Mexico City to hide. He states that he telephoned XXXXX to ask him to leave him alone but he told him he had one week to pay the money. The claimant maintains that it was at this point that the XXXXX XXXXX were XXXXX. He states that one day a car blocked his way as he came home and two men got out of the car. He says they pointed a gun at him, hit him in the face and broke his left hand. He maintains that they told him to stop XXXXX and that this was the first warning. He states that he reported the incident to the public ministry. He alleges that he three

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<sup>1</sup> As enacted by S.C. 2001, c. 27, sections 96, 97(1)(a) and 97(1)(b).

individuals attacked him a second time. They hit him in the face with the handle of a gun and told him that this was his second warning. He says he was beaten unconscious. He received four stitches in his face as a result of the attack. He states that he tried to report the matter to the public ministry. Three agencies refused to take a report. He was finally able to file a report at the XXXXX XXXXX XXXXX. Arrangements were then made for the claimants to leave Mexico. They arrived in XXXXX, Ontario on March 5, 2007 and they made claims for refugee protection on March 21, 2007.

## **DETERMINATION**

I find that the claimants are Convention refugees and they have a well-founded fear of persecution in Mexico.

## **ANALYSIS**

### **Identity**

The PC's oral testimony and the supporting documentation filed,<sup>2</sup> establish the claimants' identities as nationals of Mexico.

### **Credibility**

The first issue is whether it is credible that the PC has a well-founded fear of persecution in Mexico, because of his activities as an XXXXX XXXXX.

I find that, on a balance of probabilities, the PC was a credible witness and is an XXXXX XXXXX who has a well-founded fear of persecution from individuals about whom he has XXXXX XXXXX XXXXX XXXXX "XXXXX". The PC's oral testimony was consistent with his PIF.<sup>3</sup> I noted no contradiction, inconsistency or embellishment in his account. I find that, on a balance of probabilities, the PC was credible in his testimony as an XXXXX XXXXX. The PC also provided evidence of his membership in this social group by producing XXXXX XXXXX<sup>4</sup> and copies of his XXXXX XXXXX XXXXX XXXXX "XXXXX".

### **State Protection**

The determinative issue in this case is whether there is a serious possibility that the PC would be persecuted or that, on a balance of probabilities, he would be subjected personally to a risk to his life or to a risk of cruel and unusual treatment, if he were to return to Mexico.

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<sup>2</sup> Exhibit R/A-2, Mexican Passports.

<sup>3</sup> Exhibit C-1.

<sup>4</sup> Exhibit C-6.

I find that the PC has rebutted the presumption of state protection by providing clear and convincing evidence of the state's inability to protect him.

In assessing the issue of state protection, I am guided by a number of cases from the Federal Court. The principles were applied to this case. There is a presumption, except in situations where the state is in a complete breakdown, that it is capable of protecting its citizens. A claimant can rebut this presumption by providing clear and convincing evidence of the state's inability to protect. The onus is on the claimant to approach the state for protection in situations where state protection might be reasonably forthcoming.<sup>5</sup>

No government is expected to guarantee perfect protection to all of its citizens at all times, and the fact that his state is not always successful in protecting its citizens, is not enough to justify a claim, especially where a state is in effective control of its territory, has military, police and the civil authorities in place and is making serious efforts to protect its citizens.<sup>6</sup> Less than perfect protection is not a basis to determine that a state is either unwilling or unable to offer reasonable protection.<sup>7</sup>

Furthermore, the law states that the burden for the claimant to prove an absence of state protection is directly proportional to the level of democracy of that state.<sup>8</sup> Mexico is a democracy. There are Federal Court decisions that describe Mexico as a strong democracy. In one case it is stated that Mexico is a functioning democracy, and a member of NAFTA, with democratic institutions. Therefore, the presumption of state protection is a strong one.<sup>9</sup> I recognize that in one decision, it has been described more as a developing democracy, where corruption, drug trafficking is prevalent, involving some government officials, police and security forces, and thus, the presumption of state protection can be more easily overturned.<sup>10</sup> The claimant must do more than merely show that he or she went to see members of the police force and that those efforts were unsuccessful. The more democratic the state's institutions, the greater the onus on the claimant to show he or she has exhausted all courses of action available.<sup>11</sup> Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state

<sup>5</sup> *Canada (Attorney General) v. Ward*, (1993) 2 S.C.R. 689.

<sup>6</sup> *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.)

<sup>7</sup> *Milev, Dane v. M.C.I. (F.C.TD., no. IMM-1125-95)*, *MacKay*, June 28, 1996.

<sup>8</sup> *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4<sup>th</sup>) 532 (F.C.A.).

<sup>9</sup> *Suarez Velazquez, Cirilo Israel v. M.C.I.* (F.C., no. IMM-4159-05), Phelan, April 28, 2006; 2006 FC 532.

<sup>10</sup> *Carillo V Canada (Minister of Citizenship and Immigration)* 2007 FC 320, (2007) F.C.J. No. 439.

<sup>11</sup> *Ibid.*

inability or refusal to provide protection.<sup>12</sup> Indeed, if a claimant believes the actions of some police officers are corrupt, the onus is on him to approach other members of the security forces or authorities.<sup>13</sup>

The documentary evidence before the Board<sup>14</sup> indicates that Mexico is a democracy and that there are free and fair elections.<sup>15</sup> There is a relatively independent and impartial judiciary.<sup>16</sup> Mexico is a signatory nation to the *United Nations Convention Relating to the Status of Refugees* and the 1967 Protocol<sup>17</sup> suggesting an understanding of and commitment to fundamental human rights.<sup>18</sup>

To rebut the presumption of state protection, “clear and convincing confirmation of the state's inability to protect must be provided for example, a claimant might advance testimony of similarly situated individuals let down by the state protection arrangement or the PC’s testimony of past personal incidents in which state protection did not materialize.”<sup>19</sup>

In this case, the claimant had been attacked on two occasions and he had been warned to stop XXXXX these XXXXX. On the first occasion, he suffered a broken wrist and on this second occasion, he suffered a cut to his face, which required four stitches and he was beaten unconscious. He has provided photographs of the injuries which he suffered in the second attack.<sup>20</sup>

The PC also provided oral evidence in regard to a friend of his by the name of XXXXX XXXXX, who had XXXXX a XXXXX and a XXXXX related to XXXXX XXXXX in XXXXX and XXXXX in Mexico. He stated that she had been threatened as a result of XXXXX XXXXX XXXXX and she had sought police protection. He stated that she was ultimately kidnapped. He could not give any other details as to what ultimately happened to his friend.

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<sup>12</sup> *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).

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

<sup>14</sup> Exhibit R/A-1, *National Documentation Package*, June 29, 2007, item 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2006*, March 6, 2007.

<sup>15</sup> *Ibid.*, p. 2.1.1.

<sup>16</sup> *Ibid.*, p. 2.1.5.

<sup>17</sup> *Ibid.*, p. 2.1.8.

<sup>18</sup> *Ibid.*, p. 2.1.5, The Federal and State Commissions for Human Rights (CNDH), together with the National Defence Secretariat have provided training to law enforcement officials, military and security forces in human right issues.

<sup>19</sup> *Supra*, footnote 5.

<sup>20</sup> Exhibit C-8.

The documentary evidence<sup>21</sup> states “with nine journalists murdered and three missing, the country has the worst record in the Americas in 2006 and was second only to Iraq for the number killed, despite establishment in February of a special Federal Court to punish attacks on the media.” The report goes on to state that despite establishing this Court, “but these good intentions did not prevent one of the worst annual press freedom tolls of the past decade in the Americas.” The report goes on to give specific examples of XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. There were further reports of XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.<sup>22</sup>

At the hearing, the claimant produced a death certificate for a XXXXX XXXXX XXXXX XXXXX,<sup>23</sup> showing that he had been killed as a result of four bullets to his head. In the same exhibit, the PC also produced a letter from Mr. XXXXX, stating that he feared for his life. There is no direct evidence that Mr. XXXXX death was attributed to his activities with the claimant in XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The PC stated that he had attempted to find information on the Internet as to Mr. XXXXX death but he was unsuccessful. The mere fact of Mr. XXXXX death and the manner in which it occurred adds to the clear and convincing evidence needed to overturn the presumption of state protection as Mr. XXXXX was obviously, in a similar situation to the PC.

The PC went to the police and reported the first attack. It appears that no action was taken as a result of this report. He attempted to report the second attack and officers at three police stations refused to take the report. It was only at the fourth station the report was taken. This is further evidence of a lack of state protection for XXXXX, such as the claimant.

I find that on the totality of the evidence, and, in particular, the documentary evidence that XXXXX XXXXX in Mexico still face threats and risk of death, and the particular evidence in this case, the presumption of state protection has been rebutted.

The PC attempted to go to the City of XXXXX to escape from the elements of the Mexican XXXXX about which he had written. His evidence is that he was found in that city and his house was vandalized. The PC is a XXXXX and he should not be expected to abandon his vocation and go into hiding in another location in Mexico. He could try to XXXXX XXXXX XXXXX but he obviously wants the XXXXX XXXXX to XXXXX XXXXX XXXXX XXXXX

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<sup>21</sup> Exhibit R/A-1, item 11.1.  
<sup>22</sup> Ibid., item 11.3.  
<sup>23</sup> *Supra*, footnote 4.

XXXXX as an XXXXX XXXXX. I conclude, therefore, that there is no internal flight alternative available to the PC in Mexico.

I find that there is a serious possibility that the PC, on account of his vocation as an XXXXX XXXXX, would be persecuted, should he return to Mexico. I also find that, on a balance of probabilities, he would be subjected personally to a risk to his life or to a risk of cruel and unusual treatment or punishment, should he return to Mexico.

### **CONCLUSION**

Having considered all of the evidence and counsel's submissions, I find that the claimant is a Convention refugee. The other claimants are also Convention refugees, as a result of their claims through the PC. Accordingly, the Refugee Protection Division accepts the claims for refugee protection.

**"Ken Atkinson"**

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**Ken Atkinson**

**31 March 2008**

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**Date**

**REFUGEE PROTECTION DIVISION - CONVENTION REFUGEE - PERSON IN NEED OF PROTECTION - STATE PROTECTION - MALE - FEMALE - POSITIVE - MEXICO**