Federal Court  Cour fédérale

Date: 20120321

Docket: IMM-1660-11

Citation: 2012 FC 345

Ottawa, Ontario, March 21, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

EMILIO FLORES JACOBO
YESENIA ALVAREZ GARCIAE
EMILIO FLORES ALVAREZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the Board), dated February 22, 2011, wherein the applicants were determined to be neither Convention refugees within the meaning of section 96 of the Act nor persons in need of protection as defined in subsection 97(1) of the Act. This conclusion was based on the Board's finding that the principal applicant had witnessed corruption by some

individuals rather than the Mexican government more broadly and that the principal applicant had failed to rebut the presumption of state protection.

[2] The applicants request that the Board's decision be quashed.

Background

[3] Emilio Flores Jacobo is the principal applicant. Yesenia Alvarez Garciae, is the principal applicant's wife and their child, Emilio Flores Alvarez, is the minor applicant.

[4] Prior to 2005, the principal applicant worked as a business accountant. He also briefly helped put up campaign signs for a local political campaign.

[5] In late 2005, the principal applicant began working for the government vehicle registration department. His job entailed checking vehicle registrations for stolen vehicles imported into the state. Initially, he encountered no problems at work. However, to protect the safety of its inspectors, the government regularly moved them to different municipalities. Therefore, in 2007, the principal applicant was moved to a new municipality. There, he began noticing vehicles on the street that had previously been identified as stolen at his former office. He reported this observation to his supervisor, Carlos Avena Ledon, who told him to ignore the matter. He therefore made a complaint about Mr. Ledon to the Public Ministry. A civil servant recorded the complaint. The principal applicant was unable to obtain a copy of the complaint. He was never contacted and was not aware of any follow-up to his complaint.

[6] The principal applicant also began receiving requests to sign-off on vehicles that he found had false papers. Although Mr. Ledon ordered him to pass them, the principal applicant refused to do so. Finally, Mr. Ledon summoned the principal applicant to his office and threatened him should he not cooperate. Mr. Ledon said that he was the nephew of the local Governor, Ney Gonzalez Sanchez, and could therefore do as he wanted. The principal applicant told Mr. Ledon that he would report him to the General Secretary of Public Security, Commandant Julio Cesar Jimenez Arcadia (the Commandant). Mr. Ledon seemed unconcerned.

[7] The principal applicant did report to the Commandant, stating that Mr. Ledon was putting stolen vehicles on the road and had falsely accused the principal applicant of doing so. The Commandant replied that he was in the process of investigating the situation. Mr. Ledon found out about the report and began harassing the principal applicant. Subsequently, at the end of his contract, the principal applicant left his employment at the vehicle registration department. He kept some documents as evidence of the corruption incidents.

[8] After leaving the vehicle registration department, the Commandant helped the principal applicant secure work as a driver in the Secretariat of Health Office. Concurrently, he applied for the Agricultural Workers Program (Mexico-Canada) and later, in 2008, he completed a seven month contract in Ontario. Within days of returning to Mexico, the principal applicant was informed by friends that individuals with judicial police certification had tried to reach him. The principal applicant believed these people had been sent by Mr. Ledon.

[9] The principal applicant was subsequently asked to report to the Governor's office. Before going, he called the Commandant to thank him for the driver's job. The Commandant informed him that he had been fired due to his investigation of the sale of stolen cars and drug trafficking within the police. The Commandant asked to accompany the principal applicant to the Governor's office to present his own evidence.

[10] On their way to the Governor's office, the principal applicant and the Commandant stopped to pick up some advertising materials. Upon exiting the shop, four men confronted, shot and killed the Commandant. These men also shot at, but missed the principal applicant. One man chased him down and demanded that he give him the documents of the corruption incidents. However, as the Commandant's death drew a large public crowd, the principal applicant was able to slip away and escape.

[11] After escaping, the principal applicant fled to his in-laws' farm and later to the mountains where he hid for approximately five months. The principal applicant's wife and son were allegedly able to escape Mr. Ledon's attention because in 2005, when the principal applicant first began working at the vehicle registration department, his civil status was single. The couple married the following year, on May 10, 2006. Therefore, according to the principal applicant, Mr. Ledon did not know of the existence of his wife and son.

[12] In June 2009, Mr. Ledon visited the house of the principal applicant's mother, demanding the documents of the corruption incidents. Mr. Ledon retrieved some, but not all of them. At the

same time, Mr. Ledon demanded the whereabouts of the principal applicant and threatened to kill him.

[13] Based on their fear of Mr. Ledon, the applicants fled Mexico on June 20, 2009. They claimed refugee protection in Canada on July 2, 2009.

Board's Decision

[14] The applicants' claim was heard by the Board on January 18, 2011. The Board's decision was issued on February 18, 2011.

[15] The Board found:

1. The applicants are not Convention refugees as they do not have a well-founded fear of persecution on a Convention ground in Mexico;

2. The applicants are not persons in need of protection in that their removal to Mexico would not subject them personally to a risk to their lives, or to a risk of cruel and unusual treatment or punishment; and

3. There are no substantial grounds to believe their removal to Mexico would subject them personally to a danger of torture.

[16] In assessing the Convention refugee claim, the Board referred to the grounds on which a person must fear persecution to qualify under the definition; namely: race, religion, nationality, membership in a particular social group or political opinion. The Board acknowledged that it is

established jurisprudence that where corruption so permeates the government, an applicant opposed to the corruption may fear persecution on the grounds of political opinion (see *Klinko v Canada (Minister of Citizenship and Immigration) (TD)*, [2000] 3 FC 327, [2000] FCJ No 228, at paragraph 35). However, the Board found the facts in this case to be distinguishable from those in *Klinko* above. The Board referred to the country evidence in finding that although corruption was present in some Mexican institutions, the country is a functioning democracy rather than a failed state and the government is taking steps to deal with crime and corruption. The Board also found that only particular individuals were targeting the principal applicant. For these reasons, the Board refused to find that corruption was part of the very fabric of the Mexican system.

[17] Turning to the claim that the applicants were persons in need of protection under section 97 of the Act, the Board held that since no allegations of torture were made, no such claim was established under paragraph 97(1)(a).

[18] Under paragraph 97(1)(b), the Board examined the evidence to determine whether the applicants would face a risk to their lives or a risk of cruel and unusual treatment or punishment should they return to Mexico. The Board found that the determinative issue on this point was state protection. To rebut the presumption of state protection in a functioning democracy, the Board required the applicants to produce objectively-based, clear and convincing evidence of the state's inability to protect them.

[19] The Board found it questionable that there was a discrepancy between the principal applicant's Personal Information Form (PIF) and his testimony on whether or not he reported Mr.

Ledon's corruption to the Public Ministry. Nevertheless, the Board proceeded on the basis that it had been reported. No report of the complaint was available and the principal applicant testified that as he did not see any results from his reporting of the corruption, he concluded, without inquiring any further, that the police were not doing anything to investigate the matter. As the principal applicant's subjective belief of police corruption was not supported by objective evidence, the Board was not convinced of this claim.

[20] The Board also found some of the principal applicant's decisions and actions questionable. For instance, the Board found it illogical or unbelievable that:

1. The principal applicant would inform Mr. Ledon of his intention to report him if he truly feared him;

2. The principal applicant would make his initial complaint to a civil servant if he had ready access to a high level police officer such as the Commandant;

3. The principal applicant would not seek a follow-up of his complaint with the Commandant;

4. The letter of complaint sent by the principal applicant to the Commandant focused on Mr. Ledon accusing him of taking a bribe rather than on the alleged corruption related to the stolen cars;

5. The men who shot the Commandant would allow the principal applicant to escape solely because a crowd had gathered; and

6. The principal applicant did not report what he saw when the Commandant was shot, even though the murder generated significant public interest.

[21] The Board then referred to country evidence that labelled Mexico a democracy with a relatively independent and impartial judiciary. The evidence also described the police forces as hierarchal; suggesting the possibility for citizens to seek redress at higher levels if dissatisfied with local services. In addition, the Board highlighted evidence showing that several authorities and agencies are available to the public if they believe they have encountered corrupt officials or if they are dissatisfied with the services of security forces. Acknowledging the evidence on the corruption in parts of the Mexican administration, including the police, the Board referred to other evidence that pointed to efforts made to purge the agencies of such corruption, including new legislation and government led anti-corruption operations. The Board found that although there may be corrupt individuals working within the government system, this did not mean that the entire system was corrupt, as the principal applicant subjectively believed.

[22] The Board also found no evidence of a complete breakdown of the Mexican state apparatus. It noted the lack of evidence of similarly situated individuals with past personal experiences that would lead the principal applicant to believe that state protection was not reasonably available to him.

[23] In summary, the Board found that the principal applicant had not provided clear and convincing evidence that state protection would not be available to him in Mexico should he seek it and that under the circumstances, it would not be unreasonable for him to seek it.

[24] As the claims of the minor applicant and the wife of the principal applicant were based on the same facts as the principal applicant's claim, the Board held that its analysis and evaluation on state protection applied equally to them.

Issues

[25] The applicants submit the following points at issues:

1. Nexus and section 96 of the Act;
    a. Some evidence / no evidence;
    b. Nexus and state protection; and
2. State protection and 97 of the Act.

[26] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the Board err in finding that the applicants' claims lacked nexus with the enumerated grounds under section 96 of the Act?
3. Did the Board err in its analysis of state protection under section 97 of the Act?

Applicants' Written Submissions

[27] The applicants submit that corrupt elements in Mexico so permeate the government as to be part of its very fabric. As the principal applicant is opposed to corruption, his opposition amounts to

a political opinion and therefore falls within the Convention refugee definition under section 96 of the Act.

[28] The applicants submit that the Board unreasonably found no evidence that corruption was so pervasive in Mexico that it was part of its very fabric. The applicants point to excerpts in the country evidence that they submit provide a reasonable basis on which to find such pervasive corruption – the relevant sections are as follows:

- United States Department of State Country Reports on Human Rights Practices for 2009, released in 2010, recognized that:
    - The President of Mexico had remarked that corruption was a serious problem in the country's police forces;
    - Police, especially at the state and local level, were involved in kidnapping, extortion, and in providing protection for, or acting directly on behalf of, organized crime and drug traffickers;
    - Local forces tended to be directly pressured by criminal groups, leaving them most vulnerable to infiltration; and
    - Impunity in the country was pervasive, contributing to the reluctance of many victims to file complaints.
- USA Today reported in 2008 that:
    - The Mexican government and army were attempting to purge local forces of corrupt officers; and
    - Similar attempts had failed in the past and some analysts doubted that the attempts would produce lasting results.

- University of Chicago Chronicle reported in 1995 that:
    - A history professor reported that corruption had been a force in public life in Mexico since colonial times;
    - Corruption in Mexico consisted of an intricate system of exchanges in return for certain privileges; and
    - Corruption developed as a means of raising revenues and has developed its own set of norms and public expectations.
- Metropolitan Corporate Counsel reported in 2009 that:
    - Recent widespread violence is speculated to be a response to increasing efforts to confront corruption;
    - Corruption is largely associated with the drug trade;
    - Bribery is a long-standing tradition in Mexico;
    - The government has attempted to change the corruption since the 1990s with modest success;
    - Mexico has a score of 3.6 out of 10 on the Transparency International's Corruption Perceptions Index that measures the degree of corruption associated with doing business; and
    - Although Mexico has very strong anti-corruption laws, businesses still report that corruption remains a major issue.

[29] In support of their submission on section 96, the applicants draw an analogy to the facts in *Guzman v Canada (Minister of Citizenship and Immigration)*, 179 FTR 309, [1999] FCJ No 1869. In *Guzman* above, the applicant feared physical harm should she return to Mexico because of her

knowledge of corruption in the government's tax department. The applicants submit that the Court in *Guzman* above, upheld the applicant's counsel's characterization that nothing had changed in Mexico, even though the government had been claiming it was fighting corruption. Although *Guzman* above, was decided in 1999, the applicants submit that the situation in Mexico remains much the same today.

[30] In further support of their submission on section 96, the applicants submit that the Board confused the two components of the Convention Refugee definition; namely nexus and state protection. The applicants refer to the following statement made by the Board:

> Mexico is not a failed state but rather is a functioning democracy who's [*sic*] institutions follow the rule of law. Country documents tell me that the government is taking serious steps to deal with crime and corruption within its ranks. [emphasis added]

[31] According to the applicants, the failed state reference applies to the state protection test and not the nexus test. The applicants refer to *Klinko* above, stating that based on evidence in that case – 9,000 officials convicted of economic crimes – it was also open for the reviewing Court to find that the government was taking serious steps to deal with corruption in its rank. However, the Court did not do so and it was wrong for the Board to deny this part of the applicants' claim on that basis in this case.

[32] The applicants refer to *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, in their submission that the Board incorrectly required the applicants to rebut the presumption of state protection in the section 96 analysis. Rather, they submit that the need to rebut state protection does not even arise where a complete breakdown has occurred of the state apparatus.

[33] In addition, the applicants submit that the Board failed to assess the three components of the absence of state protection, namely:

1. Complete breakdown of the state apparatus;
2. Personal experience; or
3. Experience of the similarly situated.

Therefore, according to the applicants, the Board applied the test incorrectly.

[34] The applicants also submit that there are different standards of proof under sections 96 and 97 of the Act: reasonable possibility or good grounds (section 96) and whether persecution is more likely than not (section 97).

[35] The applicants submit that the Board erred by confusing the subjective with the objective. On the nexus point, the applicants rely on *Ward* above, at paragraph 83, in their submission that what matters is whether, from the perspective of the feared agent of persecution, an applicant has a political opinion. Therefore, a claim of nexus cannot be dismissed merely by reference to state protection.

[36] The applicants submit that the Board overstated the criteria of permeation. In the applicants' view, permeation means that corruption is widespread, not that there is nothing but corruption. In support, the applicants refer to the Court's use of the word "part" in reference to the fabric of government in *Klinko* above, as evidence that this test does not require the whole government to be corrupt; corruption of a part of government is sufficient.

[37] Finally, the applicants criticize the Board's lack of objective assessment of the state's ability to protect. They submit that the Board incorrectly focused solely on the state's willingness and not its ability to protect. They refer to the above listed evidence as proof of the state's inability to protect.

[38] In summary, the applicants submit that the Board's section 96 analysis was fundamentally flawed, which they claim is sufficient in itself to justify the setting aside of the decision.

[39] Turning to the section 97 analysis, the applicants submit that the Board erred by only referring to Mexico's willingness to protect and not objectively assessing its ability, or the effectiveness of its willingness, to protect. Further, the applicants submit that the following findings made by the Board showed that it was oblivious to the evidence before it:

1. No evidence of similarly situated individuals that did not receive state protection; and

2. Lack of evidence of past personal experience that would lead the applicants to believe state protection was not available to them.

[40] As evidence contradicting these findings, the applicants refer to the shooting of the Commandant when he was on his way to visit the Governor with the principal applicant to report the same corruption and the attempted shooting and kicking of the principal applicant. With regards to the principal applicant seeking protection, the applicants rely on *Ward* above, at paragraph 48, where the Supreme Court held that it would defeat the purpose of international protection if an

applicant had to risk his life seeking ineffective state protection, merely to demonstrate that it was ineffective.

[41] In summary, the applicants submit that the Board's decision was made without regard to the material before it and was perverse and capricious.

Respondent's Written Submissions

[42] The respondent submits that the Board conducted the required analysis for determining whether the principal applicant's opposition to corruption constituted a political opinion under section 96 of the Act and that it made a reasonable determination based on the evidence before it. The respondent highlights the Board's awareness of the evidence of crime and corruption in Mexico, as well as the evidence that supported its finding that corruption was not part of the very fabric of the Mexican system. Therefore, the respondent submits that the Board's conclusion was reasonable.

[43] The respondent distinguishes *Guzman* above, from the case at bar. It emphasizes the Board's analysis of whether corruption so permeated the state; an analysis not completed in *Guzman* above, as sufficient to distinguish the two cases from one another.

[44] The respondent also submits that the Board did not incorporate a state protection law concept in its analysis of nexus. The Board's use of the words "failed state" in its assessment of the degree of corruption in the Mexican state did not render its nexus analysis erroneous. Rather, when

read as a whole, instead of as a single sentence, the respondent submits that this section of the decision reveals that the Board did not commit the alleged error.

[45] On the question of the Board's state protection analysis under section 97 of the Act, the respondent submits that the Board's decision shows that it assessed both Mexico's willingness and ability to protect. In support, the respondent refers to the Board's conclusion that:

> … the criminal justice system in Mexico is not corrupt but rather is a system of a functioning democracy and offers protection at an adequate level to Mexican citizens.

[46] The respondent also submits that the Board made a reasonable finding that there was no credible evidence of similarly situated individuals who did not find state protection; or past personal experience that would lead the principal applicant to believe that state protection was not reasonably available to him.

[47] The respondent refers to the limited evidence submitted on protection previously sought by the Commandant, his acts in opposing corruption and previous incidents in which he was targeted. This limited evidence was not sufficient to allow the Board to assess whether the principal applicant and the Commandant were similarly situated. With regards to the state protection previously sought by the principal applicant, the respondent submits that this was limited before the killing of the Commandant and non-existent thereafter. The respondent also submits that evidence adduced by the applicant on this point was insufficient to rebut the presumption of state protection.

[48] In summary, the respondent submits that the Board's decision was sound and without reviewable error. It should therefore stand and this application dismissed.

Analysis and Decision

[49] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[50] It is established law that the findings of nexus to a Convention ground under section 96 of the Act are questions of mixed fact and law and reviewable against a standard of reasonableness (see *Ariyathurai v Canada (Minister of Citizenship and Immigration)*, 2009 FC 716, [2009] FCJ No 879 at paragraph 6; *Marino Gonzales v Canada (Minister of Citizenship and Immigration)*, 2011 FC 389, [2011] FCJ No 498 at paragraph 22; *Lozano Navarro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 768, [2011] FCJ No 968 at paragraph 15).

[51] It is also established law that assessments of the adequacy of state protection raise questions of mixed fact and law and are reviewable against a standard of reasonableness (see *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, [2007] FCJ No 584 at paragraph 38; *Gaymes v Canada (Minister of Citizenship and Immigration)*, 2010 FC 801, [2010] FCJ No 982

at paragraph 9; and *James v Canada (Minister of Citizenship and Immigration)*, 2010 FC 546, [2010] FCJ No 650 at paragraph 16).

[52] In reviewing the Board's decision on the standard of reasonableness, the Court should not intervene unless the Board came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at paragraph 59). As the Supreme Court held in *Khosa* above, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraphs 59 and 61).

[53] **Issue 2**

Did the Board err in finding that the applicants' claim lacked nexus with the enumerated grounds under section 96 of the Act?

In the case at bar, the applicants' claims must meet both of the following requirements for them to qualify as Convention refugees under section 96 of the Act:

1. have a well-founded fear of persecution for reason of their political opinion; and
2. be unable, or unwilling by reason of fear of that persecution, to avail themselves to the protection of Mexico.

[54] As acknowledged by the Board, the first question may be answered affirmatively where an applicant opposes widespread corruption:

> […] Where, as in this case, the corrupt elements so permeate the government as to be part of its very fabric, a denunciation of the

> existing corruption is an expression of "political opinion"[…] (see *Klinko*, above, at paragraph 35).

[55] In this case, the Board did not find that corrupt elements so permeated the Mexican government. The question is whether this was a reasonable finding.

[56] The Board stated at paragraphs 25 to 27 of its decision:

> [25] I have no evidence before me that corruption is so pervasive in the Mexican justice/political system that is a part of its very fabric. In fact the US Department of State report states that Mexico continues its fight against organized crime. There is no doubt that crime is a problem in Mexico and that corruption is present in some Mexican institutions. This does not mean, however, that corruption is part of the very fabric of the Mexican system as is required under *Klinko* before denunciation of criminal activity can be considered an expression of political opinion. Mexico is not a failed state but rather is a functioning democracy who's [sic] institutions follow the rule of law. Country documents tell me that the government is taking serious steps to deal with crime and corruption within its ranks.
>
> [26] The evidence before me is that the principal claimant allegedly is being targeted by criminals that work within the Mexican government system. This does not mean that the entire system is corrupt.
>
> [27] I find that the harm feared by the claimants is not by reason of one of the five grounds enumerated in the Convention refugee definition. I therefore find that the claimants' are not Convention refugees as defined in section 96 of the *Act*.

[57] I do not agree with the Board that there was no evidence showing that corruption is a part of the very fabric of the Mexican system. As noted by the applicants, in order to satisfy *Klinko* above, it is not necessary to show that corruption is a part of the very fabric of the whole Mexican system.

[58] In the present case, the principal applicant was not found to be not credible. The principal applicant's evidence showed that there was corruption in the department in which he worked. In

fact, it appears that the former police Commandant was murdered while attempting to provide evidence of the corruption to the Governor. The evidence also shows that the Commandant had been fired because he was investigating corruption.

[59] As well, there is documentary evidence that supports the fact there is corruption within the Mexican system (see tribunal record at page 389 and applicants' application record at pages 86 to 89, 90 to 95).

[60] In my view, the Board should have analyzed this evidence to determine whether the applicants satisfied the test in *Klinko* above, so as to determine whether the applicants had a nexus with an enumerated ground under section 96 of the Act.

[61] As a result, the Board's decision was unreasonable and must be set aside and referred to a different panel of the Board for redetermination.

[62] The Board's analysis of state protection was done for the purposes of section 97 of the Act and not for section 96, hence, I have no decision with respect to state protection for section 96 purposes.

[63] Because of my findings on this issue, I need not deal with the remaining issue.

[64] The applicants proposed serious questions of general importance for my consideration for certification. I am not prepared to certify these questions as they would not be dispositive of this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is referred to a different panel of the Board for redetermination.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 2001, c 27

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
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,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(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.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
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	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(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,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Federal Court  Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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