

Serrano v. Canada (Minister of Citizenship and Immigration)

Between

Roberto Flores Serrano, Flor Maria Clau Rios Romero, Haydee Flores Rios, Erica Flores Rios and Claudia Flores Rios,
applicants, and
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 570
Court File No. IMM-2787-98

Federal Court of Canada - Trial Division
Calgary, Alberta
Sharlow J.

Heard: April 14, 1999
Judgment: April 27, 1999
(15 pp.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of prosecution — Particular social group defined.

Application by Serrano, his wife and their three daughters for judicial review of the Immigration and Refugee Board's dismissal of their application for Convention refugee status. The applicants, who were Mexican, claimed to be at risk of being killed or seriously injured if they returned to Mexico. Serrano, the owner of a small trucking firm, claimed that he had refused overtures from drug dealers to transport drugs in his trucks. Thereafter, his family had received threatening phone calls and a threatening letter. A friend of Serrano's, who was also in the transport business, had been killed after he had refused to accommodate the drug dealers. Serrano indicated that his home state was a well-known centre for illegal drugs, and that the local police were particularly corrupt. Therefore, he did not report the threats to the police. The Board found that no member of the family was a member of a particular social group. The Serranos' claim had been based on fear of persecution by reason of membership in a particular social group or political opinion. The Serranos argued that they belonged to a particular social group, specifically the law abiding citizens of Mexico. The wife and children also argued that they were members of an additional particular social group, the family of Serrano.

HELD: Application dismissed. Law abiding citizens of Mexico was not a particular social group within the meaning of the Convention. Although it was common ground that a family could be a particular social group, a valid refugee claim could not be based on membership in a family unless the family member who was the ultimate target of the

persecution had a valid refugee claim. Family connection, in the absence of an underlying Convention ground for the claimed persecution, was not an attribute requiring Convention protection. The failure of Serrano's claim resulted in the failure of the claims of his wife and children.

Counsel:

Charles R. Darwent, for the applicant.

Lorraine Neill, for the respondent.

1 **SHARLOW J.** (Reasons for Order):— This is an application for judicial review of a decision of the Convention Refugee Determination Division (CRDD) that the applicants are not Convention refugees.

2 The applicants are Mr. Roberto Flores Serrano, his wife Flor Maria Clau Rios Romero, and their three daughters. They are all citizens of Mexico who claim to be at risk of being killed or seriously injured if they return to Mexico.

3 Mr. Serrano operated a small trucking business based in Acapulco. In April of 1996, he hired a new driver who introduced him to some people who wished to hire his truck. He had reason to believe that they wanted the truck for an illegal drug business and he refused to deal with them. A few days later, his truck was found abandoned and damaged, and the driver had disappeared. He learned that in fact the truck had been used to transport illegal drugs.

4 Mr. Serrano and his family then began receiving threatening telephone calls. They also received a threatening letter. Mr. Serrano believes these threats were made because he would not agree to allow his truck to be used to transport drugs. The threats were not reported to the police. Mr. Serrano believed that the police were particularly corrupt in his home state because Atoyac, apparently a well known centre for the production of illegal drugs, is located there.

5 Mr. Serrano said that a friend of Mr. Serrano, who was in the transport business, agreed to work for drug traffickers and was killed after he changed his mind. Mr. Serrano's brother-in-law, who was also in the transport business, had been murdered in 1994. Mr. Serrano does not know why or by whom.

6 Mr. Serrano left Mexico in June of 1996 and came to Canada. His wife and children followed a month later, after the end of the school term. In order to be safe, they moved from house to house in Acapulco, though the children did not change schools. They received no threatening calls during that time as the people with whom they lived had been told to pass on no calls except those from family.

7 Mr. Serrano and his wife did not consider moving elsewhere in Mexico because they were afraid due to the high level of corruption among the police.

8 The applicants' claims initially were based on fear of persecution by reason of membership in a particular social group or political opinion. The claims on both grounds were rejected by the CRDD.

9 The only issue before me is whether the CRDD erred in concluding that none of the applicants was a member of a particular social group.¹ The relevant part of the definition of Convention refugee reads as follows:

"Convention Refugee" means any person who

- (a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
 - (i) is outside the country of the person's nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country [...].

10 If the CRDD was correct in concluding that as a matter of law the applicants are not members of a "particular social group," then the applicants are not refugees despite the existence of a well founded fear of persecution, and the decision of the CRDD must stand. If the CRDD was not correct on that point, the refugee claim will have to be reconsidered because the CRDD, having reached a conclusion on a point of law they considered dispositive, did not make any findings of fact.

11 The leading authority on the meaning of "particular social group" is Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689. That case dealt with a refugee claim by a person who had been a member of a para-military terrorist group in Northern Ireland referred to as the INLA. The person feared persecution by that group because he had betrayed them by allowing some hostages to escape. It was admitted that the police were unwilling or unable to protect him. His claim thus turned in part on whether his fear of persecution was for reason of his membership in a particular social group, the INLA.

12 The judgment of the Court was written by La Forest J. After an extensive analysis of the jurisprudence in Canada and elsewhere, he concluded as follows (at page 739):

The meaning assigned to "particular social group" in the Act should take into account the general underlying themes of the defence of human rights and anti-discrimination that form the basis for the international refugee protection initiative. The tests proposed in *Mayers*,² *supra*, *Cheung*,³ *supra*, and *Matter of Acosta*,⁴ *supra*, provide a good working rule to achieve this result. They identify three possible categories:

¹ The CRDD's decision with respect to political opinion is not challenged in this application.

² *Mayers v. Canada (Minister of Employment and Immigration)* (1992), 97 D.L.R. (4th) 729 (F.C.A.)

³ *Cheung v. Minister of Employment and Immigration*, [1993] 2 F.C. 314 (F.C.A.)

⁴ (1985) 19 I. & N. 211 (Interim Decision 2986, 1985 WL 56042) (B.I.A.)

- (1) groups defined by an innate or unchangeable characteristic;
- (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and
- (3) groups associated by a former voluntary status, unalterable due to its historical permanence.

The first category would embrace individuals fearing persecution on such bases as gender, linguistic background and sexual orientation, while the second would encompass, for example, human rights activists. The third branch is included more because of historical intentions, although it is also relevant to the anti-discrimination influences, in that one's past is an immutable part of the person.

13 In *Ward*, the INLA was held not to be a particular social group.⁵ In the context of the three categories referred to above, only the second could possibly have applied on the facts, and the INLA's objective, which was to obtain political objectives through terrorism, was held not to be fundamental to the human dignity of its members.

14 In this case, counsel for the applicants argues that the applicants are members of a particular social group that may be described as "law abiding Mexican citizens" or alternatively, in the case of all the claimants except Mr. Serrano, a particular social group consisting of Mr. Serrano's family.

"Law abiding citizens of Mexico" as a particular social group

15 The applicants' argument is that the quality of being law-abiding is a moral or spiritual value that is an innate or unchangeable human characteristic, which would put the applicants into the first category in *Ward*. It is also argued that a high moral standard is fundamental to human dignity and should be held to be worthy of protection under the Convention even if it does not fit squarely into any of the *Ward* categories.

16 The *Ward* decision permits the use of the generic category, particular social group, to extend the protection of the Convention to those who are persecuted for reasons that are not specified in the Convention. Gender, linguistic background and sexual orientation are accepted as coming within the category "particular social group" because experience teaches that possession of those characteristics attracts abuses of human rights of the kind the Convention was intended to deal with.

⁵ I note that the *Ward* decision is also authority for the proposition that the definition of "particular social group" may include even criminal groups. The reason for that is not inherent in the definition, but flows from the context of the Immigration Act, which contains numerous mechanisms for excluding undesirable claimants. These mechanisms show that Parliament has decided not to treat a criminal past as a reason to prevent a claimant from gaining refugee status.

17 I agree with counsel for the applicants that the quoted passage from the Ward decision is intended only as guidance, a working rule as La Forest J. called it, that does not preclude the acceptance of additional categories of "particular social group." La Forest J. said as much in his dissenting judgment in *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593 at 642. However, any such expansion must respect the object of the definition, described by La Forest J. in Ward (at page 739) as "the underlying themes of the defence of human rights and anti-discrimination that form the basis for the international refugee protection initiative."

18 The applicants are arguing, in essence, that the "law abiding citizens" of a country are an additional subset of "particular social group" (assuming, and I think this is implicit in the applicants' argument, that the country affords no effective protection for law abiding citizens). I can see nothing in the Ward decision that would support recognition of this new category.

19 It seems to me that the contrary view is more consonant with these comments of La Forest J. from Ward (at pages 731-2):

... international refugee law was meant to serve as a "substitute" for national protection where the latter was not provided. For this reason, the international role was qualified by built-in limitations. These restricting mechanisms reflect the fact that the international community did not intend to offer a haven for all suffering individuals. The need for "persecution" in order to warrant international protection, for example, results in the exclusion of such pleas as those of economic migrants, i.e., individuals in search of better living conditions, and those of victims of natural disasters, even when the home state is unable to provide assistance, though both of these cases might seem deserving of international sanctuary.

20 In my view, the "law abiding citizens of Mexico" are not a "particular social group" within the meaning of the Convention.

21 I am supported in this conclusion by several decisions in this court that have rejected the idea that victims of crime constitute a particular social group. Each case dealt with different facts and so the actual description of the proposed group varies accordingly. I will comment on only two cases.

22 In *Mason v. Canada (Secretary of State)*, [1995] F.C.J. No. 815 (QL) (T.D.), a group said to be composed of "persons of high moral fibre who oppose the drug trade" was held not to be a "particular social group." The applicant's fear stemmed from his act of informing the police about illegal drug activity. The CRDD had concluded that his actions made him a target of criminal activity and therefore the purported group, if there was one, did not exist prior to the persecution but came into existence only in response to the persecution. Simpson J. held that the CRDD had committed no reviewable error in

reaching this conclusion because it is consistent with Ward (supra) and Chan v. Minister of Employment and Immigration [1993] 3 F.C. 675 (F.C.A.).⁶

23 Counsel for the applicants questions the validity of the principle suggested in Mason that a particular social group must exist prior to the persecution. The principle seems sound to me. The notion that a particular social group can be identified solely by the fact of persecution would give no effect to the words "for reasons of" in the definition of Convention refugee. I agree with this comment of McHugh J. in A. v. Minister for Immigration and Ethnic Affairs (1997), 142 A.L.R. 331 at 358:

The only persecution that is relevant is persecution for reasons of membership in a group which means that the group must exist independently of, and not be defined by, the persecution [...].

24 Calero v. Canada (Minister of Employment and Immigration), [1994] F.C.J. No. 1159 (QL) (T.D.), dealt with refugee claims by two families who fled Ecuador as a result of death threats from drug traffickers. The CRDD concluded that victims of organized crime do not constitute a particular social group and therefore there is no nexus between the fear of persecution and a Convention ground. Wetston J. concluded that this was a correct statement of principle, based on Ward. Counsel for the applicant argued that this case is more about the issue of state protection than the meaning of "particular social group." I do not read the case that way. Wetston J. said that the CRDD's comments on state protection were problematic, but did not consider them further because of his view of the meaning of "particular social group."

25 Other cases touching on the issue of the extent to which victims of crime may look to the Convention are Cutuli v. Canada (Minister of Employment and Immigration), [1994] F.C.J. No. 1156 (Q.L.) (T.D.); Suarez v. Canada (Minister of Citizenship and Immigration), [1996] F.C.J. No. 1036 (Q.L.) T.D.); Valderrama v. Canada (Minister of Citizenship & Immigration) (1998), 153 F.T.R. 135. All of these cases reject the argument that a person's fear of persecution by criminals can be the basis of a valid refugee claim.

26 For these reasons, I conclude that the CRDD was correct to determine that the applicants could not base a refugee claim on membership in a group consisting of "law abiding citizens of Mexico." The application by Mr. Serrano is dismissed.

27 That disposes of the claim of Mr. Serrano, but not that of the other applicants. The alternative basis of their claim is dealt with below.

Family as a particular social group

28 Ms. Rios Romero and her children assert an alternative claim based on fear of persecution for reason of their membership in a particular social group, namely, the family of Mr. Serrano.

⁶ Affirmed on other grounds: [1995] 3 S.C.R. 593

29 Assuming the facts stated above are true, Ms. Rios Romero and her children fear persecution because they have been threatened by a criminal group that is motivated by a desire to procure the cooperation of Mr. Serrano in their criminal activities. The persecution of Ms. Rios Romero and her children is a reaction of the criminal group to Mr. Serrano's resistance.

30 It is common ground that a family may be a "particular social group." Counsel for the applicants argues that if "family" is a particular social group, as the cases say, then a well founded fear of persecution that is causally connected to membership in a family is, without more, a valid ground for a refugee claim. If that is correct, then the reason for the persecution of the family members is irrelevant.

31 The respondent's argument is that not every family is a "particular social group." Rather, "family" as a category of "particular social group" is necessarily derivative; it must be a subset of one of the other Convention grounds. If that is so, then a valid refugee claim cannot be based on membership in a family unless the family member who is the ultimate target of the persecution has a valid refugee claim. For convenience, I will call that person the "principal family member." If the respondent is correct, the failure of Mr. Serrano's claim must result in the failure of the claims of his wife and children.

32 Counsel for the respondent relies upon *Canada (Minister of Citizenship & Immigration) v. Bakhshi* (1994), 190 N.R. 228 (F.C.A.) and *Castellanos v. Canada (Solicitor General of Canada)*, [1995] 2 F.C. 190 (T.D.). I do not read either of those cases as standing for the proposition asserted by the respondent, though they are consistent with it.

33 However, there are two more recent cases that accept the proposition advanced by the respondent. In *Rodriguez v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1246 (QL) (T.D.), the claimant was a member of a family group that had been targeted because of its illegal drug activities. Her claim was rejected. In *Klinko v. Canada (Minister of Citizenship and Immigration)* (1998), 148 F.T.R. 69 (T.D.), the claimants were a husband and wife who claimed to be subject to persecution because he had complained about widespread corruption among government officials. The husband's claim was based on several grounds, including a well founded fear of persecution for reason of membership in a particular social group, referred to as "businessmen" and his wife's claim was based on membership in his family. Both claims were rejected on the basis that neither claimant was a member of a "particular social group" within the meaning of the Convention. Rothstein J. said, at paragraph 11:

... the panel was correct in concluding that when the primary victim of persecution does not come within the Convention refugee definition, any derivative Convention refugee claim based on family group cannot be sustained.

34 On the other hand, obiter dicta in other cases may be read as affording the applicant some support. One such case is *Rojas v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 296 (QL) (F.C.A.). That case involved a refugee claim by a woman and her children who claimed to fear persecution on two grounds, one being her relationship with her husband, who had been threatened after firing some employees. Ultimately the claim failed for lack of evidence that state protection was inadequate, but the Federal Court of Appeal also said that the claim based on membership in a particular social group is:

... a ground of persecution that stands on its own and need not be related to another of the grounds recognized by the Convention.

35 This must be taken as a reference to the "family" social group, not only because that is what the case was about, but also because if the statement has any broader meaning it is probably inconsistent with *Ward*.

36 Counsel for the applicants also refers to numerous other cases, including *Al-Busaidy v. Canada (Minister of Employment and Immigration)* (1992), 16 Imm. L.R. (2d) 119 (F.C.A.); *Hristova v. Canada (Minister of Employment and Immigration)* (1994), 23 Imm. L.R. (2d) 278 (T.D.); *Pour-Shariati v. Canada (Minister of Employment and Immigration)*, [1995] 1 F.C. 767 (F.C.T.D.)⁷; *Velasquez v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1982 (Q.L.) (T.D.). He notes, correctly, that in each of these cases the validity of the applicant's claim as a member of a family was determined with no comment on the actual or potential refugee status of the principal family member whose activities attracted the persecution.

37 On the other hand, in each of these cases but the last one, the facts are capable of supporting an inference that the principal family member might have had a refugee claim that could support a derivative claim by other family members, although it happened that the principal family member was not a claimant. In two of these cases, the principal family member was dead.

38 *Al-Busaidy* was the case of a Ugandan man who was found to have a well founded fear of persecution because of his connections to his father, who was himself persecuted as a dissident and finally murdered by a faction of the Ugandan military. In *Hristova*, the principal family member was sought by the police in Bulgaria because he had threatened to expose an incident in which the police had killed two Turks. He had fled to Canada. The claimants were his wife and son who remained in Bulgaria. The wife claimed that she was persecuted in an attempt to force her to lure her husband home. In *Pour-Shariati*, the applicant claimed that she was persecuted because of her relationship with her son, who had been involved in anti-government activities.

39 The last case, *Velasquez*, cannot support such an inference because the facts are not fully stated. It suggests that a woman who feared persecution because of threats and

⁷ Affirmed on different grounds in *Pour-Shariati v. Canada (Minister of Employment and Immigration)*, (1997), 215 N.R. 174 (F.C.A.)

attempts on her life, but who could not prove that these were somehow related to murder of her husband, might have a valid refugee claim. However, the case was returned to the CRDD because it had failed to elicit the relevant facts. Therefore, it is impossible to know whether or not the husband might have been subject to persecution on Convention grounds.

40 In the absence of binding authority on this point, it is necessary to return to the principles in *Ward* to determine whether "family" is a stand-alone category of "particular social group" as counsel for the applicants argues, or merely a derivative of some other recognized category as the respondent argues.

41 *Ward* says that "particular social group" is a generic category that can be expanded to include groups that are not expressly mentioned in the Convention, but cannot be expanded beyond what is needed to reflect "the underlying themes of the defence of human rights and anti-discrimination that form the basis for the international refugee protection initiative" (*Ward*, per La Forest J. at page 739).

42 The applicant is asking me to hold that everyone who fears persecution solely because of a family connection may be entitled to the protection of the Convention. I think that would stretch the category of "particular social group" far beyond its proper limits. I do not accept that family connection is an attribute requiring Convention protection, in the absence of an underlying Convention ground for the claimed persecution. I conclude that in the context of the facts of this case, the respondent's position is a better reflection of the objectives of the Convention than the applicants' position.

43 On that basis, the claims of Ms. Rios Romero and her children cannot stand. The application for judicial review of their claims is dismissed.

Certified questions

44 I have been asked to certify questions on both of the issues discussed above, and I agree that this is a proper case for certification. The questions are:

1. Do "law abiding citizens of Mexico" constitute a "particular social group" within the meaning of the Convention?
2. Can a refugee claim succeed on the basis of a well founded fear of persecution for reason of membership in a particular social group that is a family, if the family member who is the principal target of the persecution is not subject to persecution for a Convention reason?

SHARLOW J.