

Date: 20080118

Docket: IMM-2420-07

Citation: 2008 FC 66

Ottawa, Ontario, January 18, 2008

PRESENT: THE HONOURABLE MR. JUSTICE SIMON NOËL

BETWEEN:

LIZETTE GUZMAN SANCHEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of the Refugee Protection Division (RPD) dated May 23, 2007, according to which the applicant is neither a “Convention refugee” nor a “person in need of protection.”

I. Issue

[2] Did the RPD err in law or in fact in making its unfavourable ruling, to wit, that the protection of the Mexican authorities was available?

[3] For the following reasons, the application for judicial review will be dismissed.

II. Facts

[4] A Mexican citizen, the applicant alleges she was the victim of sexual harassment, insults, death threats, attempted rapes, assaults and rape at the hands of Mr. José Alfredo Cid Garay between January 5, 2005 and March 6, 2006.

[5] The applicant alleges that she twice filed complaints with the Mexican authorities and once with a human rights organization, but to no avail. Indeed, according to her, the police are ineffectual when it comes to violence against women, notwithstanding the good intentions of the state to address the problem. Moreover, her assailant's brother works for the police and dissuaded her by threatening to go after her brother. Finally, the applicant tried to bring her complaint to a human rights organization, but they were unable to take her case. Therefore, as demonstrated by the documentary evidence, Mexico is unable to provide the applicant with effective protection anywhere in the country, and she was unable to pursue her efforts with the Mexican authorities because she feared for her life.

[6] The hearing before the RPD took place on April 11, 2007, and the negative decision that forms the subject of this judicial review application was handed down on May 23, 2007.

III. Impugned Decision

[7] Briefly stated, the RPD pointed out that, while the applicant's narrative was credible on the whole, the explanations she provided did not satisfy the panel as to why she returned to the same police station to file a complaint against her assailant, knowing that on her first visit she had met her assailant's brother there and he had told her she should work all of this out with his brother. The RPD would have expected her to take her complaint to higher authorities. Noting that Mexico is making serious efforts to combat this type of offence and to protect victims, the RPD found that the claimant had failed to meet her evidentiary burden by deciding not to avail herself of what resources the authorities were making available to her.

IV. Analysis

[8] First of all, the appropriate standard of review in cases involving the question of state protection is reasonableness *simpliciter*: see *Amiragova v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. no. 1116, 2006 FC 882. To succeed, the applicant must prove that the RPD's decision was unreasonable—that no evidence exists to support its finding. This is a heavy burden for the applicant to meet.

[9] In *Cristian Marcel Viguera Avila and Minister of Citizenship and Immigration*, [2006] F.C. 359, at paragraph 27, Martineau J. clearly defined the burden of proof incumbent on the applicant in such circumstances:

In order to determine whether a refugee protection claimant has discharged his burden of proof, the Board must undertake a proper analysis of the situation in the country and the particular reasons why the protection claimant submits that he is "unable or, because of that

risk, unwilling to avail [himself] of the protection" of his country of nationality or habitual residence (paragraphs 96(a) and (b) and subparagraph 97(1)(b)(i) of the Act). The Board must consider not only whether the state is actually capable of providing protection but also whether it is willing to act. In this regard, the legislation and procedures which the applicant may use to obtain state protection may reflect the will of the state. However, they do not suffice in themselves to establish the reality of protection unless they are given effect in practice: see *Molnar v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 1081, [2003] 2 F.C. 339 (F.C.T.D.); *Mohacsi v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 429, [2003] 4 F.C. 771 (F.C.T.D.).

[10] Having considered all of the evidence, including the documentation on conditions in Mexico with respect to the social evils of spousal violence and sexual abuse of women, the Court is not insensitive to the applicant's experience as she describes it.

[11] However, the Court's role is confined to examining the decision itself in light of the appropriate standard of review. The Court is not sitting in appeal of the RPD's decision; rather, it is seized of an application for judicial review. Having conducted its analysis, the Court finds that the RPD decision is supported by its finding to the effect that "Mexico is making serious efforts to combat this type of offence and to protect victims." Furthermore, the RPD stated that it was not satisfied by the efforts made by the applicant to file her complaint. The evidence reveals that while staying with an aunt of hers in Mexico City, where she alleges she was threatened, she did not lay a complaint.

[12] The case law is clear: a democratic state such as Mexico is assumed to be able to protect its citizens. No one expects that protection to be perfect. The fact that the local police proved

themselves to be ineffective and threatening under the influence of her assailant's brother is not an indication of a lack of state protection. The evidence does not allow us to aver that this was not unique to the specific circumstances of a familial relationship within the local police. Finally, the Federal Courts have also held that refugee protection claimants must provide evidence of having done all that is required in the circumstances to acquire the protection of their own country before seeking the protection of a foreign country, Canada in this case: see *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689; *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. no. 1189; and *Kadenko v. Canada (Solicitor General)*, 143 D.L.R. (4th) 532.

[13] Clearly, the RPD found that the claimant had not done so—a reasonable finding under the circumstances. The Court may have a contrary opinion, but it is not the Court's role to impose its opinion when the record shows that, having regard to all of the evidence, the RPD's decision was reasonable.

[14] The parties did not submit any question for certification.

JUDGMENT

THE COURT ORDERS AND ADJUDGES THAT:

- the application for judicial review is dismissed;
- no question is certified.

“Simon Noël”

Judge

Certified true translation

Stefan Winfield, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2420-07

STYLE OF CAUSE: LIZETTE GUZMAN SANCHEZ and
MINISTER OF CITIZENSHIP AND
IMMIGRATION (MCI)

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 16, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** The Honourable Mr. Justice Simon Noël

DATED: January 18, 2008

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