Date: 20080205

Docket: IMM-1019-07

Citation: 2008 FC 140

Ottawa, Ontario, February 5, 2008

Present: The Honourable Mr. Justice Shore

BETWEEN:

MARIA AUXILIO VALENZUELA DEL REAL

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] According to the evidence, the applicant, who arrived in Canada on April 28, 2006, was a victim of domestic violence at the hands of her husband, with whom she cohabitated from 1973 until their separation in November 2005. The husband was diagnosed with schizophrenia in 1995.

[2] According to the decision of the Immigration and Refugee Board (IRB):

> The claimant was a victim of her spouse, a chauvinistic, violent, alcoholic and schizophrenic man who is the father of her seven children and the father of ten other children of a similar age.

> The claimant was subject to persecution in the form of physical assault with beatings and injuries, humiliation and insults in front of her children and neighbours. Her children and some neighbours, witnesses to the ill treatment endured by the claimant, advised her to leave her spouse, but each time, she refused.
>
> The claimant never really went to the authorities, the police or the public prosecutor's office to obtain help and protection, although on a few occasions, she could have gotten help from a pharmacist, doctor and psychologist.

(Applicant's record, IRB decision, page 8.)

[3] The Refugee Protection Division (RPD) considered in its assessment the fact that the applicant remained passive and that she had not attempted to pursue and take steps with the authorities (*Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 391, [2004] F.C.J. No. 485 (QL); *Madoui v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1372 (QL), paragraph 5; *Eminidis v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 700, [2004] F.C.J. No. 858 (QL), paragraph 15).

[4] In fact, the evidence established that following the incident on March 21, 2006, a municipal police officer intervened, took the applicant's statement, told her that she had to go to the public prosecutor to file a report and that he would give them the report. The municipal police officer then brought her to the public prosecutor and gave this report to an employee. After waiting several hours, the public prosecutor's officers asked her what she wanted to report and she told them about her ex-husband's abuse and the attempted murder. The officer told her to come back the next day because there were other people with serious reports like firearms injuries and death and that her case could be settled easily with the Integral Development of the Family (DIF) (Personal Information Form (PIF), paragraph 14),

[5] She was therefore asked to come back the following day because her case could be easily settled at the DIF (PIF, *supra*).

[6] However, the applicant chose not to return there.

[7] It was therefore in this context that the RPD could reasonable determine that "[t]he claimant never really went to the authorities, the police or the public prosecutor's office to obtain help and protection" and that, accordingly, she "made no attempt to obtain protection" (Reasons, page 1, paragraph 5 and page 3, paragraph 3).

JUDICIAL PROCEEDING

[8] This is an application for judicial review against a decision by the RPD of the IRB, dated February 13, 2007, determining that the applicant was not a "Convention refugee" as defined under section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), or a "person in need of protection" according to section 97 of the IRPA, because she failed to establish that she did not have an internal flight alternative (IFA).

FACTS

[9] According to the evidence, the applicant, Maria Auxilio Valenzuela Del Real, who arrived in Canada on April 28, 2006, was a victim of domestic violence at the hands of her husband, with whom she cohabitated from 1973 until their separation in November 2005. The husband was

diagnosed with schizophrenia in 1995. The alleged facts took place between 1974 and April 2006. The RPD does not mention whether Ms. Del Real is credible or not.

[10] The RPD determined that Ms. Del Real had an internal flight alternative (IFA) in Mexico.

ISSUE

[11] Is the RPD's decision unreasonable?

ANALYSIS

[12] The central issue to examine in this case bears on the merits of the RPD's finding that the applicant, who would be at risk in the city of San Juan, "has a viable IFA in Mexico." This finding alone was sufficient to dismiss her refugee claim.

[13] In short, in her pleadings, Ms. Del Real strenuously argued that this finding is patently unreasonable since the RPD did not make any finding against her credibility and, accordingly, she is [TRANSLATION] "entitled to have the findings resulting from the alleged facts established according to the facts as alleged by her."

[14] According to Ms. Del Real's arguments, the RPD erred (1) because [TRANSLATION] "her husband could locate her through his police contacts" and (2) because she addressed the authorities of the city of Guanajuato who, despite the gravity of her situation and the imminent danger to her life, allegedly told her to come back the following day.

[15] Yet, if [TRANSLATION] "the applicant is entitled to a decision that is consistent with the facts she alleged", then the RPD's finding that she failed to establish that she did not have an IFA in her country cannot be reversed given the following determinative facts that she alleged before the RPD:

> (a) The police did not refuse to come to her aid (Tribunal record (TR), pages 232, 264-267, and 303);
>
> (b) The applicant was aware that there were several organizations that could help her and, specifically, she admitted on several occasions that she knew that the DIF could help her, but that she never went there (TR, pages 233-234, 268-269);
>
> (c) The applicant explained that the reason she never availed herself of this assistance was that she was afraid to leave the house in Guanajuato where she was hiding in fear that her husband would find her in that city (TR, page 268);
>
> (d) However, the applicant, who claimed to be afraid to go out to seek protection in Guanajuato, a drive of several hours from her city, out of fear that her husband would find her, nevertheless chose to return to her own city of San Juan to take the steps to obtain a passport as well as make arrangements for her departure, in the very city where her alleged persecutor was (who she argued before the Court [TRANSLATION] "could find her though his police contacts; anywhere in Mexico) while these arrangements could very well have been made elsewhere in the country (TR, pages 270-271; 273-275, 318).

[16] This was the context in which the RPD determined that Ms. Del Real "never really went to the authorities."

[17] With respect, the RPD's determination is self-explanatory:

> In light of the documentary evidence, the panel is of the opinion that the Mexican government is making considerable efforts, in Mexico City, to protect women who are victims of domestic violence and that state protection will be offered to the claimant **even if her aggressor is a powerful person or works in the justice system.**
>
> [Emphasis added.]
>
> (Reasons, page 3; TR, page 6.)

[18] Ms. Del Real did not meet her burden of establishing on a balance of probabilities that there was a serious possibility of persecution everywhere in Mexico and that it would be unreasonable for her to seek refuge in another part of her country. (*Thirunavukkarasu v. Canada (Minister of Citizenship and Immigration)*, [1994] 1 F.C. 589 (C.A.); [1994] F.C.J. No. 1172 (QL).)

[19] Therefore, considering the absence of evidence to the contrary, the RPD's determination in regard to the existence of an internal flight alternative is therefore consistent with the principles established in the case law and was sufficient to refuse Ms. Del Real's refugee claim since the existence of an internal flight alternative eliminates the possibility of qualifying as a "refugee" or a "person in need of protection" (*Fabela v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1028; [1994] F.C.J. No. 1277 (QL).)

[20] With regard to the argument contained in the applicant's memoranda, even though Ms. Del Real does not agree with the determination made by the RPD based on the evidence and

would have preferred an interpretation in her favour, she did not establish that the RPD made a perverse or capricious decision without regard to the material before it by gauging the testimonial and documentary evidence submitted and by drawing the necessary inferences.

[21] The RPD must, as a specialized tribunal, weigh the evidence submitted and make the necessary determinations.

[22] To do so, the RPD may choose the evidence that best represents reality and this choice is part of its role and its expertise. On this point, the Court refers *inter alia* to the following decisions: *Mahendran v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 549 (C.A.) (QL); *Mohimani v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 564 (C.A.) (QL); *Zhou v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.); [1994] F.C.J. No. 1087 (C.A.) (QL).

[23] The same applies when the documentary evidence is inconsistent on certain points (which is not at all admitted in this case), the RPD may validly rely on evidence that it prefers (*Kanagaratnam v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1069 (QL); *Ganiyu-Giwa v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 506 (QL); *Omar v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 665 (QL); *Vasquez v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 776 (QL)).

[24] In the absence of clear and convincing evidence to the contrary, the RPD is presumed to have considered all of the evidence in a given matter and has no obligation to comment on it in its entirety. Just because the RPD does not expressly mention particular evidence in its reasons does not mean that the evidence was not considered (*Woolaston v. Canada (Minister of Employment and Immigration)*, [1973] S.C.R. 102; *Hassan v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 946 (C.A.) (QL); *Florea v. Canada (Minister of Citizenship and Immigration)*, [1993] F.C.J. No. 598 (C.A.) (QL)).

[25] Indeed, it is not enough for claimants to file documentary evidence setting out problematic situations in their countries for them to be recognized as Convention refugees or persons in need of protection. The claimants must establish a connection between this evidence and their personal situation. In this case, Ms. Del Real did not establish such a connection (*Al-Shamhusband v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 364, [2002] F.C.J. No. 478 (QL)).

Credibility

[26] Recently, in *Garcia v. Canada (Minister of Citizenship and Immigration)*, [2007] 4 F.C.R. 385, [2007] F.C.J. No. 118 (QL), involving a female victim of domestic violence and involving the issue of state protection, Mr. Justice Douglas Campbell decided as follows:

> [4] ... Since no negative credibility finding is made, I find that the RPD accepted the applicant's evidence as true, and, subject to correction on two points, the statement constitutes facts upon which the claim for protection should be decided.

[27] Accordingly, the facts alleged are accepted as credible.

Internal flight alternative in Mexico City

[28] It is well established that an IFA in another part of the same country is inherent to the very notion of a refugee. In fact, the definition of a Convention refugee requires that "be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country" (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, [2001] F.C.J. No. 2118 (QL)).

[29] To determine that such a possibility truly exists, the RPD must be convinced, according to the balance of probabilities standard, that the claimant is indeed safe from persecution in a given region or city of the country and that it would not be unreasonable, given the claimant's particular situation, to live in that place (*Righi v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1032, [2002] F.C.J. No. 1351 (QL), by Madam Justice Carolyn Layden-Stevenson, paragraph 6).

[30] The bar must be placed very high when determining what would be unreasonable: it requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions" (*Ranganathan*, *supra*, paragraph 15).

[31] In *Julien v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 313, [2005] F.C.J. No. 428 (QL), Mr. Justice Pierre Blais reiterated that the burden of proof is on the claimants to establish that it is objectively unreasonable for them to avail themselves of an IFA:

> [11] ... Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, **they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so. *(Thirunavukkarasu v. Canada (Minister of Employment and Immigration),* [1994] 1 F.C. 589 (C.A.), at paragraph 12.)**
>
> [Emphasis added.]

[32] On the issue of documentary evidence, this Court has already stated that even though the RPD does not specifically mention any documentary evidence in its reasons, this does not as such vitiate the decision (*Perrier v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 35, [2002] F.C.J. No. 54 (QL), by Mr. Justice Yvon Pinard, paragraph 6; see also *Hassan v. Canada (Minister of Citizenship and Immigration)* (C.A.), [1992] F.C.J. No. 946 (QL)).

[33] Further, this Court determined that in the absence of clear and convincing evidence to the contrary there is a presumption that the RPD considered all of the evidence (*Florea*, *supra*).

The RPD's decision was reasonable

[34] In this case, the RPD considered all of the evidence (testimonial as well as documentary) in its analysis and it was reasonable for it to determine that Ms. Del Real had a viable IFA in Mexico City and that it was not objectively unreasonable for her to relocate to Mexico City.

[35] First, the RPD analyzed the documentary evidence in the record on the availability of an internal flight alternative and state protection in Mexico City.

[36] The RPD established *inter alia* that the government had adopted various legislative measures and offered various services to help victims of domestic violence. Indeed, the RPD noted that it is possible to turn to several government services, including the family courts and the public prosecutor; that victims have temporary shelter available and that there are centres where victims of violence can obtain psychological support, counselling and legal assistance. (Reasons, page 2, paragraph 3.)

[37] Moreover, the RPD noted that the documentary evidence also indicated that to report a crime or offence in Mexico, whether as a victim or as a witness, the case must be reported to the nearest public prosecutor's office. If the authorities do not consider a complaint or do not process it, recourse is available against the internal comptroller of the Office of the Attorney General of the Republic (AGR), which notably was reorganized in 2001 in order to better fight against internal corruption (Reasons, page 2).

[38] Then the RPD analyzed the steps undertaken by Ms. Del Real in order to obtain protection from the police.

[39] The RPD considered in its assessment the fact that Ms. Del Real remained passive and that she did not attempt to pursue and undertake steps with the authorities (*Sanchez*, *supra*; *Madoui*, *supra*, paragraph 5; *Eminidis*, *supra*, paragraph 15).

[40] In fact, the evidence established that, following the incident on March 21, 2006, a municipal police officer intervened, took Ms. Del Real's statement, told her that she had to go to the public prosecutor to file a report and that he would give them the report. The municipal police officer then brought her to the public prosecutor and gave this report to an employee. After several hours of waiting, the public prosecutor officers asked her what she wanted to report and she told them about her ex-husband's abuse and the attempted murder. The officer told her to come back the next day because there were other people with serious reports such as firearms injuries and deaths and that her case could be easily settled with the DIF.(PIF, paragraph 14).

[41] She was therefore told to return the next day because he case could be easily settled at the DIF. (PIF, *supra*.)

[42] Ms. Del Real chose not to return, however.

[43] It was therefore in this context that the RPD could reasonable determine that "[t]he claimant never really went to the authorities, the police or the public prosecutor's office to obtain help and protection" and that, accordingly, she "made no attempt to obtain protection" (Reasons, page 1, paragraph 5 and page 3, paragraph 3).

[44] Accordingly, it is difficult to criticize the Mexican authorities for their failure to act when Ms. Del Real did not return the following day to give them the opportunity to protect her. As stated by Mr. Justice Yves de Montigny in *Villasenor v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1080, [2006] F.C.J. No. 1359 (QL):

> [19] ... it is reasonable to expect that a person alleging that the authorities were unable to protect him should first have done something that would usually have resulted in their protection. Save in exceptional circumstances, it seems inconceivable to the Court that an applicant should be able to blame the authorities in his country for their inaction when he did not even make them aware of his position of vulnerability and never gave them an opportunity to protect him.

(See also: *Smirnov v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1080; *Villanueva v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1320, [2004] F.C.J. No. 1619 (QL).)

[45] This is not an indication of a lack of protection but rather reticence on Ms. Del Real's part to avail herself of it. As stated in the case law of this Court, this does not render the State unable to protect her.

> [10] Also, the applicant made the decision not to press criminal charges against her husband because she was afraid of his reaction. This behaviour is understandable considering the circumstances but it does not make the state protection insufficient. **A decision was made by the applicant not to use the system established by governmental authorities. If all victims of violent domestic abuse do not use the service offered, that system will never improve.**
>
> [Emphasis added.]

(*Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1212, [2002] F.C.J. No. 1636 (QL); see also *Tenorio v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 63, [2007] F.C.J. No. 98 (QL), paragraph 28.)

[46] Still in regard to the same issue, the RPD could also consider in its analysis the fact that Ms. Del Real was not able to give a reasonable explanation as to why she had not relocated in Mexico City; she testified that she had never thought to move to Mexico City. Further, she testified that she had already heard about the DIF although she chose not to contact it. This Court, in *Skelly v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1244, [2004] F.C.J. No. 1503 (QL), per Mr. Justice James Russell, has already stated:

> [51] ... Hence, it is difficult to fault the Board's conclusion that the Applicant had not rebutted the availability of state protection in her particular circumstances because she "made no effort whatsoever to seek protection in St. Lucia, or even to find out what protection was available to her."

(See also: *Jara v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 973, [2006] F.C.J. No. 1226 (QL), paragraph 12; *Zhuravlvev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3, [2000] F.C.J. No. 507 (QL), paragraph 31)

[47] Finally, the RPD could take into account the fact that in terms of finding work in Mexico, Ms. Del Real is a resourceful, well-spoken businesswoman.

[48] The RPD's determination with regard to the existence of an internal flight alternative is therefore consistent with the principles set out in the case law, supported by the evidence submitted and sufficient to dismiss Ms. Del Real's refugee claim. In fact, the existence of an internal flight alternative eliminates the possibility of qualifying as a "refugee" or a "person in need of protection" (*Fedomin v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1684 (QL)).

CONCLUSION

[49] Considering the foregoing, Ms. Del Real's application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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