Date: 20080603

Docket: IMM-4647-07

Citation: 2008 FC 696

Toronto, Ontario, June 3, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

ABIGAIL VIDAL SANCHEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated October 19, 2007, wherein the applicant was found not to be "Convention refugee" nor a "person in need of protection" under sections 96 and 97 of the Act.

I. Facts

[2] A citizen of Mexico, the applicant lived in and around Mexico City (the Federal District) until some time in 2006. Upon her arrival in Canada, on August 22, 2006, the applicant claimed refugee status on the basis that she was a “person in need of protection” because of the threats of her former common-law partner, Israel Mena Bautista (Israel).

[3] The applicant alleges that she entered into a common-law relationship with Israel in December 2001, and that this relationship became physically and emotionally abusive before ending in approximately August 2002. She then entered into a common law relationship with another man and had a daughter. However, she did not completely exclude Israel from her life, and his continued involvement strained that relationship to the breaking point by August of 2004. The applicant gave Israel another chance in January of 2005, and he quickly became very possessive.

[4] Finally, in April 2006, Israel raped the applicant in her home, but she did not report it to the police. Instead, she left for Veracruz where she lived with family members and obtained employment. By July 2006, however, Israel had found the applicant and allegedly threatened her. The applicant again decided against going to the police, and instead chose to flee the country.

[5] The applicant claims that she did not approach the police for protection because Israel had some connection with the Judicial Police through a friend. Additionally, she believes the Mexican

police to be pervasively corrupt because of how she was treated following a mugging, and claims that they did not help when her mother was the victim of domestic violence.

II. The Impugned Decision

[6] The Board rejected the applicant's claim on the basis that she had an Internal Flight Alternative (IFA) in the Federal District. In reaching this conclusion, the Board refers to the documentary evidence which indicated the following:

- the legislative framework for addressing acts of violence against women is complex, multi-layered and differs from state to state;
- the Federal District has a broad range of legislation criminalizing domestic violence and sexual abuse, including within common-law relationships, and which include sanctions for family violence of six months to four years;
- there is a national health regulation that requires health centres to record domestic violence complaints with the purpose of ensuring medical staff recognize and report family violence to the authorities who can notify victims of their right to file a criminal complaint;
- that statistics show that individuals do avail themselves of government services, such as the Domestic Violence Assistance Centre that offers comprehensive services and which refer women to shelters and assist women in filing complaints.

The last two points are specifically referenced in regard to the effectiveness of protection efforts in the Federal District.

[7] With respect to the fact that the applicant did not approach the police, the Board states that there is no persuasive evidence that Israel's "friend" in the Judicial Police have the capacity to prevent the applicant from obtaining protection. Nor is there any evidence that he is engaged in "any illegal way" with the applicant during a period when she was separated from Israel. However, even if there was such evidence, the Board states that the applicant could still file a complaint against him with the Federal Attorney General.

[8] The Board also deals with the applicant's mugging. The Board notes that the mugger was arrested, that the applicant made a denunciation, that she was represented by duty counsel, that the matter was brought before a judge, and that the mugger was released after he paid what the applicant specifically referred to as a "bail". The Board holds this up as an example of state protection, and suggests that criminal procedure was followed even if the claimant is not satisfied with the result.

[9] The Board concludes that while there are still serious problems with violence towards women in Mexico, the documentary evidence indicates that the Federal District authorities are making a serious effort to fight it and that it would be reasonable for the claimant to approach them if she felt at risk. The Board then refers to some jurisprudence on state protection and finds that the applicant has not rebutted the presumption of state protection. Because of that, the Board finds that

she has an IFA in the Federal District and concludes that it would not be unduly harsh for her to relocate to Federal District as she had lived there for seventeen years, was able to find work in Veracruz when she moved there, and there is no persuasive evidence before it that she would not be able to find employment and a place to live.

III. Issue

[10] The only real issue in this case is whether or not the Board erred in its determination that the applicant had an IFA on the basis that state protection was available in the Federal District.

IV. Standard of Review

[11] The Board's conclusion on the adequacy of state protection is a question of mixed fact and law reviewable on a standard of reasonableness (See *Mendoza v. Canada (Minister of Citizenship and Immigration),* [2008] F.C.J. No.481 at paragraph 11 which references both *Hinzman v. Canada (Minister of Citizenship and Immigration)* (2007), 362 N.R. 1 at paragraph 38 (F.C.A.), and *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraphs 55, 57, 62, and 64). Further, the Board's determination on the IFA should also be reviewed on the reasonableness standard (*Khokhar v. Canada (Minister of Citizenship and Immigration),* 2008 FC 449 at paragraph 22).

[12] As noted in *Mendoza,* reasonableness requires consideration of the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether

the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law. (See *Dunsmuir* at paragraph 47).

V. Analysis

[13] In the present case, the Board determines that the applicant has an IFA in the Federal District. However, in reaching that conclusion, the Board finds that the applicant had not rebutted the presumption of state protection. Given that the applicant's challenge is primarily mounted against the Board's findings on state protection, that finding must be dealt with.

[14] The applicant has attempted to argue that the Board errs because it fails to consider contradictory evidence, and fails to consider the effectiveness and immediacy of the police reaction in its determination on state protection.

[15] It is true that a decision-maker should refer to evidence that contradicts its conclusions, and that the Court could infer that an erroneous finding of fact was made from "a failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency." *(Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration),* [1998] F.C.J. No. 1425, at para. 15). On the other hand, "the reasons given by administrative agencies, (such as the Board here), are not to be read hypercritically by a court", nor are these tribunals required to refer to every piece of evidence that they received (*Cepeda-Gutierrez, above,* at paragraph 16).

[16] It is also true that the effectiveness of the mechanisms of state protection must be evaluated. *Lopez v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1341 deals with this concept.

[17] However, it must also be remembered that there is a presumption of state protection, especially in a democratic state. This presumption has been accepted numerous times in this court (*De La Rosa v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 83, *Santos v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 793; *Lazcano v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1630, *Baldomino v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1638). The applicant has the burden of rebutting that presumption.

[18] The applicant has only pointed to one piece of evidence that speaks specifically to the Federal District that would demonstrate that the Board's conclusions were incorrect: a passage in the March 2003 document Mexico: Domestic Violence and Other Issues Related to the Status of Women (March 2003 Document) that mentions that there are shortcomings in Family Violence Assistance and Prevention Law (which had been in force since 1996). The other documentary evidence that the applicant has referred to deals with drug trafficking and organized crime and is of limited value in attacking the Board's findings in this particular case.

[19] Despite this one passage, it is clear that the Board considers in its decision the effectiveness of state protection and, on a general level, addressed the gaps or inconsistencies in Mexican state protection.

[20] The Board recognizes also that the documentary evidence shows that the Federal District must be distinguished from the generalized information about Mexico, and that the legislative framework differs from state to state. In the documentary evidence that was before the Board, the Federal District is referred to separately from other states with regard to domestic violence, and its legislative and institutional framework – as well as some information about its implementation – is dealt with. While the information regarding the "effectiveness" of the serious effort to deal with domestic violence in the Federal District is limited, it does not contradict the Board's findings. The Board notes that there are serious problems regarding domestic violence in Mexico, but that the authorities in the Federal District were making serious efforts to deal with the violence. This is supported in the documentary evidence that was before the Board in this case. The applicant simply overstates the amount and strength of the contradictory documentary evidence on the Federal District that was before the Board when it made its decision.

[21] In accordance with the decision in *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, the applicant was required to put forward clear and convincing evidence that state protection is not available to her. The applicant admits that she never even asked the police for help with Israel. She offers reasons why she did not approach the police, but those are dealt with and rejected by the Board. At best, the applicant has only been able to offer up the suggestion that her mother was not helped by the police at some point in the past. The applicant has simply not established that the police refused or were unable to investigate her complaint.

[22] However, this still leaves the question of the reasonableness of the Board's finding that the applicant has an IFA. The test for this can be found, reformulated, at paragraph 20 of *Kumar v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 601:

> In order for the Board to find that a viable and safe IFA exists for the applicant, the following two-pronged test, as established and applied in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.) and *Thirunaukkarasu*, [1994] 1 F.C. 589 (C.A.), must be applied:
> (1) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the proposed IFA; and
> (2) Conditions of the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[23] Given the above, the Board's decision on the first part of the test is reasonable in that it is logical and one of the possible acceptable outcomes based on the evidence.

[24] As far as the second prong of the test, the applicant advanced only the argument that it would be unduly harsh for the applicant to return to the Federal District because of the proximity of Israel and given her unspecified particular circumstances.

[25] The Board here takes note of the fact that the applicant was able to find employment and residence when she moved away from the Mexico City area, and that she lived in the City for many years, went to school there, and had family there. The applicant has suggested no other specific personal circumstance other than the fact that Israel lives nearby.

[26] While the Board does not specifically deal with this fact in the section about the second prong of the IFA test, however the Board does effectively deal with it under the state protection finding. There the Board makes it clear that the applicant can approach the state for protection from Israel, if he ever threatens her while she is in the Federal District. This Court sees no reason to disturb this conclusion.

[27] On the overall the applicant has failed to show that the impugned decision is unreasonable and falls outside the range of acceptable outcomes which are defensible in respect of the facts and law. And therefore this application for judicial review will be dismissed.

[28] The Court agrees with the parties that there is no question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS THIS COURT dismisses the application.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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