Date: 20080609

Docket: IMM-4703-07

Citation: 2008 FC 716

Montréal, Quebec, June 9, 2008

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

EMMANUEL REYES MONTALVO
LIZBETH HERNANDEZ CARMONA
LIZBETH HERNANDEZ CARMONA

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*, S.C. 2001, c. 27 (the Act), for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated October 22, 2007, wherein the Board determined that the applicants were not Convention refugees according to section 96 of the Act, nor "persons in need of protection" according to section 97 of the Act.

[2] The applicants are all citizens of Mexico who allege to fear a risk to their lives on the grounds of political opinion.

[3] The male applicant worked in a pawn shop owned by his uncle until rumours began to circulate that his uncle was a narcotics dealer with links to organized crime, at which point the applicant started working at a different pawn shop. He was also informed that his uncle was bribing corrupt police officers to further his operations.

[4] On March 14, 2005, the male applicant was kidnapped, blindfolded, assaulted and tortured by members of the Ministerial Police in Veracruz. He was forced to sign a false confession and his captors threatened to murder him on his uncle's behalf. He was taken to the city of Veracruz and held captive in the presence of the Commander of the Ministerial Police of Alvarado, in the state of Veracruz. He was blindfolded and tortured again and forced to sign a confession for a crime that he had not committed. He was warned not to tell anyone about his captivity and was released in front of his house. He was taken to a doctor by his family.

[5] On October 19, 2005, the male applicant left for Canada and made his claim for protection the next day.

[6] The female applicant alleges that after the male applicant fled the country, she began to receive threatening telephone calls from the Ministerial Police Officers who had kidnapped and tortured the male applicant. The caller threatened her and her daughter with death in revenge for her spouse fleeing the country.

[7] The female applicant and her daughter fled to Canada on August 7, 2006 and made their claims for protection on the same day.

[8] In a decision dated October 22, 2007 the Board determined that the applicants had an internal flight alternative (IFA) available in Mexico City and that state protection in Mexico City was adequate.

STANDARD OF REVIEW

[9] In the case of *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 62, the Supreme Court of Canada emphasized that in determining the standard of review courts should first "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of defence to be accorded with regard to a particular category of question."

[10] With respect to the IFA analysis, the Court's jurisprudence reveals that based on the factual nature of an IFA determination, the appropriate standard of review is that of patent unreasonableness (*Hattou c. Canada (Ministre de la Cityonneté et de l'Immigration)*, 2008 CF 230, [2008] A.C.F. no 275 (QL), at para. 12; *Chorny v. Canada* (*Minister of Citizenship and Immigration*), 2003 FC 999, [2003] F.C.J. No. 1263 (QL), at para. 11). Given *Dunsmuir*, above, the standard applicable to this question will also be that of reasonableness.

[11] Recent decisions of this Court have also examined the standard of review applicable to the issue of state protection in light of the guidance in *Dunsmuir*, above, and concluded that the

appropriate standard is that of reasonableness (*Flores Zepeda v. Canada (Citizenship and Immigration*) 2008 FC 491, at para. 10; *Eler v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 334, at para. 6).

[12] Thus, pursuant to the reasonableness standard, the analysis of the Board's decision will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] […] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47).

ANALYSIS

Did the Board err in its IFA analysis?

[13] The applicants submit that the panel ignored the explicit evidence provided as to the ease with which the corrupt police offers could locate them in Mexico City. Specifically, at the hearing the male applicant noted "[…] I thought about it [going to another location in Mexico] but I couldn't go to another city or another state because when I wanted to get a job or work it'll – it'll show up my name because the authorities they have access to all the names and all my papers in the files". He also indicated that the authorities would still be looking for him in order to fulfill the threat that they made of killing him. Further, the female applicant stated she had talked with the male applicant about leaving the state of Veracruz, but "it was impossible because the state authorities […] were involved in this" and that because she is a school teacher in Mexico, the state government pays her and therefore she would be found in any place she fled to.

[14] The applicants refer to the country condition evidence summarized by the Board indicating that police involvement in kidnappings and association with organized crime and drug cartels is prevalent throughout Mexico. Thus, the alleged fear faced by the applicants exists throughout the country.

[15] The determination of the existence of an IFA is "integral to the determination [of] whether or not a claimant is a Convention refugee" (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, [1991] F.C.J. No. 1256 (QL). In determining the existence of an IFA, the Federal Court of Appeal stated in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, [1993] F.C.J. No. 1172 (QL), at para. 12, that an IFA must be sought unless it can be demonstrated that it is objectively unreasonable to do so.

[16] The Court articulated the considerations involved in determining the reasonableness of an IFA. First, an IFA must be a realistic and attainable option; "[…] the claimant cannot be required to encounter greater physical danger or to undergo undue hardship in travelling there or in staying there." (*Thirunavukkarasu*, above, at para. 14). Moreover, individuals should not be forced to hide out in isolated areas of the country, but "[…] neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work" (*Thirunavukkarasu*, above, at para. 14).

[17] Further, as the Federal Court of Appeal stated in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, [2000] F.C.J. No. 2118 (QL), the threshold for the unreasonableness of an IFA is a very high one which "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" and "actual and concrete evidence of such conditions" (at para. 15).

[18] In its analysis of the IFA, the Board indicated that there were no social, economic or legal barriers preventing the applicants from relocating to Mexico City and highlighted the health status, level of education, and work experience possessed by the adult applicants. There was no evidence submitted indicating that any of the persecutors in Veracruz state still had an interest in pursuing the applicants if they were to relocate within Mexico. The Board emphasized the fact that twenty-two million people live in the urban areas of the state of Mexico and in Mexico City, and every year the population of the state of Mexico increases by 350,000 people. The Board found that on a balance of probabilities, none of the persecutors in Veracruz state would still have an interest in pursuing the applicants if they were to relocate to Mexico City, and would have no knowledge that the applicants were residing there.

[19] Intertwined with the issue of the IFA is that of the existence of adequate state protection in Mexico City. The Board found that the presumption of state protection applied to Mexico. It went on to analyze the documentary evidence before it and acknowledged that "the police and judicial system in Mexico is weak and subjected to corruption in some areas, and not as effective as they could be." However, the Board was of the view that the police and government authorities in

Mexico are making serious efforts, though not always successful ones, to curb and eliminate criminal gang activities in the country, including those of illegal drug traffickers and cartels as well as illegal and corrupt activities by police authorities, the military and other state officials.

[20] The applicants submit that the presumption of state protection is limited to cases where the agents of persecution are non-state actors. In the alternative they argue that the applicants did all they could to seek state protection, to no avail.

[21] A state is to be presumed capable of protecting its citizens absent "clear and convincing confirmation" to the contrary put forth by an applicant (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at pages 724-725, [1993] S.C.J. No. 74 (QL), at para. 50). I note that contrary to the applicants' argument, the Federal Court of Appeal has affirmed that "[t]he presumption of state protection described in *Ward*, therefore, applies equally to cases where an individual claims to fear persecution by non-state entities and to cases where the state is alleged to be a persecutor". (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, [2007] F.C.J. No. 584 (QL), at para. 54).

[22] Given the above, and in light of the IFA analysis, it was reasonable for the Board to conclude that the applicants would be afforded state protection in Mexico City as they did not provide clear and convincing evidence that it would not be forthcoming in this location.

[23] Based on the above, I am unable to find that the Board's determination with respect to the existence of an IFA was unreasonable. Accordingly, this application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that:

The present application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4703-07
STYLE OF CAUSE:	EMMANUEL REYES MONTALVO ET AL. v. MCI
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