Date: 20081007

Docket: IMM-482-08

Citation: 2008 FC 1132

Montréal, Quebec, October 7, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

EDITH ANGELICA VASQUEZ LUNA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review against a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated October 31, 2007, to the effect that the applicant Edith Angelica Vasquez Luna and her daughter Brenda January Barrientos Vasquez are not Convention refugees or persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

[2] Note however that only the mother is a party to this application for judicial review, and she did not raise any ground on which she would be justified to act on behalf of her daughter Brenda January Barrientos Vasquez, who is also contemplated in the Board's decision. This judgment therefore only involves the application of Edith Angelica Vasquez Luna.

II. Statement of facts

[3] The applicant alleges that her daughter, a young woman of 19 years of age, became pregnant after she was raped by one Paul who allegedly threatened to kill her and rape her again if she were to refuse an abortion. Further, this individual made the same threats to the applicant.

[4] The Board dismissed the application for protection of the mother and her daughter on three grounds: the lack of credibility in their story, the availability of protection from the state of Mexico and the existence of an internal flight alternative.

III. Issues

[5] The application raises the following issues:

a. Did the Board make an unreasonable error in making a negative finding regarding the credibility of the applicant and her daughter, by refusing the applicant status as a refugee or a person in need of protection and in deciding that she would not face

cruel and unusual treatment or punishment if she were to return to Mexico to avail herself of the protection of her country?

b. Did the Board make an unreasonable error in finding that an internal flight alternative was available?

IV The standard of review

[6] As a specialized administrative tribunal, the Board benefits from expertise in matters within its jurisdiction. The courts must afford deference to the decisions of these tribunals when, as in this case, they are acting within their power. It must therefore be asked whether the impugned decision is reasonable, falling within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v. New Brunswick*, 2008 SCC 9). The standard of reasonableness requires no more than the answer to this question.

[7] Within this standard of review, can we determine that the Board erred in determining that the applicant does not qualify as a “Convention refugee” or as a “person in need of protection” within the meaning of the Act?

V. Analysis

The credibility of the application

[8] The Board states that it considered the *Guidelines on Women Refugee Claimants Fearing Gender-Related* (Guidelines) when it assessed the refugee claim.

[9] It still found a lack of credible or plausible evidence that would support the fear of persecution or the serious prejudice alleged in support of the refugee claim, in terms of the applicant's actions as well as those of her daughter:

a. There was no complaint by the applicant or her daughter to the police after the alleged rape by the assailant.
b. There was no medical exam of the daughter by a physician following the incident and no suggestion by the parents, including the applicant, to consult one;
c. There was no identification of the assailant or of his parents, not even a name, despite the statement that the assailant was a "bum" and a criminal protected by a father who was counsel with great political influence who would place the applicant in even more danger if she were to file a police report;
d. Neither the applicant nor her daughter availed themselves of the protection measures available in their country;
e. Neither the applicant nor her daughter sought an internal flight alternative.

[10] An administrative tribunal has the jurisdiction to decide whether testimony is plausible, insofar as its finding is not unreasonable to the point where the Court's intervention is justified (*Divsalar v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 653, 114 A.C.W.S. (3d) 923, at paragraphs 22 to 24). Such that the Court will not intervene to set aside a finding on plausibility, unless the evidence does not support the stated reasons (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.), 42 A.C.W.S. (3d) 886).

[11] There is no ground to intervene on this issue, as the Board was entitled to take into account the above-mentioned actions or omissions of the applicant and her daughter in making the negative credibility finding on their story.

State protection

[12] The Board also notes that the applicant could have availed herself of the protection available in Mexico from her assailant.

[13] We will never know whether the applicant and her daughter were justified in distrusting the Mexican judicial mechanism, since they never sought help from the police following the alleged acts of the assailant, nor did they request or seek the protection of an authority or internal agency of any kind able to provide assistance, support or shelter.

[14] In order to justify her conduct, the applicant, like her daughter, insists on the ineffectiveness of the police protection offered in Mexico for female rape victims. This position must nevertheless

result from clear and convincing evidence (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 41 A.C.W.S. (3d) 393)). The Court cannot disregard that democracy is working in Mexico, that this country is a member of NAFTA, and that it has democratic institutions. Accordingly, for this country there is a strong presumption of state protection, even if the situation is not always ideal (*Zepeda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 491, at paragraphs 17 and 18).

[15] The applicant had to establish that it was objectively reasonable for her not to seek protection from the Mexican authorities. It is not enough to qualify this protection as ineffective; it must also be established by convincing evidence, which the applicant did not provide. Simply stating, as she did, without supporting evidence, that she did not seek protection because the assailant's father has a great deal of political influence that would put her in more danger if she were to report to the police, suggests that the applicant at the very least is aware of the assailant's identity and/or that of his father. Otherwise, how could she say that the father of her daughter's assailant has such influence if she does not know who he is? Can we question the Board for having doubted such a statement?

[16] As the applicant failed to show the Board that she had exhausted all of the recourse available to her, or that it was objectively unreasonable for her to seek recourse, she cannot be exempted from her obligation to seek protection from her country. Accordingly, the Court cannot intervene in the Board's findings of fact regarding the existence of a strong presumption that protection is available in the Mexican state that could benefit the applicant.

The internal flight alternative

[17] Subparagraph 97(1)(*b)*(ii) of the IRPA reads as follows:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97. (**1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:
…	[…]
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	(b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:
…	[…]
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
…	[…]

[18] This excerpt from the Act provides that the person must be subjected to a risk to their life or to a risk of cruel and unusual treatment or punishment in every part of their country. The internal

flight alternative is also a component of the notion of "*person in need of protection*" provided under subparagraph 97(1)(*b)*(ii), *supra*. Such that the refugee claimant must establish that there is a serious risk of persecution across the entire country with no available flight alternative (*Gilgorri v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 559, 152 A.C.W.S. (3d) 695).

[19] In this case, the Board determined that the applicant had an internal flight alternative elsewhere in Mexico. The applicant stated nevertheless that because of the power of the assailant's father and his contacts, she would be hunted down and ultimately found. However, the Board was entitled to take into account the fact that she had not filed any report, to doubt the ground raised for not having filed a report, and to accept that she had not sought any assistance for her or her daughter, that she did not have her daughter consult a physician after the rape and that she did not advise her to consult one, i.e. sufficient evidence that taken as a whole supported the Board in finding as it did.

[20] As the applicant failed to persuade the Board, through credible and convincing evidence, that there was a serious risk of persecution without any internal flight alternative, the Court does not see grounds for it to intervene.

[21] It is not the Court's responsibility, at this stage, to reassess the evidence and substitute its opinion for that of the Board. The Board has the benefit of its expertise and especially the unique advantage of having heard the applicant and her daughter on their allegations and claims. Master of

the facts, the Board remains the best qualified to determine the credibility to assign to the story of the applicant and her daughter.

VI. Conclusion

[22] After reviewing the evidence in the record, the Court determines that the findings in the decision contemplated by this proceeding are more than justified, supported by the facts as well as by the law. It is therefore a reasonable decision, giving rise to the dismissal of the application for judicial review. No serious question of general importance was proposed, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT ORDERS that:

The application for judicial review is dismissed**.**

"Maurice E. Lagacé"
Deputy Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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