Date: 20081010

Docket: IMM-636-08

Citation: 2008 FC 1148

Montréal, Quebec, October 10, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

JOSE MIGUEL HERNANDEZ MEDINA
BELIA ROSA MARTINEZ GUANIPA
MARTIN JAVIER SANCHEZ MARTINEZ

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated December 12, 2007, determining that the

applicants are neither Convention refugees nor persons in need of protection, as defined by sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

II. Facts

[2] Jose Miguel Hernandez Medina (principal applicant) and the other applicants, his wife Belia Rosa Martinez Guanipa, and his son Martin Javier Sanchez Martinez, are all citizens of Venezuela.

[3] The principal applicant began working for Petroleos de Venezuela SA (PDVSA), which is owned by the Venezuelan government, on September 27, 1992; he was employed there until he was dismissed on January 31, 2003, along with some 19,000 other workers, following a general strike triggered by the unions and the party opposing the government of President Chavez.

[4] On the day of the strike, the principal applicant was arrested by the National Guard. After his release a short time later, he learned of his dismissal in the newspapers, which published the list of all the other workers who had been dismissed for the same reason.

[5] The principal applicant claims that he was subsequently unable to find work in his field, even at a private company, because of a letter to the petroleum companies threatening them with reprisals if they hired former strikers who had been dismissed. From 2004 to 2005, he operated a convenience store that he finally had to close.

[6] Believing that he was being harassed because of his anti-Chavez political convictions, he obtained a passport from the authorities in his county and used it to obtain a visitor's visa from the Canadian authorities. He arrived in Canada on July 21, 2006, and claimed refugee status on August 4. His wife and his son came to live with him a month later and joined in his claim.

III. Impugned decision

[7] The Board refused to grant refugee status to the applicants because it found that an internal flight alternative (IFA) existed in Venezuela, outside the states of Carabobo and Falcon.

[8] After considering the documentary evidence, the Board noted that the principal applicant did not have the same profile as the leaders who had encouraged the 2003 strike and who were targeted by the Chavez government, since he was only one of the many dismissed strikers whose only role was participating in the strike as a mere employee. The Board found that being a former PDVSA employee did not put the principal applicant at risk elsewhere in Venezuela on the basis of his profile, position or activities during the strike.

[9] At the hearing, the principal applicant added to his profile and stated for the first time that he had been a member of the Social-Christian Party (COPEI) from 1982 to 1983. The Board decided that the applicant's former allegiance to this party did not put him at risk because his work at that

time was specific, limited and on a volunteer basis, and he never held an official position with the party.

[10] Finally, considering the applicants' diplomas, work experience, age and state of health as well as the documentary evidence, the Board determined that it was not unreasonable to believe that they could seek refuge in their country, outside the states of Carabobo and Falcon, without being disturbed.

IV. Issue

[11] Did the Board err by failing to consider material evidence in its analysis, when it found that, with their profile, the applicant and his family could take refuge in their country, outside the states of Carabobo and Falcon, without putting themselves at risk?

[12] Essentially, the applicants are challenging the Board's findings of fact based on the evidence and contend that it did not consider all the evidence.

V. Analysis

a. Standard of review

[13] As a specialized administrative tribunal, the Board has expertise in matters that come under its jurisdiction. Courts must show deference to decisions of these tribunals that are based on an

assessment of the facts where, as in this case, the tribunals are acting within their jurisdiction. The court must inquire whether the impugned decision is reasonable, having regard to its justification, and whether the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir v. New Brunswick*, 2008 SCC 9). The reasonableness standard does not require a greater intervention than the answer to this question.

[14] Within this standard of review, can it be concluded that the Board erred by deciding that, with their profile, the applicant and his family could take refuge in their country, outside the states of Carabobo and Falcon, without putting themselves at risk?

b. Internal flight alternative

[15] Even if the Board did not doubt the applicants' story, the onus of proof rested on them to show, on a balance of probabilities, that there was a serious possibility of persecution throughout their country, with no possibility of an IFA, including the states mentioned by the Board, and that it was objectively unreasonable for them, based on their situation and circumstances, to seek safety in another part of their country (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (FCA)).

[16] The Federal Court of Appeal set out a two-part test for an IFA: the tribunal must be satisfied, on a balance of probabilities, that there is no serious possibility that the applicants would face persecution in the part of the country that is alleged to afford an IFA, and the tribunal must also

be able to find that the situation in the part of the country that it considers to be an IFA is such that it would not be unreasonable for the applicants to seek safety there, considering all the circumstances (*Thirunavukkarasu*, above, pages 597 and 598).

[17] It appears from the reasons of the impugned decision that, before determining that there was an IFA, the Board carefully analyzed all the evidence based on the two-part test set out in the above-mentioned case.

[18] After reviewing the documentary evidence, the Board was satisfied that the individuals targeted were “opposition leaders”, “prominent human rights lawyers”, “journalists and officers of media companies”, managers of organizations, in short, people whose profile was very different from that of the principal applicant, who was simply a basic union member when he was dismissed in 2003.

[19] The principal applicant’s situation is no different from that of the many union members who were dismissed like him and who were able to relocate, find work elsewhere in Venezuela, and even, for a number of them, receive compensation. Moreover, none of the reports that were put in evidence indicate that the Chavez regime targeted mere employees of the PDVSA after their dismissal solely on the basis of their participation in the 2003 strike, as was the case for the principal applicant.

[20] In his testimony before the Board, the principal applicant added, however, that notwithstanding his efforts to settle elsewhere in his country, he would always be intimidated and harassed because of his political convictions. But again, his situation is no different from the large number of Venezuelans who share the same convictions and openly oppose the Chavez regime. The documentary evidence analyzed by the Court indicates that only the leaders, activists or heads of political opposition movements are at risk of being targeted by the Chavez regime, and the principal applicant never played such a role.

[21] In the personal information declaration that the applicant submitted in support of his refugee claim, he referred extensively to his dismissal in 2003, his efforts to relocate elsewhere and his difficulties in finding work that could support him and his family. Nowhere in this declaration does he describe himself as a political activist. It was not until he testified before the Board that he described himself for the first time as a political activist opposed to the Chavez regime. However, even there, he testified that the only time he demonstrated publicly against the Chavez regime was as a mere striker taking part in a gathering during the famous strike that led to his dismissal. Such a role does not make him an activist or a leader.

[22] If, as the documentary evidence analyzed by the Board indicates, a large number of his former co-workers were able to relocate and earn a living elsewhere in Venezuela despite their participation in the 2003 strike, it was open to the Board to believe that the principal applicant and his family could do likewise. To suddenly describe himself, as the principal applicant did at his refugee hearing, as a political activist opposed to the Chavez regime, when he did not mention this

previously in his written declaration, is perhaps a self-interested assertion. But activism is measured by the facts, and prior to this statement by the applicant at the hearing, his own description of the facts did not make him a political activist any more than the large number of opponents of the Chavez regime.

[23] After analyzing the decision under review as well as the evidence in the record, including the transcript of the principal applicant's testimony, the Court does not see how it was unreasonable for the Board to believe that the applicants could live elsewhere and earn a living in their country without putting themselves at risk, instead of trying to seek refuge in Canada.

[24] In short, the applicants have not discharged their onus of demonstrating that the Board made an error justifying the intervention of this Court. It is not for the Court, at this stage, to reassess the evidence or substitute its opinion for the Board's. The Board had the advantage of its expertise and especially the unique advantage of having heard the claim.

[25] The issue is not so much whether the Court would have rendered the same decision, but whether the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law. The facts and the law support the decision in this case.

[26] The Court must therefore find that the decision under review is not unreasonable, which is fatal to the application for review. No serious question of general intent was proposed, and no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT:

Dismisses the application for judicial review.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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