Federal Court		Cour fédérale

Date: 20081203

Docket: IMM-5077-07

Citation: 2008 FC 1347

Montréal, Quebec, the 3rd day of December 2008

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

GEMMA OLIVARES VARGAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated October 31, 2007, in which the applicant was determined not to be a Convention refugee or a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act* (the IRPA).

FACTS

[2] The applicant, a citizen of Mexico, was born on June 21, 1988. She essentially alleges that she was a victim of violence and that she was beaten by her ex-boyfriend, a young man named Ivan Reyes Guzman, with whom she had a relationship that began in March 2004.

[3] The applicant allegedly filed a complaint against Ivan two days after he assaulted her on March 21, 2005. She claims that she temporarily left school at that time, and that she returned only in the fall of 2005.

[4] It is alleged that, on December 12, 2005, Ivan went to the applicant's family's home and broke windows by throwing stones. After this, the applicant allegedly moved to another family residence in Campestre, which her ex-boyfriend did not know about. Nonetheless, it is alleged that he easily found the residence with the help of his police contacts, and that, on January 10, 2006, he stationed himself outside her home with two of his friends and threatened her again. Frightened, the applicant returned to her parents' home to live.

[5] On May 22, 2006, Ivan and two of his friends allegedly attempted to kidnap the applicant, shoving her mother and hitting her father with a pistol. Alerted by her sisters' screams, the police allegedly arrived on the scene, but let Ivan get away because the applicant's mother refused to give them money.

[6] The applicant says that she subsequently received anonymous notes as well as death threats. She left Mexico for Canada on June 24, 2006, and claimed refugee status upon arrival.

IMPUGNED DECISION

[7] The RPD rejected the applicant's refugee protection claim on the grounds that her account was not credible and that there was an internal flight alternative. It also rejected her application under section 97 of the IRPA.

[8] After hearing the applicant's testimony, the RPD determined that she was not credible for the following reasons:

> - She contradicted herself with respect to the date on which she decided to leave Mexico. According to the notes from the interview at the point of entry, she said that she decided to leave Mexico during the first week of June 2006, after her ex-boyfriend found her and attempted to kidnap her. However, in her testimony, she said that she decided to leave her country on May 22, 2005. Upon being confronted with the inconsistency, she corrected herself and said that she made the decision in 2006.
> - Her conduct was inconsistent with the conduct of someone with a well-founded fear of persecution, in that she returned to her family home in order to live with her parents after she was threatened in Campestre.
> - It was unlikely that her 17-year-old ex-boyfriend could have found her in Campestre thanks to his police contacts.

[9] The RPD also determined that the applicant had an internal flight alternative in Monterrey or León, two major Mexican cities. Having examined the circumstances as a whole, the Board expressed the opinion that it would not have been unreasonable for the applicant to seek refuge in one of those two cities.

ISSUES

[10] This case essentially raises three substantive issues: (1) Did the RPD err in failing to consider the Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution (the Guidelines)? (2) Did the RPD err in determining that the applicant was not credible? (3) Did the RPD err in determining that there was an internal flight alternative within Mexico?

ANALYSIS

Standard of review

[11] It is settled law that the Court must show deference to decisions of the RPD regarding questions of credibility and assessment of the evidence. The decision of the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9, has not changed the wording of paragraph 18.1(4)(*d*) of the *Federal Courts Act*, under which this Court will intervene only if the board, commission or other tribunal based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[12] The same principles apply to the internal flight alternative. This Court's decisions prior to *Dunsmuir* stood for the proposition that the "patently unreasonable" standard of review applied to cases of this nature. Since that standard of review is no longer applicable, we must apply the reasonableness standard. Does this mean that the Court must now intervene more readily? Not necessarily. The Supreme Court took care to note that courts should never lose sight of the reasons that legislatures have created administrative bodies. As it wrote in *Dunsmuir*, at paragraph 49:

> In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the

> processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.

[13] Consequently, the Court should refrain from intervening unless the impugned decision is unreasonable. This requires an assessment that looks at both process and outcome. Thus, the Court must consider justification, transparency and intelligibility within the decision-making process, and must also be concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

The Guidelines

[14] The applicant submitted that the RPD failed to consider the Guidelines, even though, at the end of its analysis, the Board expressly stated that it took them into account. The proof, she submits, is that the Guidelines are referred to as an obligatory formality, and that the applicant's youth, inexperience and unfamiliarity with countries other than Mexico were not taken into account in assessing her testimony.

[15] It is true that the mere mention of the Guidelines by the RPD is not a sufficient basis on which to conclude that the Guidelines were truly taken into account in the decision. The sensitivity that the RPD must show toward women who are persecuted because of their gender must manifest itself in more than merely a formal and ritual reference to the Guidelines. On the other hand, the mere fact that the RPD did not find the applicant credible will be insufficient to show that it was insensitive to the fate of women. In the case at bar, I am of the opinion that the Board could find that the applicant was not credible based on the inconsistencies, omissions and implausibilities that it identified in her testimony.

[16] It is no doubt true that the applicant was vulnerable and may have been shaken by what she claims happened to her. However, this does not explain why, after being threatened in Campestre, she returned to her parents' home where she could easily be found, rather than seeking refuge in another major Mexican city. If her parents were able to take out a loan to send her to Canada, they could no doubt have financed her relocation elsewhere in Mexico as well. Such a finding does not reflect insensitivity to her situation; rather, it results from an assessment of the facts.

Assessment of the evidence

[17] The applicant submits that the Board erred by failing to consider the evidence before it, including the abundant documentary evidence concerning the lack of protection offered by the Mexican government. She also submits that it is not implausible for a young man aged 17 to have friends in the police, and to be able to track down the applicant anywhere in Mexico.

[18] I should begin by noting that the documentary evidence cannot help the applicant if her account is determined not to be credible. A refugee claimant must prove not only an objective fear, but a subjective fear as well. The situation of women who are victims of conjugal violence in Mexico was only relevant to the extent that the applicant could show that she truly feared persecution on that ground, and this she failed to do.

[19] Counsel for the applicant attempted to convince the Court that it was entirely possible for a young man aged 17 to have police contacts. That is one possible assessment. However, it is not this Court's mandate to substitute its discretion for that of the RPD, unless its findings find no support in the evidence or were made in a perverse or capricious manner. I cannot come to such a conclusion based on a reading of the record. Although I might have been able to arrive at a different conclusion,

that is not the test that I must apply. The RPD had the advantage of seeing and hearing the applicant, weighing her testimony and prior statements, examining her behaviour and considering her explanations. It came to the conclusion that her account did not hold water. I have not been convinced that this conclusion was unreasonable in view of the evidence.

Internal flight alternative

[20] The RPD determined that the applicant had an internal flight alternative in other major Mexican cities, notably Monterrey and León. In so doing, the Board did not accept the applicant's arguments that her ex-boyfriend could have tracked her down anywhere in Mexico using school records.

[21] The Federal Court of Appeal has specified that the onus is on the refugee claimant to show that he or she could not relocate elsewhere in his or her country. In order to make its finding, the Board needed to be satisfied that there was no serious risk of the applicant being persecuted in the cities in which it found that an internal flight alternative existed, and that, in the circumstances, it would not have been unreasonable for the applicant to travel there. In this regard, the burden of proof on the person seeking refugee protection is a heavy one. As the Federal Court of Appeal reiterated in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, at paragraph 15:

> 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.

[22] The applicant, however, did not dispute the RPD's findings concerning the existence of an internal flight alternative. This finding alone was sufficient to reject the claim for refugee protection.

Indeed, an internal flight alternative is inherent in the very concept of a refugee and of a person in need of protection. As for the vague allegation that the applicant could be tracked down anywhere in Mexico using school records, I consider it baseless, and it was not corroborated by any evidence.

[23] For all these reasons, the application for judicial review is dismissed. No question was submitted for certification, and none is worthy of certification.

ORDER

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Yves de Montigny"
Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5077-07
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