Date: 20090129

Docket: IMM-2357-08

Citation: 2009 FC 92

Ottawa, Ontario, January 29, 2009

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Julio Cesar VARELA SOTO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27 (Act), of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB), dated April 25, 2008, in which it was determined that the applicant, a citizen of Mexico, was not a Convention refugee or a person in need of protection.

[2] The determinative reason for the RPD decision is the existence of an internal flight alternative (IFA).

[3] The standard of review that applies to an RPD decision concerning the existence of an IFA is reasonableness (*Franklyn v. Minister of Citizenship and Immigration*, 2005 FC 1249, at paragraph 18). Thus, the role of this Court in this case is to inquire into "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 47). I am of the opinion that the decision has such qualities, for the following reasons.

[4] When the issue of an IFA is raised, applicants must show, on a balance of probabilities, that there is a serious possibility that they will be subject to persecution everywhere in their country and that it is objectively unreasonable for them, in view of their circumstances, to find refuge elsewhere in the country (*Medina v. Minister of Citizenship and Immigration*, 2008 FC 1148; *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.)).

[5] In the case at bar, the applicant is essentially objecting to the RPD's assessment of the facts.

[6] However, in its decision, the RPD began by clearly specifying the test for determining whether an IFA exists. This test has two components: (1) to determine whether there is another part of the country where the applicant would not be subjected to a danger or a risk, pursuant to subsection 97(1) of the Act, and, if the answer is "yes", (2) to determine whether it is objectively

unreasonable for the applicant to move to another part of his country before claiming refugee protection abroad.

[7] With regard to the first component, the RPD decided the following:

> When the claimant was asked if he could find an IFA in Cancun or in Guadalajara, he answered: [translation] "I do not know why; they will look for me in other places." He was then asked why he had not tried to find an IFA. He stated that he would end up working for another international company or asking for a transfer from the company that he was currently working for, and that it would be easy to find him. The panel does not share the opinion that it would be easy to find the claimant.

[8] The panel found it likely that the applicant had been targeted by mistake by his assailants. It therefore found as follows:

> . . . Without knowing the motive for the attack, the panel sees no reason to believe that the crime that was committed was anything but a localized incident. The panel does not see why these people would go to other parts of the country to find the claimant in the suggested larger cities, or in other cities in Mexico.

[9] Concerning the second component, the RPD noted that the applicant is an engineer, from an affluent family, with 16.5 years of education. Before leaving Mexico, he had a good job and earned above-average wages. Consequently,

> [a]lthough the claimant might encounter some difficulties in relocating, these do not, in and of themselves, make the possibility of an IFA unreasonable. . . .

[10] After reviewing the evidence, I find that the applicant did not satisfy me that the RPD had based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or

without regard for the material before it (see paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. (1985), c. F-7). On the contrary, the panel's finding concerning the existence of an IFA was reasonably inferred from the evidence submitted by the applicant, and consequently, the decision in question has the qualities that make it reasonable, referring both to the process of articulating the reasons and to outcomes, as referred to in *Dunsmuir*, *supra*.

[11] Consequently, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dated April 25, 2008, is dismissed.

"Yvon Pinard"

Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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