

Date: 20090317

Docket: IMM-3399-08

Citation: 2009 FC 275

Ottawa, Ontario, March 17, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

**ANA MARIA ISABEL ORTIZ SOSA,
ALEXA YAMILETH ROJO ORTIZ
and LUIS IVAN ACOSTA ORTIZ**

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA) of a decision by the Refugee Protection Division (the RPD) of the Immigration and Refugee Board dated July 7, 2008, which found that the applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

FACTS

[2] The applicants, a mother and her two minor children, are Mexican citizens. They fear returning to their country because the principal applicant has become the target of a corrupt police officer.

[3] The applicant witnessed the murder of a lawyer involved in drug trafficking by a former neighbour, a member of the judicial police. After trying in vain to report him, she took refuge with friends elsewhere in Mexico following threats by the murderer.

[4] After learning that her alleged persecutor was looking for her, the applicant left Mexico for Canada on July 23, 2007, leaving her children hidden with members of her family. She claimed refugee status in Canada on July 30, and her children rejoined her on October 24 of the same year to claim refugee status.

IMPUGNED DECISION

[5] After analyzing all the applicant's evidence, the RPD determined that the applicant's credibility was irremediably compromised on a number of points.

[6] First, the applicant was unable to explain to the panel's satisfaction why the name of the alleged victim in the Personal Information Form (PIF) is inverted and does not match the name indicated in the objective documentary evidence.

[7] The RPD also pointed out a number of contradictions in the applicant's testimony, in particular, regarding when she learned that her persecutor was a police officer and the period during which her persecutor was her neighbour.

[8] The RPD also noted certain implausibilities in the applicant's story. They include the applicant's fear, in a context where her alleged persecutor would no longer have a reason to go after her because her complaints were not accepted by his police colleagues. Similarly, the RPD found it implausible that a judicial police officer was unable to find her, knowing that she lived in the city of Coatzacoalcos for two months.

[9] The RPD was also of the view that the applicant's behaviour was not consistent with that of a person who has a subjective fear. In fact, she had stayed in the city of Coatzacoalcos for two months despite knowing that her alleged persecutor was aware that she was living there.

[10] Last, the RPD noted that the applicant did not provide any evidence to corroborate her place of residence in Mexico during the period of alleged risk, nor did she specify in her PIF where she was living during that period.

[11] Even if the applicant's story had been considered credible, the presumption that the state could protect the applicant was not rebutted. While recognizing that the situation in Mexico regarding victims of crime is not perfect, the RPD relied on the documentary evidence to determine that there was a recourse available and that it was possible to obtain assistance from the police or

other bodies even where the persecutor is a police officer. Consequently, the RPD determined that it was unreasonable for the applicant to not have filed a complaint or taken any steps after her setback with the local authorities, solely because she felt a subjective reluctance to engage the state.

[12] Last, the RPD concluded that the applicant had not discharged her burden of establishing on a balance of probabilities that there was a serious risk of persecution everywhere in Mexico and that it would be unreasonable to seek refuge in another region of the country.

ISSUES

[13] This application for judicial review raises three issues:

- a. Did the RPD err by finding that the applicant was not credible?
- b. Did the RPD err by concluding that the applicant had not rebutted the presumption of state protection in Mexico?
- c. Did the RPD err by determining that an internal flight alternative was available?

ANALYSIS

[14] The arguments advanced by the principal applicant regarding the credibility of her story all involve questions of fact and, as such, must be reviewed on a standard of reasonableness. There has been general consensus in the jurisprudence that this Court must show considerable deference on such issues, given the RPD's expertise and the fact that it had the advantage of hearing the applicants' testimony and was thus in a better position to assess the credibility of their story and the authenticity and sincerity of their actions.

[15] The issues of whether a state is capable of protecting its citizens and whether it is possible to find an internal flight alternative are mixed questions of law and fact that must also be reviewed on a standard of reasonableness.

[16] Consequently, the Court must focus its analysis on the justification for the decision, its transparency and intelligibility. On the merits, it will also be appropriate to ask whether the RPD decision falls within a range of possible and acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 47).

[17] With respect to the credibility of the applicant's story, I am prepared to admit that some of the RPD's findings appear to result from a microscopic analysis of her statements. The same is true, in particular, of the negative inference the panel drew from the fact that the applicant inverted the name of the alleged victim. Counsel for the respondent acknowledged at the hearing that some of the RPD's findings, taken in isolation, could be challenged. There is no question that the RPD could draw a negative inference from the omissions, inconsistencies and disparities between the applicant's statements at the point of entry, the PIF and her testimony, particularly regarding the length of time that she and her alleged persecutor were neighbours and when he moved away.

[18] The same is true for the implausibilities noted by the RPD. It was entitled to disbelieve the applicants based on the contradictions between their statements about fearing persecution and their actions. Not only could the RPD reasonably consider whether the principal applicant still had reason to fear her persecutor given that his colleagues did not accept her complaints, but it was also open to

the RPD to consider whether it was plausible to stay in the city of Coatzacoalcos for two months, knowing that the alleged persecutor was aware that the principal applicant was in that city. Where the RPD determines that a claimant is not credible because of implausibilities and its decision is supported by the evidence, this Court will not intervene even if it would have reached a different conclusion.

[19] Last, this Court has also repeatedly confirmed that the RPD can draw an adverse inference from the lack of evidence corroborating a claimant's testimony where the panel has concerns about his or her credibility. The applicants had to properly document their alleged fear of persecution. In this case, the applicant did not provide any evidence to corroborate her place of residence during the period of alleged risk and did not even specify in her PIF where she lived during that period. It was therefore not unreasonable for the RPD to expect the applicants to provide credible evidence to corroborate the allegations that were at the heart of their claim and were the very foundation of their fear of persecution, given that the onus was on them to credibly establish their allegations in support of that fear, which they failed to do in this case.

[20] Regarding state protection, the applicant takes the position that the RPD erred by failing to consider whether the protection that organizations like the Federal Attorney General's Office could provide was effective. Relying on the decision of this Court in *Razo v. Minister of Citizenship and Immigration*, 2007 FC 1265, the applicant contends that the RPD erred by not considering the effectiveness of the protection offered by the Federal Attorney General's Office.

[21] It is settled law that each case must be examined in light of the facts and the evidence filed with the RPD. The applicant testified that she had not gone to the Federal Attorney General's Office because it was [TRANSLATION] "a little like being able to speak to God" and that [TRANSLATION] "when someone is in danger, the best thing is to flee, to get out fast . . .". The RPD properly found that this was not sufficient to rebut the presumption of state protection.

[22] Regardless of the deficiencies that may exist in the Mexican criminal justice system, the fact remains that Mexico is a functioning democracy with a state apparatus that provides a measure of protection for its citizens. The fact that protection at the local level cannot be ensured does not exempt the applicant from taking other steps.

[23] The applicant had to not only adduce evidence that the state protection was inadequate, but that evidence also had to be relevant, reliable and convincing so as to satisfy the trier of fact on a balance of probabilities that the state protection was inadequate (*Minister of Citizenship and Immigration v. Carrillo*, 2008 FCA 94). Based on the the applicant's evidence, the RPD was entitled to find that she had not discharged her burden of proof. The applicant did not even take the time to find out whether existing resources could be useful, such as the Federal Attorney General's Office, the Internal Investigations Department or the Office of the Inspector General. The documentary evidence reveals that complaints are treated confidentially and may be filed by telephone or electronically. In these circumstances, it was open to the RPD to find that the applicant had not shown that she had taken all reasonable steps to seek protection in her country. Again, the

question is not whether the Court would have reached the same conclusion but whether the decision by the RPD was reasonable based on the evidence that was before it.

[24] Last, it appears that the applicants did not seriously contemplate the possibility of seeking an internal flight alternative in another part of their country. However, this is an element of the very concept of being a refugee or a person in need of protection. The applicant took the position that it would be unreasonable for her and her children to move to another part of the country mainly because of the risks posed by numerous murders and crime. Again, it was open to the RPD to determine that this was insufficient to support a finding that there was no possibility of an internal flight alternative and that the applicant had not discharged her burden of proving that she could not live safely anywhere in Mexico. Although she subsequently added that her alleged persecutor could go after her anywhere in Mexico, this assertion was based only on speculation. Considering the evidence that was before it as well as the applicant's testimony, the RPD could reasonably determine that an internal flight alternative was available to her and her children.

[25] Given the foregoing reasons, I am of the opinion that this application for judicial review should be dismissed. Since the parties did not submit a question for certification, none will be certified.

ORDER

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

“Yves de Montigny”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3399-08

STYLE OF CAUSE: Ana Maria Isabel Ortiz Sosa et al. v.
Minister of Citizenship and Immigration

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 3, 2009

**REASONS FOR ORDER
AND ORDER BY:** The Honourable Mr. Justice de Montigny

DATED: March 17, 2009

APPEARANCES:

Luciano Mascaro

FOR THE APPLICANT

Evan Liosis

FOR THE RESPONDENT

SOLICITORS OF RECORD:

ARPIN, MASCARO & ASSOCIÉS
10 Notre-Dame Street East
Suite 700
Montréal, Quebec
K2Y 1B7
Fax: (514) 289-9885

FOR THE APPLICANT

John H. Sims
Deputy Attorney General of Canada
Guy Favreau Complex
200 René-Lévesque Blvd. W.
12th floor
Montréal, Quebec H2Z 1X4
Fax: (514) 496-7876

FOR THE RESPONDENT