

Date: 20090423

Docket: IMM-3987-08

Citation: 2009 FC 397

Ottawa, Ontario, April 23, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**SANTA YAZMIN AHUMADA LARA
APRIL DIAZ AHUMADA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated August 15, 2008, that the applicants are not Convention refugees or persons in need of protection.

Issues

1. Did the panel err in finding that the principal applicant was not credible?

2. Did the panel err in finding that there was an internal flight alternative (IFA)?

[2] For the following reasons the application for judicial review will be dismissed.

Factual background

[3] The applicants, Santa Yazmin Ahumada Lara, 43 years of age, and her daughter April Diza Ahumada, 17 years of age, are citizens of Mexico who are claiming refugee status in Canada in accordance with section 96 and paragraph 97(1)(b) of the Act. The principal applicant alleges that she is a victim of conjugal violence and fears returning to her country because she is scared of Francisco Solano Cruz. Santa Yazmin Ahumada Lara is the designated representative of her minor daughter.

[4] The applicant alleges that she entered into a romantic relationship with Francisco Solano Cruz in November 2006. After a few months of dating, the applicant became pregnant in May 2007 and she decided to inform him of the news. He became furious and struck her violently and she apparently lost the baby.

Impugned decision

[5] The panel found that the applicant's story was not credible. However, even if it were, the panel found that there was an internal flight alternative (IFA) in the Federal District (Mexico City) and explained the reasons that support this finding in light of the documentary evidence and the personal situation of the applicant.

[6] The panel noted several implausibilities in the testimony of the principal applicant, notably with respect to her visit to a doctor who was suggested by her former lover as well as the lack of a medical certificate.

[7] The panel also noted several inconsistencies regarding a complaint filed with police.

Analysis

Standard of review

[8] When the issue is credibility and assessment of evidence, the Court will intervene only if the panel based its decision on an erroneous finding of fact made in a perverse or capricious manner or if it delivered its decision without regard for the material before it. (*Aguebor v. Canada (Minister of Citizenship and Immigration)* (1993), 160 N.R. 315 (F.C.A.), 42 A.C.W.S. (3d) 886).

[9] Assessing credibility and weighing the evidence fall within the jurisdiction of the administrative tribunal called upon to assess the allegation of a subjective fear by a claimant (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (F.C.T.D.), 83 A.C.W.S. (3d) 264 at paragraph 14). Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the standard of review that is applicable in comparable circumstances is reasonableness.

[10] The same standard now applies to IFA issues. In the past, this issue was subject to the patent unreasonableness standard (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 44, 136 A.C.W.S. (3d) 912 and *Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, 238 F.T.R. 289). Therefore, the Court will intervene only if the decision does not reflect an acceptable and rational solution (*Dunsmuir*, para. 47). The reasonableness of a decision is concerned with the existence of justification, transparency and intelligibility within the decision-making process.

1. *Did the panel err in finding that the principal applicant was not credible?*

[11] After having analyzed and considered the transcript, the documents in the record as well as the written submissions and the case law submitted, the Court is of the opinion that the panel's finding falls within the range of acceptable solutions based on the evidence.

[12] The panel took into account the Board's Guidelines on the claims of women victims of gender-related persecution. When it assessed the credibility of the principal applicant it took into account the explanations provided by her regarding the implausibilities and inconsistencies raised but it did not consider them to be satisfactory. The Court is of the opinion that the panel is in a better position to assess the credibility of a claimant through the claimant's testimony and/or conduct at the hearing (*Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 266, [2002] 4 F.C. 193; *Ithibu v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 288, 202 F.T.R. 233; *Gonzalez v. Canada (Minister of Citizenship and Immigration)* (1999), 88 A.C.W.S. (3d) 1062, [1999] F.C.J. No. 805 (F.C.T.D.) (QL); *Grinevich v. Canada (Minister of Citizenship and*

Immigration) (1997), 70 A.C.W.S. (3d) 1059, [1997] F.C.J. No. 444 (F.C.T.D.) (QL); *Boye v. Canada (Minister of Citizenship and Immigration)* (1994), 83 F.T.R. 1, 50 A.C.W.S. (3d) 643).

[13] In the case at bar, the finding of the panel is not unreasonable considering the multiple discrepancies in the testimony of the applicant. The applicant did not obtain a medical certificate following the surgical procedure done by the friend of her former lover and she did not bring a copy of the complaint filed with the police authorities with her when she came to Canada. It was reasonable for the panel to find that it was implausible that the applicant did not ask questions with respect to the medical procedures performed by the friend of her former lover and that she not see a doctor after being raped by her former lover.

2. *Did the panel err in finding that there was an internal flight alternative (IFA)?*

[14] The finding of the panel on the internal flight alternative is reasonable with respect to the particular circumstances in this case. The applicant did not provide any evidence showing that the IFA is unreasonable.

[15] In *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (F.C.A.) at paragraph 15, the Court establishes a very high threshold for those who claim refugee status:

. . . 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. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to

say if it establishes that, as a result, a claimant's life or safety would be jeopardized. . . .

[16] The decision of the panel in this proceeding is based on the testimony of the principal applicant as well as the personal situation of the applicants, the documentary evidence and the reasonable possibility that they could have relocated elsewhere in Mexico. The intervention of the Court is not warranted given that there was no reviewable error.

[17] This application does not raise any serious question of general importance.

JUDGMENT

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

"Michel Beaudry"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3987-08

STYLE OF CAUSE: SANTA YAZMIN AHUMADA LARA
APRIL DIAZ AHUMADA
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 9, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** BEAUDRY J.

DATED: April 23, 2009

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