

Federal Court



Cour fédérale

Date: 20090501

Docket: IMM-3438-08

Citation: 2009 FC 441

Ottawa, Ontario, May 1, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**GUSTAVO MENDOZA MARTINEZ
OLGA MARQUEZ VELAZQUEZ
ALBIA ALBINA MENDOZA MARQUEZ
GUSTAVO MOISES MENDOZA MARQUEZ
MONSERRAT MENDOZA MARQUEZ**

Applicants

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*, 2001, c. 27 (Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (panel) dated July 14, 2008, that the applicants are not Convention refugees or persons in need of protection.

Issues

1. Did the panel err in finding that the applicants are not credible?
2. Did the panel err in finding that there was an internal flight alternative for the applicants?

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

[3] The applicants are citizens of Mexico. The principal applicant, Gustavo Mendoza Martinez, was born on December 4, 1971, and his wife, Olga, was born on March 6, 1980. They were married on February 5, 1999, and three children were born of this marriage. The principal applicant claims to be a victim of constant harassment and threats by a group of corrupt persons who are complicit with the authorities and state officials. They would fear for their lives if they returned to their country.

[4] The panel found that there was no basis for allowing the claim because the refugee claimants were not credible regarding their subjective fear. The panel was also of the opinion that there was an internal flight alternative (IFA) in the cities of Campeche or Monterrey.

Standard of review

[5] In questions of credibility and assessment of evidence, it is well established under paragraph 18.1(4)(d) of the *Federal Courts Act*, R.C.S. 1985, c. F-7, that the Court will intervene only if the panel based its decision on an erroneous finding of fact in a perverse or capricious manner or if it delivered its decision without regard for the material before it.

[6] 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).

[7] Following the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the panel's findings as to credibility of a refugee claimant should continue to be subject to deference by the Court and are reviewable on the standard of reasonableness (*Dunsmuir*, above at paragraphs 55, 57, 62 and 64; see also *Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698, 170 A.C.W.S. (3d) 161 at paragraph 11).

[8] Before *Dunsmuir*, the standard of review for IFA cases was patent unreasonableness (*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). Since *Dunsmuir*, a decision is now reviewed according to the new standard of reasonableness. Consequently, the Court will intervene only if the decision does not fall within the range of possible and acceptable solutions which are defensible in respect of the facts and law (*Dunsmuir*, above at paragraph 47). The reasonableness of a decision is concerned with the existence of justification, transparency and intelligibility within the decision-making process..

[9] At the hearing, the applicants' counsel declared that with the consent of her clients she relied on the written submissions already filed.

1. *Did the panel err in finding that the applicants are not credible?*

[10] In this case, the panel noted several problems in the applicant's testimony:

- He contradicted himself by stating at the hearing that he did not recognize the people who assaulted him on July 23, 2007, while he stated in his PIF that he recognized them.
- He failed to indicate in his PIF that he started receiving phone threats in May 2007.
- He failed to mention in his PIF that he was threatened close to 25 times during the few weeks preceding his departure.
- He stated that in Mexico, it was possible to find anyone using the Internet if you have only the person's social insurance number.

[11] The panel is in a better position to assess the explanations provided by the applicants with respect to perceived implausibilities and discrepancies. It is not for the Court to substitute its judgment for the findings of fact made by the panel regarding the credibility of the applicants (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, 146 A.C.W.S. (3d) 325 at paragraph 36; *Mavi v. Canada (Minister of Citizenship and Immigration)*, [2001] A.C.F. No. 1 (F.C.T.D.) (QL)).

[12] In this case, the panel's finding is not unreasonable in light of the multiple discrepancies in the testimony of the principal applicant.

2. *Did the panel err in finding that there was an internal flight alternative for the applicants?*

[13] In *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, the Court ruled as follows 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. 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. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.

[14] The panel's decision is based on the applicants' testimony as well as documentary evidence.

The applicants did not succeed in persuading the panel that the internal flight alternative is unreasonable. Moreover, the applicants did not even file written submissions on this point.

[15] No question for certification was proposed.

JUDGMENT

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

“Michel Beaudry”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3438-08

STYLE OF CAUSE: GUSTAVO MENDOZA MARTINEZ
OLGA MARQUEZ VELAZQUEZ
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MONSERRAT MENDOZA MARQUEZ
v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 29, 2009

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

DATED: May 1, 2009

APPEARANCES:

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