

Federal Court



Cour fédérale

Date: 20090505

Docket: IMM-4201-08

Citation: 2009 FC 451

Ottawa, Ontario, May 5, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

**MARINA HAYDEE BAENA ESPEJEL
MARIA JUANA ESPEJEL JUAREZ**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The principal applicant, Marina Haydee Baena Espejel, is applying under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision made on August 12, 2008 by the Refugee Protection Division of the Immigration and Refugee Board (panel) that she and her mother Maria Juana Espejel Juarez are neither “refugees”

nor “persons in need of protection” within the meaning of sections 96 and 97 of the Act and therefore rejecting their claim for refugee protection.

II Facts

[2] A citizen of Mexico like her mother, the principal applicant alleges a fear of persecution by her former common law spouse, Raul Tapia Bustos, a federal police officer who was employed by the Federal Investigation Agency (Agencia Federal de Investigación – AFI).

[3] Alleging that she was beaten by him on January 15, 2007, the principal applicant claims to have filed a complaint against him on January 16, 2007 with a sex crimes officer, before moving with her mother to another locality. They then moved a second time to another city in April 2007, after believing that the ex-spouse had followed them.

[4] After her ex-spouse tracked her down to her new refuge and beat her again, the principal applicant lodged another complaint on July 2, 2007, this time with an official with the Attorney General’s office in Tlaxicoyan.

[5] Feeling that they could not find a safe haven in Mexico, on August 8, 2007 the applicants left their country to seek refugee protection in Canada.

III. Impugned decision

[6] After a thorough analysis of the evidence, the panel concluded in its decision that the principal applicant's narrative was not credible and that she and her mother had not discharged the burden of demonstrating that they were "persons in need of protection" with a "well-founded fear of persecution" if they returned to Mexico.

IV. Issue

[7] Did the panel err unreasonably in finding that the narrative underlying the principal applicant's claim was not credible?

V. Analysis

Applicable standard of review

[8] The panel's decision is based on the lack of credibility of the principal applicant's narrative. It is well settled that assessing the credibility of witnesses is within the jurisdiction of the panel, which has the expertise to analyze and weigh questions of fact in order to assess the credibility and subjective fear of persecution of a refugee claimant (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration*, [1998] F.C.J. No. 1425 (QL), at paragraph 14).

[9] In an application for judicial review that involves questions of credibility, the applicable standard of review is reasonableness, as defined in *Dunsmuir v. New Brunswick*, 2008 SCC 9. The Court must therefore show great deference because it is up to the panel to assess an applicant's

testimony and determine his credibility. If the panel's findings are reasonable, there is no reason to intervene. However, the panel's decision must be based on the evidence; it must not be made arbitrarily on the basis of erroneous findings of fact or without regard for key evidence before it (*Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, at paragraph 38).

VI. Analysis

Parties' submissions

[10] The applicants submit that the panel erred unreasonably by not ascribing any credibility to them and completely ignored the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* (Guidelines) as well as the documentary evidence corroborating their narrative.

[11] The Minister defends the conclusions drawn by the panel from its analysis of the evidence, based on its expertise, and maintains that it was up to the applicants to provide evidence of the principal facts underlying their claims. What are the merits of these arguments?

Credibility of the principal applicant

[12] Throughout its decision, the panel questions the principal applicant's credibility:

[TRANSLATION]

- a. No document filed in evidence to show that the principal applicant and her former spouse Mr. Bustos lived together or to indicate where they lived;
- b. No document attesting that the ex-spouse worked as an officer with the AFI;

- c. Authenticity of the informations of January 16, 2007 and July 2, 2007 questionable owing to the principal applicant's failure to provide acceptable explanations for the absence on the two documents in question of the official letterhead, address and file number that generally appear on such documents from Mexican authorities.

[13] The panel could, for the reasons indicated in its decision, doubt the authenticity of the documents provided by the principal applicant to corroborate her testimony on the two complaints of conjugal violence against her ex-spouse filed with the Mexican authorities. Yet those complaints are the very basis of the principal applicant's claims regarding the steps she took to seek the protection of the Mexican government.

[14] The applicants argue that the panel failed to consider all of the evidence they submitted to it and that consequently its decision is unreasonable. It should be noted that the panel is free to choose what evidence it deems important or reliable. It is not up to this Court or the applicants to determine what evidence affects or does not affect their credibility and what evidence the panel should or should not have accepted.

[15] Moreover, the panel is deemed to have considered all the evidence that was before it (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (QL)). When a panel finds that a refugee claimant is not credible, as is the case here, it is not required to explain why it did not give probative value to the documents which purport to substantiate the opposite of those it considers not credible or reliable (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 471, at paragraph 26).

[16] It is not enough for the applicant to argue that the panel did not consider all the evidence. Because here, contrary to the applicants' allegations, the panel in its decision does appear to have considered all the evidence before it, except that it did not give it the same corroborative weight as the applicants do.

[17] The applicants claim that by requiring corroboration of their narrative through tangible evidence, the panel subjected them to an overly exacting burden of proof. However, this Court has consistently held that it is up to refugee claimants to provide evidence in support of their claims when the panel doubts their credibility (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 62, at paragraph 28). Consequently, it was up to the applicants to bolster their credibility with objective evidence and sufficient explanations to dispel the doubts reflected in the panel's questions.

[18] The panel was not required to accept at face value all the documents put before it by the applicants to corroborate their narrative. It could question the authenticity of some of these documents and request explanations from the applicants. Requesting explanations to dispel the panel's doubts about their story did not impose an obligation to achieve a result or an excessive burden on the applicants since it was up to them to convince the panel of the merits of their claims.

[19] In attempting to convince the Court that the panel erred in drawing negative inferences from the evidence regarding their credibility, the applicants are seeking to justify the evidence that the panel dismissed as a corroboration of their narrative because it considered it unreliable or unsatisfactory. It should be noted that the applicants had every opportunity to convince the panel, but unfortunately did not succeed in doing so.

[20] In the case at bar, the applicants are merely repeating the same allegations that the panel already assessed, when it is not up to this Court to repeat the panel's exercise and reassess the evidence. This is particularly so because the panel has the expertise and the unique advantage of having heard the applicants on their claims. The panel remains best qualified to determine how credible the applicants' narrative might be.

[21] The Court must only determine whether the panel's decision is warranted and reasonable, or unreasonable as the applicants claim. Decisions regarding an applicant's credibility constitute "the heartland of the discretion of triers of fact" and must be given considerable deference upon judicial review (*Dunsmuir*, above). They cannot be overturned unless they are perverse, capricious or made without regard to the evidence (*Siad v. Canada (Secretary of State) (C.A.)*, [1997] 1 F.C. 608, at paragraph 24). To succeed, the applicants had to show the Court how and why the decision they were challenging was unreasonable, rather than simply making a general statement to that effect and repeating the same allegations already made before the panel.

[22] The panel could draw negative inferences about the credibility of the principal applicant. These inferences were justified by the quality of the evidence placed before the panel, so the Court does not see how or why these inferences and the conclusion reached by the panel are unreasonable.

[23] As for the medical report by Dr. de Margerie that was adduced to corroborate the fact that the principal applicant had been the victim of conjugal violence at the hands of her ex-spouse, it should not be given too much weight. The report limits itself to noting that the principal applicant currently suffers from post-traumatic stress which could be attributed to conjugal violence.

However, this report was written for the purposes of the applicant's claim, and the medical expert

neither heard nor was able to assess the patient's testimony. Its conclusion is based on what the applicant chose to report. However, it was up to the panel to assess the impact of this report on the principal applicant's credibility. It is in no way unreasonable for the panel to consider as non-corroborative a report that was not written at the time of the events described by the applicant and that was based, furthermore, on allegations that were not deemed credible.

[24] The applicants also accuse the panel of having failed to consider Guideline 4 - *Women Refugee Claimants Fearing Gender-Related Persecution* (Guidelines) while assessing the principal applicant's testimony.

[25] The Court has reviewed the transcript and does not share this view. On the contrary, the panel appears to have shown a great deal of empathy towards the applicants, both in its efforts to reassure them and in its questions. In its decision, the panel does not merely recite the Guidelines. The panel clearly puts the Guidelines into practice in paragraph 18 of its decision when it accepts as reasonable the principal applicant's explanation as to why she did not reveal to the hospital authorities in her country the real cause of the injuries for which she was seeking treatment.

[26] In the Court's opinion, based on the evidence, the panel was justified in finding that the principal applicant and her mother lacked credibility and in deciding that they had not shown that they qualified as *refugees* and *persons in need of protection* within the meaning of the Act, and in rejecting their claim for refugee protection.

[27] Accordingly, the Court finds that the decision is not unreasonable and therefore dismisses the application for review. Since no serious question of general importance was proposed or should be proposed, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISSES the application for judicial review.

"Maurice E. Lagacé"

Deputy Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4201-08

STYLE OF CAUSE: MARINA HAYDEE BAENA ESPEJEL ET AL.
v. M.C.I.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 7, 2009

REASONS FOR JUDGMENT: LAGACÉ J.S.

DATED: May 5, 2009

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