Date: 20090507

Docket: IMM-4092-08

Citation: 2009 FC 468

Ottawa, Ontario, May 7, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

ALBERTO MORALES ESQUIVEL
CLAUDIA VALLE CARRASCO
RAQUEL MORALES VALLE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated August 13, 2008,wherein the applicants were found not to be "Convention refugees" nor "persons in need of protection" pursuant to sections 96 and 97 of IRPA, on the main basis that the applicants had an internal flight alternative (IFA) in Mexico.

I. Facts

[2] Alberto Morales Esquivel (the principal applicant), his common-law spouse Claudia Valle Carrasco, and their daughter Raquel Morales Valle, all citizens of Mexico, claimed refugee protection alleging a well-founded fear of persecution by reason of their membership in a particular social group, and that they are personally subject to a risk to their life or to a risk of cruel and unusual treatment or punishment.

[3] The principal applicant states that on May 1, 2007, his brother, Guadalupe Morales Esquivel, was murdered by members of a gang involved in drug trafficking, abductions, extortion and murders. He also alleges that the Mexican authorities refused to investigate the matter, despite requests made by himself and by his brother's wife.

[4] He contends that on May 19, 2007, six members of this gang saw him and told him that they were soon going to shoot him because he had asked questions about the death of his brother. He also alleges that, from that day on, he no longer thought that he and his family were safe. He claims that he asked his wife not to come home on weekends anymore and to stay with his or her parents instead, and that he would work but remain in hiding.

[5] On June 11, 2007, he was assaulted by two individuals who stole his bag, his wallet, which contained some money, and his driver's license, as well as a telephone bill. He also claims that the

following day he received a telephone call and was told that he was being followed and that he would have to pay if he did not want his family to be hurt.

[6] He claims that he lodged a complaint with the State Public Prosecutor's Office on June 13, 2007, but that the copy of the complaint received that day did not contain his entire statement. He asked why and was told it was not possible for him to be given the entire content of this complaint.

[7] Two days later, the two individuals who had assaulted him on June 11, 2007, stopped him and told him that they knew that he lodged a complaint. The principal applicant also alleges that he then wanted to add to his complaint of June 13, 2007, that he knew that these two individuals were members of the gang, but his request was refused and he was told that the investigation was in progress.

[8] On June 17 or 18, 2007, his wife was stopped by members of the gang, who told her that her husband and her family were going to die. The principal applicant claims that on the following day, he and his wife returned to the State Public Prosecutor's Office to add this incident to his original complaint, but this request was again refused for the same reasons, and he was told once again that the investigation was in progress.

[9] Finally, on August 14, 2007, the applicants left Mexico and claimed refugee protection in Canada on the same day.

[10] The applicants stated that before deciding to leave Mexico to seek refuge in Canada they had considered relocating to another state in Mexico, but that having been advised otherwise by their lawyer, they decided not to do so.

II. Impugned Decision

[11] After analyzing all of the evidence, the Board concluded that it was not objectively unreasonable or unduly harsh to expect the claimants to relocate to another part of their country prior to seeking refugee protection abroad, that they had an internal flight alternative and that, as a consequence, they were not Convention refugees under section 96, nor persons in need of protection under subsection 97(1) of the IRPA.

III. Issue

[12] Did the Board commit a reviewable error with respect to the availability of an Internal Flight Alternative?

IV. Analysis

Standard of Review

[13] It is stated law that the question at issue of an IFA is factual in nature and is clearly within the expertise and purview of the Tribunal, and therefore deference is owed *(Dunsmuir v. New*

Brunswick, 2008 SCC 9**)**. This Court should not intervene to quash the Board's decision, unless the applicants demonstrate that its conclusion was unreasonable.

Internal Flight Alternative (IFA)

[14] The applicants had to demonstrate on a balance of probabilities that they had no IFA in Mexico, their country of origin, in order to be granted protection (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)(C.A.)*, (1993) 163 N.R. 232 (F.C.A.). However, the Board found that the applicants did not demonstrate that they could not live elsewhere in Mexico, such as Monterrey, Puebla or Merida.

[15] Indeed, the applicants did explain that their lawyer advised them to leave the country because of "the gangs' code of honour", but the Board dismissed this allegation as the applicants could not corroborate their allegations. In any event, and even admitting the applicants did receive this advice, they still had the obligation to demonstrate on a balance of probabilities that they had no IFA in Mexico, their country of origin, in order to be granted protection in Canada.

[16] The burden was on the applicants to prove all the elements of their claim (Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228; *Ramanathan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 862; *Akhtar v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1319; *Taha v. Caanda (Minister of Citizenship and Immigration)*, 2004 FC 1675).

[17] The Board also noted that the applicants were unable to identify their aggressors; therefore, it was not unreasonable for the Board to find that the applicants had failed to establish who was targeting them and that they were at risk throughout their country. Indeed, if the applicants did not know the identity of their aggressors' gang, how could they claim that an unknown gang would target them throughout the whole country?

[18] Moreover, and for the same reason, the applicants could not adduce evidence that the gang in question was powerful and had contact with the authorities. It was therefore not unreasonable for the Board to find that it would not be unduly harsh for the applicants to relocate elsewhere in another part of their country.

[19] It is well established that the existence of a valid IFA is determinative of a refugee claim. Therefore, the Court need not consider the other issues raised by the applicants (*Shimokawa v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 445 at paragraph 17; *Sran v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 145 at paragraph 11).

[20] The Board was satisfied here, on a balance of probabilities, that there was no serious possibility that the claimants would be persecuted in the proposed IFA, and that it was not unreasonable for the claimants to seek refuge there. In determining that the applicants had an available IFA, the Board met the test set out in *Thirunavukkarasu*, above, and *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

[21] The only excuse offered by the applicants for not seeking an IFA was that they acted on the advice of their lawyer and decided to seek refuge abroad instead. But considering the applicant's situation, this has not proved to be the best advice for them to receive. They will have to bear now the consequence of the advice they decided to follow.

[22] The applicant's only criticism of the Board's judgment on the IFA is that it did not examine the evidence as to whether or not the serious efforts to fight violence were paying off in Mexico. Since the applicants made no effort to seek an IFA, we will never know if an effort on their part in that direction, instead of seeking refuge abroad, would have succeeded or not. Moreover, the Board is presumed to have considered all evidence, and is not required to refer to all the evidence (*Florea v. Canada (Minister of Employment and Immigration)*(F.C.A.), [1993] F.C.J. No. 598.

[23] There being no evidence that the applicants would be at risk in a different city in Mexico, the Court sees no reason for intervention on the IFA issue.

Child's best interest

[24] The applicants further claim that the Board failed to consider the "best interest of the child", Raquel Morales Valle, their daughter.

[25] However, it is clear from the transcript that the Board took into consideration the "best interest" of the child, as it followed the *Guideline 3 – Child Refugee Claimants* (Guideline 3), and

made sure that she had a representative for the claim purposes. The child was present at the hearing and on that date was only four months and three weeks short of being 18 years old.

[26] The documents indicate that counsel for the child chose not to make her testify. Moreover, the minor applicant based her claim upon her parents' claim. She can hardly complain now that her claim was heard jointly with her parents' claim. Inasmuch as the daughter's claim depended completely on her father's claim for the same protection, the issue is whether the latter's claim was fairly heard; since the applicants did not contend that it was not, there is no issue as to whether the child's claim was adequately heard or not. Therefore, the reproach made by the applicants that the Board did not apply the Guideline 3 is inconsequential in this instance and there is no reason for the Court to intervene on that basis.

V. Conclusion

[27] The documents filed by the applicants in support of their application for judicial review do not disclose any serious or sufficient ground which could allow this Court to intervene in order to set aside the Board's decision.

[28] The Court agrees with the parties that there is no question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS, THIS COURT dismisses the application.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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