Federal Court  Cour fédérale

Date: 20090914

Docket: IMM-3959-08

Citation: 2009 FC 903

Ottawa, Ontario, September 14, 2009

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

MARIA ERCILIA ARAMBULO RUIZ
MAGALI ARAMBULO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division (the Board), dated August 29, 2008, which found that the applicants, citizens of Paraguay, are neither "Convention refugees" nor "persons in need of protection".

[2] Maria Ercilia Arambulo Ruiz and her minor daughter, Magali Arambulo, claimed refugee status on March 21, 2006, two weeks after their arrival in Canada. The Board found that the principal applicant was not credible. Furthermore, the Board found that the applicant failed to rebut the presumption of state protection in her country.

ISSUES

[3] The issues are as follows:

a. Was the Board's negative credibility finding concerning the principal applicant unreasonable?

b. Was the Board's negative finding concerning the presumption of state protection unreasonable?

APPLICABLE STANDARD OF REVIEW

[4] Pursuant to *Dunsmuir v. New Brunswick*, 2008 SCC 9, the decisions of administrative tribunals on questions of fact are reviewable according to the standard of reasonableness. Credibility is a question of fact.

FACTS ALLEGED BY APPLICANTS

[5] The principal applicant alleges that she was abused by her spouse, Luis Reinaldo Grenier, when they lived together from 1995 to 1998. He became increasingly violent with her. Her daughter, Magali, was born in February 1998, but Mr. Greiner did not recognize the girl as his daughter.

[6] The applicant submits that she did not report her spouse to the police. She testified that it would have been too humiliating and that she knew that it would have done no good, since the police do not help women in her situation. That said, since 1996, she has turned to the social group of the Holy Family of Nazareth Parish for spiritual, psychological and personal help. She told them

that she was having problems with her spouse, but she never informed them of the violence she was subjected to.

[7] The applicant submits that the year her daughter was born, she learned that a search warrant had been issued for her spouse in the city of Foz do Iguaçu, Brazil. Instead of reporting him to the police, she warned him that she was aware of his situation with regard to the Brazilian police and that she would not file any complaints against him if he disappeared from her and her daughter's lives. The result of this agreement was that for nearly eight years, she lived without any problems.

[8] The applicant alleges that she saw her former spouse again for the first time in January 2006. She submits that he spoke, at the applicant's home, with her daughter's baby-sitter, who gave him the name of the school the child attended. Then, on January 20, he contacted the school principal to offer to pay the tuition fees and obtain permission to take his daughter after school. The principal immediately contacted the principal applicant for information on the matter. The applicant went to the school that same day to formally forbid the school to accept her former spouse's offer or give him access to her daughter.

[9] After that, the applicant alleges that her former spouse called her and threatened to take her daughter away from her. On January 28, 2006, she made the decision not to send her daughter to school and to leave for Canada. A friend, resident of the city Foz do Iguaçu in Brazil, helped her: she took in the little girl while the applicant made the necessary arrangements for the journey. The applicant returned to Paraguay several times, but submits that it was only to put her affairs in order at home and at work. Apart from that, she applied for visas in Argentina, and the applicants left Brazil on March 4, 2006.

IMPUGNED DECISION

[10] The Board is of the opinion that the applicants are neither “Convention refugees” nor “persons in need of protection” because the principal applicant was not credible. The Board concluded that it did not believe the applicant’s story or problems, and its view was that the principal applicant made up a story in order to obtain status in Canada.

[11] According to the Board, the incident that allegedly marked the principal applicant occurred when her former spouse appeared at his daughter’s school to offer to pay the tuition fees and ask for permission to take her from school. The applicant made a mistake about the name of the school, and the Board was not satisfied with her explanation that she had merely made a mistake and wished to forget the incident. What is more, even without the mistake regarding the name of the school, the date of the incident, January 2006, is not consistent with the information provided on the minor girl’s Personal Information Form (PIF), where it is written that she finished school in November 2005.

[12] Furthermore, the Board stated at paragraph 17 of its decision that all of the conduct of the principal applicant, who went to democratic countries (Argentina, Brazil) without requesting protection, as well as all of the trips she made back to her country although she feared being killed by her former spouse, are inconsistent with the conduct of a person who truly fears for her life, as the principal applicant alleged.

[13] The Board finds that the principal applicant exaggerates her testimony in stating that her former spouse could easily find her in Paraguay because, generally speaking, no one disappears in

that country. The Board states that there is no evidence that the former spouse is a powerful man who would have access to specific information.

[14] The Board also criticizes the principal applicant for several other minor points:

- having waited more than two weeks before applying for protection in Canada;
- having added the letter "H" at the end of the "NAZARETH" religious group that helped her in Paraguay, whereas in the Spanish document received from that group, the word is written without an "H";
- the fact that the principal applicant alleges that her former spouse never wished to recognize his daughter Magali, but two of the photographs she filed in a bundle show the former spouse with a baby in very tender and affectionate poses, and that when the Board questioned her about it, the applicant merely replied that he had been tender towards her as well;
- having filed an amendment on the very day of the hearing which stated that her father had been murdered by thieves in Paraguay, and for having failed to file the original newspaper article describing the incident and her father's death certificate;
- having filed the same document twice: the first time unsigned and unstamped, and the second time with stamps and signatures.

[15] The Board concluded that even if it had believed the applicant's story, she failed to rebut the presumption of her state's protection.

ANALYSIS

a. Was the Board's negative credibility finding concerning the principal applicant unreasonable?

[16] The applicants submit that a claimant's testimony should not be easily or lightly set aside and that the Board had a minimal duty to use its experience in cases involving claimants who allege having been victims of spousal violence to say, at the least, whether the events experienced by the principal applicant could have affected her testimony. Additionally, when it is a matter of assessing the credibility of a testimony containing implausibilities, it is necessary to refer to the relevant evidence and the explanations provided by the applicant which could rebut a finding of implausibility.

[17] On the basis of *Kong v. Canada (Minister of Employment and Immigration)* (1994), 23 Imm L.R. (2d) 179, the applicants submit that the negative credibility findings must be reasonable and cannot be based solely on conjectures or hypotheses. Furthermore, they submit that this Court has previously stated that it will not exercise unwarranted deference with regard to a board's assessment of plausibility, since that assessment is based on deductions and may be contested (*Giron v. Canada* (1992), 143 N.R. 238 (F.C.A.)).

[18] The respondent submits that the Board provided clear and unequivocal reasons regarding the applicants' credibility and the rejection of their claim for refugee protection. As well, it was open to the Board to find that the testimony and evidence contained numerous contradictions and inconsistencies because that finding was clearly backed up by the evidence before the Board.

[19] The respondent also submits that neither the principal applicant nor her counsel demonstrated to the Board, prior to the hearing, any inability to testify, which weakens her

argument that her claim for refugee protection was affected because she was traumatized by the incidents she experienced involving her former spouse.

[20] It is of the very essence of the role of the tribunal that hears witnesses to rule on their credibility. Witnesses must be assessed by a person who is ready to believe that what they say is the truth and to maintain that belief until there is a clear and important reason not to do so (*Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302, *Bula v. Canada (Secretary of State)*, [1996] F.C.J. No. 876 (QL)). However, the presumption that the claimant's sworn testimony is the truth is questionable and, in appropriate circumstances, is in fact rebuttable if the documentary evidence fails to mention what it is normally expected to mention (*Adu v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 114 (F.C.A.) (QL)).

[21] One point that was not clarified at the hearing before the Board or in the documentation supporting this claim is the length of the school year in South America, specifically in Paraguay. In North America, the school year for elementary schools normally begins in September and ends in June. But from reading the documentary evidence, it seems that the school year in South America is different. In her PIF, the minor girl, Magali, wrote that she had finished school in November 2005. The principal applicant stated in her PIF that she had to make an urgent decision in response to the situation concerning her former spouse and the school principal because classes at the school would begin again on February 10 (2006). An attentive reading of her PIF, the hearing transcript and her affidavit in support of this claim shows that the applicant never said that her former spouse wished to take his daughter from the school on the same day that he spoke with the school principal. Neither does the applicant say that she took Magali out of school, only that she went to speak with

the principal to ensure that she would not accept any payment from the applicant's former spouse. Her fear was, therefore, prospective.

[22] Given these facts, the dates in the applicant's story pertaining to the meeting between her former spouse and the school principal are not necessarily inconsistent.

b. Was the Board's negative finding concerning the presumption of state protection unreasonable?

[23] The Board stated at paragraph 26 of its decision that even if it had believed the applicant's narrative, the applicant did not rebut the presumption of state protection in her country. The Board found that although the situation in Paraguay is not perfect with respect to women who are victims of spousal violence, "there is legislation against this form of violence; the police and various groups receive . . . training . . . to . . . assist women in informing on their attackers; and some success can be achieved".

[24] The principal applicant submits that the documentary and oral evidence shows that adequate protection for victims of spousal violence is nonexistent in Paraguay and that the arrangements made by the state have not helped others in situations similar to that of the applicants. Consequently, the applicants have rebutted the presumption of state protection.

[25] The respondent submits that a refugee claimant does not rebut the presumption of the existence of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state in providing protection (*Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1126). The applicants had to provide evidence of having done all that was required in the circumstances to acquire the protection of their own country and evidently failed to do so.

[26] The respondent suggests that it may be useful to ask whether the applicants' situation should be considered as a case of criminality in the broad sense rather than a case of spousal violence because the principal applicant has not had a spousal relationship with her former spouse since 1998.

[27] To rebut the presumption of state protection, the applicant must first introduce evidence of inadequate state protection and must then convince the board that the evidence adduced establishes that the state protection is insufficient (*Carillo v. Canada (Minister of Citizenship and Immigration),* 2008 FCA 94). In *Hinzman v. Canada (Minister of Citizenship and Immigration),* 2007 FCA 171 at paragraph 57, the Court explains that ". . . a claimant coming from a democratic country will have a heavy burden when attempting to show that he should not have been required to exhaust all of the recourses available to him domestically before claiming refugee status".

[28] The applicant herself testified that she had never filed a complaint with the authorities:

> [TRANSLATION]
> Q. Why did you not trust in the authorities? Had you already gone to complain?
>
> R. I never complained to the authorities because every day, I see that nothing happens when a report is made. . .

[29] Paraguay is a democracy, and the Board observed at the hearing that the *Country of Origin Research*, which discusses the protection available to victims of spousal violence in Paraguay, indicates that there are laws in force and a certain number of organizations that provide aid and advice to victims of spousal violence, in addition to non-government organizations which offer the same services. Furthermore, the Board mentioned that the *Country Reports on Human Rights*

Practices 2007 states that during the year in question, these organizations received over 14,000 complaints of domestic violence.

[30] It is clear from the documentary evidence that domestic violence is fairly common in Paraguay, but the documentary evidence also shows that many victims file complaints and make use of the services available. Consequently, it was open to the Board to find that the principal applicant had not rebutted the presumption of her state's protection.

[31] For all of these reasons, I conclude that the Board's negative finding concerning the presumption of state protection was reasonable, intervention by this Court is not warranted and the application for judicial review is dismissed.

[32] There was no question proposed for certification, and none is involved in this matter.

JUDGMENT

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

"Louis S. Tannenbaum"
Deputy Judge

Certified true translation
Sarah Burns

AUTHORITIES CONSULTED BY THE COURT

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2. *Dimitru v. Canada (M.E.I.)* (1994), 27 Imm. L.R. (2d) 62 (T.D.)
3. *Kong v. Canada (M.E.I.)* (1994), 23 Imm. L.R. (2d) 179 (T.D.)
4. *Rasaratnam c. Canada (M.E.I.)*, [1992] 1 F.C. 706 (C.A.)
5. *Afolabi v. Canada (M.C.I.)*, 2006 FC 468
6. *Zambo v. Canada (M.C.I.)*, 2002 FCT 414
7. *Parnian v. Canada (M.C.I.)*, [1995] F.C.J. No. 777 (QL) (T.D.)
8. *Chahal v. Canada (M.C.I.)*, [2001] F.C.J. No. 1540 (QL) (T.D.)
9. *Umana* v. *Canada (M.C.I.)*, 2003 FCT 393
10. *Sanchez v. Canada (M.C.I.)*, 2004 FC 391
11. *Muthuthevar v. Canada (M.C.I.)*, [1996] F.C.J. No. 207 (QL) (T.D.)
12. *Kabir* v. *Canada (M.C.I.)*, [2002] F.C.J. No. 1198 (QL) (T.D.)
13. *Baines v. Canada (M.C.I.)*, 2002 FCT 603
14. *Carillo* v. *Canada (M.C.I.)*, 2008 FCA 94
15. *Ferguson v. Canada (M.C.I.)*, 2002 FCT 1212
16. *Kaur v. Canada (M.C.I.)*, 2006 FC 1066
17. *Kim v. Canada (M.C.I.)*, 2005 FC 1126
18. *Toora v. Canada (M.C.I.)*, 2006 FC 828
19. *Boye v. Canada (M.E.I.)*, [1994] F.C.J. No. 1329 (QL) (T.D.)
20. *Rahman v. Canada* (M.E.I.), A-1224-91, April 22, 1994 (F.C.A.)
21. *Parmar v. Canada (M.C.I.)*, [1998] F.C.J. No. 50 (QL) (T.D.)
22. *Pan v. Canada (M.E.I.)*, [1994] F.C.J. No. 1116 (QL) (F.C.A.)

23. *Kwizera v. Canada (Citizenship and Immigration)*, 2008 FC 1261 (CanLII)

24. *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689; 103 D.L.R. (4th) 1; 20 Imm. L.R. (2d) 85.

25. *Sanxhaku v. Canada (M.E.I.)* (FCT, IMM-3086-99)

26. *Riadinskaia v. Canada (M.E.I.)*, [2001] F.C.J. No. 30 (QL) (T.D.)

27. *Huerta v. Canada (M.E.I.)*, [1993] F.C.J. No. 271 (QL) (F.C.A.)

28. *llie v. Canada (M.C.I.)*, [1994] F.C.J. No. 1758 (QL) (T.D.)

29. *Chan v. Canada (M.E.I.)*, [1995] 3 S.C.R. 593, 659

30. *Rajudeen v. Canada (M.E.I.)*, [1984] F.C.J. No. 601 (QL) (F.C.A.)

31. *Adjei v. Canada* (*M.E.I.)*, [1989] 2 F.C. 680 (F.C.A.)

32. *Cheema v. Canada (M.C.I.)*, [2002] F.C.J. No. 1672 (QL) (T.D.)

33. *Monteiro v. Canada (M.C.I.)*, [2002] F.C.J. No. 1720 (QL) (T.D.)

34. *Hazara v. Canada (M.C.I.)*, [2002] F.C.J. No. 1728 (QL) (T.D.)

35. *Dunsmuir v. New Brunswick*, 2008 SCC 9

36. *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302

37. *Bula v. Canada (Secretary of State)*, [1996] F.C.J. No. 876 (QL)

38. *Adu v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 114 (F.C.A.) (QL)

39. *Najimiding v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 515

40. *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-3959-08**
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