Federal Court		Cour fédérale

Date: 20090717

Docket: IMM-410-09

Citation: 2009 FC 730

Vancouver, British Columbia, July 17, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

SILVIA BECERRIL GUTIERREZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Becerril Gutierrez has been a victim of domestic violence ever since she married in 1976. She finally fled Mexico in November 2006 and two-and-a-half months later sought refugee status here.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board found that she was not a refugee within the meaning of the *United Nations Convention* or a person otherwise in need of Canada's protection. The panel did not believe she had a subjective fear of persecution in

Mexico and that in any event adequate state protection was available. Her application for leave and judicial review of that decision was dismissed by this Court.

[3] The next step was a pre-removal risk assessment (PRRA) under sections 112 and following of the *Immigration and Refugee Protection Act*. An applicant may only present new evidence that arose after her claim was heard or was not reasonably available or that she could not reasonably have been expected in the circumstances to have presented. Although the PRRA Officer accepted new evidence, the application was dismissed on the basis that adequate state protection is available to her in Mexico. This is the judicial review of that decision.

Ms. Becerril Gutierrez' Case

[4] There are two prime submissions advanced. The first is that the reasons given are inadequate. She was entitled to an articulate set of reasons which would allow her to understand why her claim was rejected. The second is that even if the reasons are comprehensible, they do not fall within the range of reasonable outcomes considered in a judicial review (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, 304 D.L.R. (4^{th}) 1).

[5] It must be borne in mind that the PRRA is not a fresh refugee hearing. The record is limited to what is new, as defined above. The burden rests with the Applicant. There is a presumption that the state is capable of protecting an applicant and it is not incumbent upon the PRRA Officer to

establish the existence of state protection (*Duran Mejia v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 354, at para. 48). The reasons must be read and considered as a whole.

[6] There is one statement within the reasons which, if taken out of context, is somewhat jarring. In speaking of Ms. Becerril Gutierrez's unsuccessful claim for refugee status, the PRRA Officer said:

> The RPD stated, "The applicant has not demonstrated either that state protection would not have been reasonably forthcoming, or that it would have been objectively unreasonable for any other reason for her to approach the state authorities in Mexico." I am not bound by the RPD's decision, and have decided this application independently of its findings.

[7] Read alone, one might think the PRRA Officer intended to re-assess country conditions as they were at the time of the RPD hearing. That is not the purpose of a PRRA. However, in context that statement favours the Applicant. The PRRA Officer accepted that she was suffering from post-traumatic stress disorder (PTSD). Although a psychologist's report had been before the RPD, no finding had been specifically made, but the implication is that Ms. Becerril Gutierrez was found not to have PTSD. This relates to the fact that in her original Personal Information Form (PIF) she only mentioned seeking state protection once, in 1980. She later amended the PIF to say that she had also unsuccessfully sought state protection in 1986 and 2004. Since the finding that she did suffer from PTSD was "new", the PRRA Officer was apparently prepared to accept that she sought state protection on three occasions and not just one. In other words, there was a reasonable explanation why she had originally failed to mention the second and third visits to the police. Nevertheless, the PRRA Officer also came to the conclusion that adequate state protection was available.

[8] The obligation to give reasons devolves from procedural fairness. The reasons before me are not simply a summary of the evidence followed by conclusions. There is a thread of reasoning with respect to state protection which can easily be followed (*R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, *North v. West Region Child and Family Services Inc.* 2007 FCA 96, 362 N.R. 83).

[9] Turning now to the second issue, that of state protection, in my opinion the findings of the PRRA Officer were not unreasonable. They fell within an acceptable range of outcomes (*Dunsmuir* and *Khosa* above).

[10] The officer is accused of a "good news" analysis. I do not see how that submission is justified. Reference was made to very recent documentation on country conditions, including documentation submitted by the Applicant.

[11] It is suggested that the RPD's decision was forward-looking in that new laws respecting domestic violence had come into force in Mexico in February 2007, but that the new evidence before the PRRA Officer reveals that they have not been effective because old societal attitudes that domestic violence is a private matter remain strongly entrenched. The hearing before the RPD was in November 2007 and the decision was rendered in February 2008. However, there is no specific reference to the February 2007 law, and I cannot read into that decision that it played a factor in the rejection of Ms. Becerril Gutierrez's claim.

[12] Although domestic violence was and continues to be a grave matter in Mexico, Mexico is a democracy and clear and convincing evidence was required to rebut the presumption of the availability of state protection. This point was re-emphasized by the Federal Court of Appeal in *Florez Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636, a case which dealt with domestic abuse in Mexico before the coming into force of the new law.

[13] Apart from there being no basis for the allegation that the analysis by the PRRA Officer of country conditions was not even-handed, more particularly, the Amnesty International Report submitted by the Applicant was specifically considered. Counsel notes that this report of August 2008 states "Amnesty International's research has shown that although there have been improvements in the legal framework in most states, these are often not adequately enforced and as a result do not translate into effective protection for women."

[14] However, on the page before that statement it was acknowledged that Mexican authorities have been active in raising public awareness about violence against women and on the following page we find:

> Amnesty International welcomes the 2007 General Law and accompanying legislation as a positive advance. It is now vital that this is backed up with political commitment, resources, training and accountability to ensure gender perspectives are effectively integrated into the policies and activities of key institutions.

[15] Ms. Becerril Gutierrez's submissions are result-oriented but the reasons of the PRRA Officer are not. While the situation may or may not have improved in Mexico since the RPD's decision, it certainly has not deteriorated. That is what the PRRA had to take into account.

[16] It is also submitted that the decision was unreasonable for not giving due weight to a letter from Ms. Becerril Gutierrez's daughter, which states that her husband is still looking for her, with mayhem in his heart, and that he has the ways and means of finding her anywhere in Mexico. As I read it, no particular weight was given to the supporting evidence with respect to the friends in high places he was supposed to have. In any event, the issue before the PRRA Officer was not whether or not there would be pursuit by the husband. In actual fact the presumption is that there may well be malevolent intentions, but that the state is in a position to protect her.

[17] It may be hard for Ms. Becerril Gutierrez to return to Mexico. That is an issue to be considered in a humanitarian and compassionate application, not a PRRA.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

There is no question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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