Date: 20090723

Docket: IMM-4443-08

Citation: 2009 FC 750

Montréal, Quebec, July 23, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

ADAN DARIO RESENDIZ BELLO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated September 14, 2008, wherein the Board determined that the applicant was not a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act.

Issues

[2] The only issue to be determined in this case is whether the Board committed a reviewable error in its assessment of the applicant's credibility.

[3] For the reasons that follow, the judicial review application shall be dismissed.

[4] The applicant is a 31-year-old citizen of Mexico who claims to have a well-founded fear of persecution at the hands of commander Rafael Villalobos, Miguel Angel Cervantes Islas and Hector Javier Cervantes, who are all allegedly involved in drug trafficking.

[5] The applicant practises martial arts and he was teaching young offenders in order to break their drug dependency and their criminal habits.

[6] The applicant learned that some of his students were involved with drug trafficking gangs under the orders of commander Rafael Villalobos with Miguel Angel and Javier Cervantes. The applicant also noticed that some of his students were skipping his classes and some showed signs of physical violence.

[7] Some of the students who were rehabilitated did not want to work for Villalobos any longer, and the applicant was told that the area's residents had alerted authorities about the situation in the

past, but to no avail. The applicant informed his superior of what his students were doing and his supervisor recommended that he get rid of the undesirable elements.

[8] The applicant filed a complaint against Rafael Villalobos and Hector Javier Cervantes on May 27, 2006. As a consequence, on July 4, 2006, the applicant was kidnapped, beaten and threatened with death. The applicant then filed a complaint and fearing for his life, on July 6, 2006, he left Querétaro to hide 500 kilometres away in Poza Rica, state of Veracruz, where he remained in hiding for 11 weeks. The applicant alleged that the federal district police officers were probably able to gather information about him because he had once lived with his grandmother in Poza Rica.

[9] The applicant left Mexico for Canada on October 16, 2006 and he claimed refugee status on October 23, 2006. The applicant's case was heard on January 15, 2008 and May 6, 2008.

Impugned Decision

[10] The Board concluded that the applicant was not credible and that there was no credible basis for his claim.

[11] The applicant stated that one of his students worked for someone known as commander Villalobos. When the Board asked the applicant to explain what Villalobos did, he stated that one of his students told him that Villalobos is a commander. The applicant did not know any details himself and the Board noted that he was unable to provide any evidence that he actually exists.

[12] The applicant filed a newspaper article from the *Diario de Querétaro* dated November 7, 2006, which was before the applicant signed his Personal Information Form (PIF) on December 27, 2006. The article reports the arrest of Miguel Angel Cervantes Islas and Hector Javier Cervantes, the latter being a member of the Attorney General's Federal District Judicial Police.

[13] Through an information request made to the Specific Information Research Unit in Ottawa, the Board learned that the article was indeed published by the newspaper on November 7, 2006. The Board expressed some doubt that the applicant may have used the incident reported in the article in his story but the applicant rejected this theory and swore that a friend of his father's sent him the article via the Internet in September 2007.

[14] The applicant's complaint filed on July 4, 2006, in the City of Querétaro, relates the incidents that he experienced and provides the names of the two people who are mentioned in the article and in his PIF. Since the complaint was filed before the article was published and since the applicant's PIF contains this information but dating it to December 2006, even though he stated that he did not receive the article until September 2007, this sequence of events should lead the Board to believe the applicant's story.

[15] When requesting information about the newspaper article, the Board made a second request for information to verify the complaint made against the police. The Attorney General of the state of Querétaro was contacted to verify that information, namely the name of the public prosecutor, the

crime committed and the name of the plaintiff indicated in the complaint. However, the information submitted by the applicant to the Board did not correspond to those in the system at the Attorney General's office.

[16] When the applicant was called to appear again on May 6**,** 2008, he was shown the request for information. The applicant stated that he had signed the complaint and had asked his mother to go to the *Procudaria General* to obtain a copy to be sent to him and that the copy before the Board was the copy he had received. The Board told the applicant that his mother had sent him a false document and since the complaint to the police is consistent with portions of the newspaper article as well as the applicant's story, on the basis of this false document, the Board attributed no credibility to the applicant and concluded that the applicant's story was not credible. The Board therefore found that subsection 107(2) of the Act applies and the applicant's claim for refugee protection was dismissed.

Relevant Legislation

[17] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27:

107. (2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.	**107.** (2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

Analysis

Standard of Review

[18] Before the decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the appropriate standard of review in similar circumstances was patent unreasonableness. It is now reasonableness.

Analysis

[19] The issue in the case at bar is not whether the Court would have come to a different conclusion. The Court must determine whether the Board's decision is based on the evidence before it. The Court cannot intervene unless a reviewable error has been demonstrated.

[20] The applicant's argument that he was not prepared to be confronted with exhibit A-3 (Memorandum following the Acquisition of Information Form, page 32, Tribunal Record) cannot be accepted because this document was sent to his consultant. The latter confirmed that he received the document. The applicant was confronted with the document at a subsequent hearing without asking for an adjournment through his representative.

[21] Also, the alleged clerical errors in exhibit A-3 are not determinative. The Court's intervention is not warranted**.**

[22] The applicant was unable to provide information to the Board regarding his persecutors or his situation beyond the extent of the newspaper article he submitted and the information obtained from his students. The applicant lacks knowledge of the basic information on which his claim is based and he was also unable to provide documents supporting his claim. It was thus not unreasonable for the Board to doubt the applicant's credibility.

[23] In this case, the Court is of the view that the Board's decision contains all the elements of a reasonable decision.

[24] The parties did not submit any question for certification and none arises.

JUDGMENT

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

"Michel Beaudry"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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