Date: 20091116

Docket: IMM-3099-09

Citation: 2009 FC 1164

Vancouver, British Columbia, November 16, 2009

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ADRIANNA AZNAR ALVAREZ
JUAN MANUEL ROMO AVILA
JUAN ANDRES ROMO AZNAR
MARIA CRISTINA ROMO AZNAR
JOSE ERIC CALVA CABRERA
MARIA FERNANDA AZNAR ALVAREZ
MONSERRAT ERIKA CALVA AZNAR
ANDREA DANIELA MADRAZO AZNAR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada dated May 15, 2009, wherein it was determined that the applicants were not Convention refugees and not persons in need of protection.

Background

[2] The principal applicants, Adriana Aznar Alvarez (‘Adriana’) and her sister Maria Fernanda (‘Maria’) Aznar Alvarez, sought to recover money allegedly defrauded from their mother and grandmother in 2001 by a cousin, Ernesto Aznar. In doing so, they attempted to have him arrested and prosecuted. In return, they and their family members faced death threats which ultimately led them to seek protection in Canada in 2007. On one occasion, the threat was emphasized by a gun pointed to the head of one of the applicants. Since coming to Canada, the applicants have continued to pursue their legal remedies against Ernesto through a lawyer in Mexico.

Decision Under Review

[3] The panel accepted the facts of the claim as credible but found no fear of persecution on a Convention ground. The applicants were not found to be persons in need of protection as the member concluded that they had an internal flight alternative (IFA) in Mazatlan, Sinaloa. Mazatlan is several thousand kilometers away from Ernesto’s home in Merida and approximately one thousand kilometers away from the applicants’ former home in Aguascalientes.

[4] The member accepted that Ernesto had the means to find the applicants in Mazatlan if he wished to. The member concluded, however, that Ernesto has no interest in actually harming the applicants. He had not actually harmed anyone in the family despite their efforts to have him arrested. Having considered the conditions in Mazatlan and the circumstances of this case, the member found that it is objectively reasonable for the applicants to seek refuge in Mazatlan.

Issue

[5] The issue is whether the panel member erred in failing to assess whether the death threats against the applicants made an IFA in Mazatlan objectively unreasonable.

Analysis

[6] The applicants submit that questions of law arise in this application in two respects and that the standard of review for those questions should therefore be correctness. First, they submit that it is a question of law whether being subjected to death threats in the IFA constitutes a risk to life, or of cruel and unusual treatment. Second, they submit that it is a question of law whether death threats affect the objective reasonableness of the proposed IFA. They agree that the global standard of review of the panel's decision should be reasonableness.

[7] The starting point for any analysis of the standard of review is now *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 (*Dunsmuir*). In *Dunsmuir*, the Supreme Court of Canada abandoned the patent unreasonableness standard leaving only two standards of review, correctness and reasonableness. The Supreme Court also held that a standard of review analysis need not be conducted in every instance. Where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review.

[8] Prior to *Dunsmuir*, it was settled law that an IFA determination was a highly fact-driven finding which called for a high degree of deference: see for example *Mohammed v. Canada*

(Minister of Citizenship and Immigration), 2003 FC 954, [2003] F.C.J. No.1217. The leading authorities were the Federal Court of Appeal decisions in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, [1991] F.C.J. No. 1256, *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, [1993] F.C.J. No. 1172 and *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, [2000] F.C.J. No. 2118. As set out in *Rasaratnam*, at paragraph 10, the Board must be satisfied on a balance of probabilities that (1) there is no serious possibility of the applicant facing persecution in the IFA; and (2) in all of the circumstances, it is not unreasonable for the applicant to seek refuge there.

[9] In *Thirunavukkarasu*, at paragraph 2, Linden J.A. clarified the concept of an IFA in these terms:

> …It should first be emphasized that the notion of an internal flight alternative (IFA) is not a legal defence. Neither is it a legal doctrine. It merely is a convenient, short-hand way of describing a fact situation in which a person may be in danger of persecution in one part of a country but not in another….

And at paragraph 13:

> It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his

> country, to move to another less hostile part of the country before seeking refugee status abroad?

[10] This sets a very high threshold for the unreasonableness test, as Létourneau J.A. observed in *Ranganathan* at paragraph 15: "It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions." To accept anything less would be to allow persons to seek protection in Canada simply because they would be better off physically, economically and emotionally here than in a safe place in their own country: *Ranganathan*, at paragraph 16.

[11] Since *Dunsmuir*, it has been held that a Board's decision concerning questions of fact is reviewable upon the standard of reasonableness: *Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427, [2008] F.C.J. No. 515; see also *Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358, [2008] F.C.J. No. 463, at paragraphs 11-15.

[12] In a case such as this one, there might be more than one reasonable outcome. However, as long as the process adopted by the tribunal and its outcome fits comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12, at paragraph 59).

[13] In the context of an IRPA section 97(1)(b)(ii) claim for protection, as in this case, the applicants must demonstrate that removal to their country would subject them personally to a risk to their life or to a risk of cruel and unusual treatment or punishment if the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country. The question of whether the risk would be faced by the applicants in every part of the country is a question of fact. The Court's review of that determination by the tribunal calls for a high degree of deference and the standard is one of reasonableness.

[14] I do not think it was necessary in this case, as a matter of law, for the panel member to analyse whether Ernesto's death threats amounted in themselves to a risk to the lives of the applicants or to a risk of cruel and unusual treatment or punishment. It is clear that the member would have accepted that the applicants were persons in need of protection but for her finding that the threats were empty and that Ernesto had no actual intention of carrying them out during the years in which the applicants had actively sought to have him jailed for fraud. This was a factual finding that was reasonably open to the member on the evidence. She did not simply dismiss the threats as unrealistic but considered the context in which they had been made in the course of the on-going dispute between the parties. That context had included a threat to Ernesto by one of the male applicants that he would make it impossible for Ernesto to carry on his businesses.

[15] The question that was determinative was whether it was objectively reasonable for the applicants to move to another and distant part of Mexico, Mazatlan, before seeking the protection of Canada from which to continue their legal case against Ernesto. The member considered that it was,

notwithstanding her finding that Ernesto had the capability to locate the applicants in Mazatlan if he chose to do so. It would have been speculative to assume that Ernesto would continue to utter threats against the applicants should they have taken up residence in Mazatlan and to consider whether such threats, which the member had found to lack substance, would render the IFA unreasonable. There was no actual and concrete evidence of conditions which would jeopardize the lives and safety of the applicants in that area, per *Raganathan*, above at paragraph 15.

[16] In my view, applying a high degree of deference, the process adopted by the tribunal and its outcome fits comfortably with the principles of justification, transparency and intelligibility and meets the reasonableness standard. Neither of the parties proposed a serious question of general importance and none will be certified.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that:

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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