Date: 20090928

Docket: IMM-4089-08

Citation: 2009 FC 972

Ottawa, Ontario, September 28, 2009

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

JOSE LUIS VELOZ LOPEZ
LILIANA GUILLEN DOMINGUEZ
ALDAHIR VELOZ GUILLEN
JOSE LUIS VELOZ GUILLEN
ANA JAILINE VELOZ GUILLEN

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 panel), dated September 2, 2008, according to which the applicants – a couple and their three children, all Mexican citizens – are neither "Convention refugees" nor "persons in need of protection", and an internal flight alternative (IFA) is available to them.

[2] The issues are the following:

- Did the panel err by not analyzing the best interests of the children as to relocation in Mexico?

- Did the panel err in finding that the applicants had an IFA of which they could have availed themselves instead of seeking refuge in Canada?

[3] As a result of *Dunsmuir v. New Brunswick*, 2008 SCC 9, the decisions of administrative tribunals are reviewable on a standard of reasonableness when dealing with questions of fact. Questions of procedural fairness are reviewable on a standard of correctness.

[4] Jose Luis Veloz Lopez (the principal applicant) alleges in his personal information form (PIF) that, beginning in 2004, he was in charge of four taxis for a business in Coatzacoalcos, Mexico. His responsibilities included solving mechanical breakdown problems, paying general expenses for the cars, paying licence lessees, hiring drivers and receiving accounts. The owner, Ricardo Lopez, worked on an oil rig one month at a time, after which he returned home to rest for a couple of weeks and, according to the principal applicant, did not have the time to manage his business. The principal applicant alleges that Mr. Lopez [TRANSLATION] "had full confidence in me..." .

[5] The principal applicant alleges that on November 20, 2005, he found a package of cocaine in taxi 1197 assigned to two drivers whose names were Juan and Ricardo. He notified Mr. Lopez, who promptly fired Juan and Ricardo.

[6] The principal applicant claims that a few days later, Juan and Ricardo offered him ten thousand pesos a week if he would lend them a car for four days each week so that they could run drugs without any trouble. The principal applicant alleges that when he turned down the offer, they threatened him more or less continually during the month that followed. Finally, on December 24, 2005, they threatened him with a pistol in a parking lot. He ran to his car to get away and found the radio stolen and the seats broken. He alleges that he went to the authorities to complain but that they did not help him because he had no proof of the threats. During the hearing before the panel, he testified that the evidence concerning the state of his car was insufficient; the public ministry required that he be injured or beaten.

[7] The principal applicant alleges that the same evening someone called him on his cellular telephone to tell him that his wife and children would be dead if he complained. He warned his wife, who took their children and went to stay with her mother in the town of Acayucan for the month of January, while the principal applicant left his job and moved to the town of Villahermosa. He claims that Juan and Ricardo went looking for him in Villahermosa. They were unable to find him but he decided to apply for his passport, which he obtained on February 22, 2006.

[8] Liliana Guillen Dominguez (the adult female applicant), who is the principal applicant's wife, alleges in her PIF that she went through hell in January 2006 at her mother's place because her husband's aggressors found her and threatened to kill her and her family. In February, she decided to return to Coatzacoalcos to sell all of her property and to move to another town.

[9] The principal applicant returned to Coatzacoalcos after February 22, 2006 to tell his wife that he was leaving the country. Once there, he claims that he was attacked and that his father saved him. On March 7, 2006, he left Coatzacoalcos to arrive the following day in Canada, where he immediately claimed refugee protection.

[10] At the beginning of March 2006, the adult female applicant went with her children to Villahermosa, where they stayed for several months with a female friend, without problems. During the hearing before the panel, she testified that things were going so well that she thought she would no longer have any problems (Panel's Record, p. 326).

[11] The adult female applicant alleges that she returned to Coatzacoalcos on June 16, 2006 to obtain a certificate of enrolment at her daughter's school. During her testimony, she explained that this was necessary so that she could enroll her daughter in a new school in Villahermosa. She was attacked by two men who threatened to rape her if she did not tell them where her husband was. Two passers-by saved her and she went to the police the same day to report the incident. In her statement, she did not name the individuals who attacked her, but indicated that they were the same people who had threatened her on the telephone since her husband's departure in December 2005 (Panel's Record, p. 221).

[12] The adult female applicant admits in her PIF that she panicked and decided to advance her trip to get away from the criminals for good. She and her children came to Canada on July 16, 2006 and claimed refugee protection at the airport in Montréal.

[13] The adult female applicant also alleges that on July 30, 2006, her mother had to file an information with the police because she was being followed and threatened. She claims that her mother had to return to Acayucan because of that situation.

[14] The panel's decision indicates that the determining question is the internal flight alternative (paragraph 15). The panel concludes that the applicants did not establish on a balance of probabilities that, if they had to return to live in Mexico, they would be exposed throughout the country to a serious possibility of persecution or to a risk, more likely than not, of threats to their lives from the two people in question, namely Juan and Ricardo. Furthermore, the panel concludes that apart from their subjective fear connected with the existence of drug trafficking everywhere in Mexico, the applicants adduced no evidence showing that there were obstacles preventing them from settling elsewhere in Mexico, for example in Monterrey or Merida (Panel's Record, p. 9).

Did the panel err by not analyzing the best interests of the children as to relocation in Mexico?

[15] The applicants argue that the panel erred by failing to apply section 159(1)(*h*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the *Act*), which provides:

159. (1) The Chairperson is, by virtue of holding that office, a member of each Division of the Board and is the chief executive officer of the Board. In that capacity, the Chairperson	159. (1) Le président est le premier dirigeant de la Commission ainsi que membre d'office des quatre sections; à ce titre :
…	[…]
(h) may issue guidelines in writing to members of the Board and identify decisions of	*h*) après consultation des vice-présidents et du directeur général de la Section de

the Board as jurisprudential guides, after consulting with the Deputy Chairpersons and the Director General of the Immigration Division, to assist members in carrying out their duties;	l'immigration et en vue d'aider les commissaires dans l'exécution de leurs fonctions, il donne des directives écrites aux commissaires et précise les décisions de la Commission qui serviront de guide jurisprudentiel;

The guidelines that should have been followed, according to the applicants, are the *Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act* (the Guidelines). They submit that the Guidelines state that the Convention Refugee Determination Division (CRDD) should give primary consideration to the best interests of the child in determining the procedure to be followed when considering the refugee claim of a child.

[16] The applicants submit that nowhere did the panel analyze the best interests of the children, either during the hearing or in its decisions. In support of these submissions, they cite the decision of Justice Shore in *Nahimana v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 161. They submit that it would not be in the best interests of the children to go and live in other cities elsewhere in Mexico, given that they were already found in a town that is more than 10 hours' drive from Mexico City, and that the panel did not take that fact into consideration when it made its decision.

[17] The respondent submits that the panel did not commit a reviewable error by not referring to the Guidelines. He submits that it is in the best interests of the child that each child claiming refugee protection be duly represented. In the instant case, the three minors were accompanied by their

mother, whom the panel designated as their representative. Even though the panel does not mention the Guidelines, the respondent submits that it complied with them and with the provisions of the *Act*.

[18] The respondent submits that *Nahimana*, above, differs from the case at bar in that it concerned two "unaccompanied" minors claiming refugee protection in Canada, and not minors accompanied by their parents as is the case here.

[19] The Guidelines, which came into effect on September 30, 1996, state:

> The *Immigration Act* does not set out specific procedures or criteria for dealing with the claims of children different from those applicable to adult refugee claimants, except for the designation of a person to represent the child in CRDD proceedings. … (Emphasis added.)
>
> …
>
> The *Immigration Act* requires the designation of a representative for all child claimants. In cases where the child is accompanied by his or her parents, one of the parents is usually appointed as the designated representative of the child. (Footnotes omitted.)

[20] As argued by the respondent, the facts that these Guidelines were not specifically mentioned in the decision is not fatal (*Kaur v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1066, at paragraphs 12 to 15). It is clear that the panel followed the Guidelines and the *Act* by appointing the adult female applicant as the representative of the children at the beginning of the hearing.

[21] I do not accept the applicants' submission with respect to the best interests of the children and their relocation to another city or town in Mexico, nor their claim that the panel did not consider that question when it made its decision. The transcript indicates entirely the contrary:

> [TRANSLATION]
>
> Q.: While you were in Villahermosa, ma'am, did you have problems because of the two people who had already assaulted your husband?
>
> A.: No. And that's why I thought there wouldn't be that problem anymore. That's why I had to go to Coasa Coalcos [*sic*] to get the report cards so that I could enroll my children so that they could find schools in the proper way.

[22] I find that the panel fulfilled its obligation to consider the best interests of the children in accordance with the Guidelines and the *Act*.

Did the panel err in finding that the applicants had an IFA of which they could have availed themselves instead of seeking refuge in Canada?

[23] The applicants allege that it was unreasonable of the panel to punish the principal applicant for not knowing the surnames of the two aggressors. They claim that the family tried unsuccessfully to relocate within Mexico. They also submit that, according to the evidence presented to the panel, it would not be difficult for someone to find them in Mexico by obtaining voters' lists by means of the voter's card.

[24] The respondent submits that the panel did not commit a reviewable error when it concluded that the applicants could avail themselves of an IFA in Monterrey or Merida. He submits that the panel was entitled to draw a negative inference regarding the principal applicant's credibility; that

apart from the general allegation that no city in Mexico is safe, the applicants cited no other factor to support the impossibility of their relocating elsewhere in Mexico; and finally, that it is clear from reading the panel's reasons that it considered all of the evidence before it.

[25] In *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, the Court of Appeal held that in order to reach the conclusion that an IFA truly exists, first, the panel must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists, and second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[26] The applicants submit that credibility is not an issue, but it is clear from reading the impugned decision that the question of credibility played a role in the panel's conclusion. Assessing a claimant's credibility is an essential aspect of the panel's competence. The Court has held that the panel has well-established expertise to deal with questions of fact, and more specifically to gauge the credibility of a claimant (*Aguebor v. Canada (Minister of Employment and Immigration)*, (1993) 160 N.R. 315).

[27] The principal applicant wrote in his PIF that he was responsible for hiring taxi drivers and that Juan and Ricardo were drivers; that he paid the taxes and the licence lessees; that his boss did not have the time to manage his business and trusted him. Also, it was he who found the cocaine and who reported the incident to his boss. At paragraph 16 of its decision, the panel wrote:

> … The panel concludes that the principal claimant's failure to provide a document that could corroborate the fact that, in the course of his employment, he found drugs in a taxi used by two individuals who had been working for his employer for six months is significant, and finds that this failure undermines his credibility.

[28] The panel's conclusion is not a punishment. Given that Juan and Ricardo and the cocaine found in their taxi were what set off the whole chain of events that the applicants allege brought them to Canada, the panel's conclusion is not unreasonable. In this regard, the comments of Justice Hansen in *Muthiyansa v. Canada (Minister of Citizenship and Immigration),* 2001 FCT 17, are relevant:

> 13 In my view, however, the lack of corroborating documents itself was not the source of the panel's concern. Rather the applicant was unable to satisfy the panel as to why, after ten months in Canada, she had not made efforts to retrieve her marriage certificate and her children's birth certificates from Sri Lanka, especially given that her story hinges on her husband. The CRDD's lack of credence in her story arises not from the absence of documentation, but from the absence of effort to retrieve it. As a consequence, I cannot find the CRDD erred in its credibility finding in this regard.

[29] The applicants bore the burden of showing that no internal flight alternative was available to them in another part of Mexico (*Ranganathan v. Canada (Minister of Citizenship and Immigration),* [2001] 2 F.C. 164). As described at paragraph 20 of these reasons, the adult female applicant testified that she received no threats and experienced no problems during the six months in which she and her children lived with her female friend in Villahermosa. Her testimony discloses more:

> [TRANSLATION]
>
> Q.: … So before coming to Canada, ma'am, did you think about settling in another part of your country?

> A.: Yes. I thought about settling in Villahermosa and I was already waiting for him, and then, when I went to fetch my children's school certificates, then I experienced what I put in the information.
>
> Q.: But in Villahermosa itself … – in Villahermosa itself you never had a problem with them.
>
> A.: No. No.
>
> Q.: So go on, I'm listening.
>
> A.: I made the decision after I experienced what happened to me on June 16.
>
> Q.: You made the decision to what?
>
> A.: Not to go from place to place anymore and to be with my husband so that he would protect us.

[30] It is clear that the adult female applicant and her children were able to relocate successfully in Mexico. Moreover, the principal applicant testified that before coming to Canada, he had not considered settling in another region of Mexico:

> [TRANSLATION]
>
> Q.: … Did you, before moving to - before coming to Canada, did you think of settling in another region of Mexico, for example in Monterrey or in Merida?
>
> A.: No.
>
> Q.: And why not?
>
> A.: Because they are cities in which there is no safety either.
>
> Q.: Other reasons?
>
> A.: Quite simply for our safety.

> Q.: When you say “quite simply for our safety,” because you are afraid – because in those other cities there is no safety either, is that what you’re saying?
>
> A.: That’s it.
>
> Q.: Apart from that fear that there was no safety in those other cities, were there other factors that prevented you from settling in either of those two cities, Monterrey and Merida?
>
> A. : No.

[31] In his affidavit in support of this application, the principal applicant said that Juan and Ricardo had the protection of a certain Mr. Arredondo, a cocaine user who was formerly a university rector and now holds an important position in the Ministry of Education of the State of Veracruz. This information was not in his PIF and when the panel asked him why, the principal applicant replied that he had forgotten. Here is what the panel wrote on this subject:

> The panel is of the opinion that this explanation is not reasonable, given that this is crucial information and cannot be regarded as a detail. The panel finds that this omission undermines the principal claimant’s credibility on the issue of whether the two individuals who threatened him in Mexico were connected with and protected by Mr. Arredondo.

A panel’s perception that a claimant is not credible on an important element of their claim can amount to a finding that there is no credible evidence to support the claim (*Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (F.C.A.) and *Chavez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 962, at paragraph 7).

[32] The fact that documentary evidence is not referred to in the panel's reasons does not invalidate its decision (*Perrier v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 35). That said, at paragraph 21 of its decision, the panel states:

> … After analyzing their testimony and all of the documents submitted by the claimants to the Refugee Protection Division (RPD), the panel is of the opinion that the claimants have not established the identities of the two individuals who are threatening them or what influence those individuals may have today throughout Mexico, what activities they are engaged in, or, even if we assume that those activities are as alleged by the claimants, whether they extend beyond the borders of Veracruz state, where they lived. …

Considering moreover its conclusions regarding the principal applicant's credibility, it was not unreasonable for the panel to give little weight to the evidence concerning the voters' cards.

[33] At the hearing before the undersigned, on July 7, 2009, the applicants asked for leave to produce an amended supplementary affidavit in order to introduce certain new arguments. The respondent objected and the objection was taken under consideration. The undersigned is of the opinion that the applicants have not demonstrated exceptional circumstances that would warrant such an amendment. The respondent's objection is allowed.

[34] For these reasons, I find that the panel's decision is reasonable and that the Court's intervention is not warranted. Accordingly, the application for judicial review will be dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that, for the aforementioned reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification by the parties and none is certified.

"Louis S. Tannenbaum"

_____

Deputy Judge

Certified true translation
Brian McCordick, Translator

AUTHORITIES CONSIDERED BY THE COURT

1. *Nahimana v. M.C.I.*, 2006 FC 161
2. *Rasaratnam v. Canada (M.E.I.)*, [1992] 1 F.C. 706
3. *Navarro v. Canada (M.C.I.)*, 2008 FC 358
4. *Canada (M.C.I.) v. Khan*, 2005 FC 398
5. *Munoz v. Canada (M.C.I.)*, 2006 FC 1273
6. *Estrella v. Canada (M.C.I.)*, 2008 FC 633
7. *Singh v. Canada (M.C.I.)*, 2006 FC 134
8. *Valenzuela Del Real v. Canada (M.C.I.)*, 2008 FC 140
9. *Varga v. Canada (M.C.I.)*, 2006 FCA 394

FEDERAL COURT

SOLICITORS OF RECORD

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