Federal Court  Cour fédérale

Date: 20091201

Docket: IMM-2359-09

Citation: 2009 FC 1231

Toronto, Ontario, December 1, 2009

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

David RAMIREZ ALBOR
Consuelo MONZALVO PEREA
XIADANI GUADALUPE RAMIREZ MONZALVO
(aka XIADANI GUADALU RAMIREZ MONZALVO
YAZMIN ITZEL RAMIREZ MONZALVO
DAVID RAMIREZ MONZALVO

Applicants

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 April 21, 2009, wherein the Board determined that the Applicants were not Convention refugees or persons in need of protection.

Issue

[2] This application raises the following issue: Did the Respondent err in finding the Applicants had not reversed the presumption of state protection in Mexico?

[3] For the following reasons, the application for judicial review will be dismissed.

Factual Background

[4] David Ramirez Albor (the principal Applicant or the Applicant), his wife Consuelo Monzalvo Perea and their children Xiadani Guadalupe Ramirez Monzalvo, Yazmin Itzel Ramirez Monzalvo and David Ramirez Monzalvo are all citizens of Mexico. The Applicants claim refugee protection pursuant to sections 96 and 97 of the Act.

[5] The Applicant alleges that he lived with his family in Mexico City when his car was vandalized and his belongings in the car were stolen at the end of 2005. His daughter, Yazmin, informed him that a child living across the street named Jonathan saw the perpetrator of the crime.

[6] The Applicant filed a complaint with the Attorney General's office, but because Jonathan's mother refused to allow the child to be a witness in the case, Benjamin Escudero Alarcon from the Prosecutor's office forced the Applicant to withdraw his complaint. Four judicial policemen allegedly began extorting money from the Applicant who was forced to make monthly payments to the four judicial policemen until he left Mexico.

[7] Later, during the 2006-2007 academic year, the Applicant's son David became a target of his teacher, Teresita Hernandez Perez, who mistreated him at school. With the help of the principal from the school, the Applicant's wife filed a complaint against the teacher. However, before the school authorities took action, the teacher turned other children against the Applicant's son and they psychologically and physically abused him. After the teacher was fired from her teaching job, a union representative confronted the Applicant's wife and issued death threats to her and her family and accomplices made four telephone calls to the Applicant's wife to issue death threats. The Applicant thus decided to flee from Mexico with his family.

Impugned Decision

[8] Based on the totality of the evidence adduced, the Board found that adequate state protection exists for individuals like the Applicant and his family in Mexico. The Board further found the Applicant did not meet the burden of establishing "clear and convincing" proof of a lack of state protection for people in his situation in Mexico.

Applicants' Arguments

[9] The Applicants submit that the Board erred in its assessment of state protection and that the obligation of a claimant to seek protection is not an absolute one. Rather, according to the Applicants, the tribunal must explore the reasons for which the claimant believes state protection would not have been forthcoming (*Mallado v. Canada (Minister of Employment and Immigration)*, (1994), 74 F.T.R. 54, 46 A.C.W.S. (3d) 743). The Applicants submit this was not properly done by

the Board in this case. The Applicants contend that the examination of the availability of state protection in the case at bar was neither thorough nor adequate (*Espinoza v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 343, 137 A.C.W.S. (3d) 1204).

[10] According to the Applicants, the Board failed to consider Mexico's real capacity to protect its citizens and simply noted the government's statements of its good intentions to improve the situation.

[11] The Applicants submit that simple statements by a government indicating that it wishes to address the problem do not result in adequate protection. If the Applicant is of the belief that the police does not have the ability to protect him and his family, and this belief is objectively justified, then there are no other institutions in Mexico which can protect them according to the Applicant.

Respondent's Arguments

[12] According to the Respondent, the Applicants must establish their refugee claim with credible and trustworthy evidence. The Applicants failed to meet this onus as the independent evidence presented indicated that there was adequate, albeit not perfect, state protection available to them in Mexico, should they choose to access it.

[13] The Respondent submits that the Applicants' aversion to obtaining state protection was not objectively reasonable and was based to some extent on the Applicant's failure to explore options that were available to him and his family. In the present case, the documents before the Board

contained, *inter alia*, evidence that indicated that both the police force and justice system operate adequately in Mexico, and that the state agencies in Mexico are making serious efforts to combat crime, including corruption.

Analysis

[14] Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Board's conclusions on state protection are subject to review under the reasonableness standard (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 CA 171, 263 N.R. 1 at par. 38; *Huerta v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 586, 167 A.C.W.S. (3d) 968 at par. 14; *Chagoya v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 721, [2008] F.C.J. No. 908 (QL) at par. 3; *Dunsmuir* at par. 55, 57, 62 and 64). According to the Supreme Court, the factors to be considered are justification, transparency and intelligibility within the decision-making process. The outcome must be defensible in respect of the facts and the law (*Dunsmuir* at par. 47).

[15] The central issue in the case at bar is state protection.

[16] It is well known that while Mexico is a democratic state and a NAFTA partner, it suffers from an on-going and well documented problem of corruption (*Zepeda* v *Canada (Minister of Citizenship and Immigration)*. Against this background, at hearing, counsel for the Applicants and counsel for the Respondent outlined conflicting lines of jurisprudence on the issue of state protection. One line of jurisprudence holds that in seeking state protection, an Applicant should call upon organisations if the police is unable or unwilling to provide protection. The other line of

jurisprudence holds that the police force remains the only entity that can be taken into account in the context of state protection.

[17] Counsel for the Applicants argued that the Board erred in expecting that the Applicants should have sought out the assistance of organisations or agencies other than the police in the circumstances. In support of this argument, reference was made to *Zepeda* where Justice Tremblay-Lamer of this Court recently questioned the availability of state protection in Mexico and concluded that although Mexico is a democracy willing to protect its citizens, corruption problems remain an issue. Justice Tremblay-Lamer stated that as a result, decision makers must engage in a thorough analysis of the evidence before them to determine whether Mexico is able or unable to protect its citizen.

[18] It is further noted that in *Kaur* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FC 1491, 143 A.C.W.S (3d) 1094, Justice de Montigny stated that the protection offered by a state, even a democratic one (India in this instance), must be "effective and real, and not just theoretical". (See also *D'Mello v. Canada (Minister of Citizenship and Immigration)*, (1998), 77 A.C.W.S. (3d) 387, [1998] F.C.J. No. 72 (QL) (F.C.T.D.); *Bobrik v. Canada (Minister of Citizenship and Immigration)*, (1994), 85 F.T.R. 13, 50 A.C.W.S. (3d) 850 (F.C.T.D.)).

[19] I agree that alternate organisations or institutions put in place in order to overcome corruption issues in a given state must be more than an empty shell lacking the effective means to achieve their purposes and protect persons such as the Applicants. Such organisations or institutions

must reflect a genuine alternative and translate into more than good intentions on the part of the government. A mere expression of an intention on the part of a state to address a corruption problem with no evidence of a follow-through will generally be insufficient.

[20] In the case at hand, the Board's decision (e.g. at pp. 18-19) refers to documentary evidence that clearly demonstrate the existence of organisations and institutions which are in fact producing results in terms of tackling corruption in Mexico:

> "In June 2004, President Fox stated that federal authorities would work with state and municipal governments to "co-ordinate anti-kidnapping efforts. Consequently, much of the law enforcement efforts to combat kidnapping has involved primary federal police agencies such as the AFI [Federal Agency of Investigations]. In September 2004, a Mexico City-based news magazine reported that the AFI's reputation in handling crime situations such as kidnapping was improving. Between December 2001 and June 2004, the AFI disbanded 48 kidnap gangs, arrested 305 suspected kidnappers and solved 419 cases of kidnapping. In addition, the AFI assisted state authorities with 91 kidnapping cases. Moreover, by August 2005, federal authorities announced that the year-to-date AFI had taken into custody 72 suspected kidnappers and had "fully dismantled' 11 kidnapping gangs. The same document indicates that among those charged for several recent abductions are current and former employees of the various branches of the federal and municipal forces. […]
>
> In 2007, the Secretariat of Public Administration (SFP), which investigates corruption across federal government, reported that 6,253 inquiries and investigations into possible malfeasance or misconduct by 4,877 federal employees resulted in dismissal of 410 federal employees, dismissal of an additional 1,023 employees with re-employment restrictions, the suspensions of 1,664 employees, 2,173 reprimands and issuance of 9 letters of warnings. In addition, 974 sanctions were imposed. Mexico is worked multilaterally to promote efficient and effective counternarcotics and anti-corruption policies.

> Documentary evidence indicated that the government has enacted strict laws attacking corruption and bribery, with average penalties of 5 to 10 years in prison. Although enforcement of corruption was a challenge, officials have been sentenced and punished with emprisonment [sic] and fines. The Fox administration has issued over 13,000 sanctions against public servants, resulting in 1,297 dismissals, 278 indictments and 53 convictions."

[21] The Court is therefore of the view that although corruption remains an issue in Mexico, the evidence demonstrates in the circumstances that there are avenues, albeit imperfect ones, for state protection that were accessible to the Applicants, had they chosen to access it (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, 163 N.R. 232 at par. 5-6; *Li v. Canada (M.C.I.)*, 2003 FC 1514, [2004] 3 F.C.R. 501 at par. 50, aff'd *Li v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1, [2005] 3 F.C.R. 239; *Ward*; *Villafranca*). The evidence on record thus confirms that the government's intention and willingness to contain corruption is coupled with serious efforts leading to tangible results.

[22] In *Kadenko*, the Federal Court of Appeal noted that one cannot automatically conclude that a democratic state is unable to protect one of its citizens because a local police officer refused to intervene. Further, the Applicants have not diligently sought to obtain protection from their country in 2007 before coming to Canada and have not provided clear and convincing evidence to rebut the presumption that the state of Mexico was able to protect them. The onus is on the Applicants to rebut the presumption of state protection (*Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, 165 A.C.W.S. (3d) 336) and, in order to rebut this presumption, a claimant must adduce relevant, reliable and convincing evidence which demonstrates, on a balance

of probabilities, that state protection is inadequate (*Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636).

[23] In addition, the more democratic the state, the more the Applicant must do to exhaust all reasonable remedies to obtain protection from the state before seeking international protection (*N.K. v. Canada (Minister of Citizenship and Immigration)*, (1996), 206 N.R. 272, 68 A.C.W.S. (3d) 334 (*Kadenko*); *Ward*). The evidence demonstrates that the Applicant could have approached the organisations established by the Mexican government to face corruption in 2005 and the authorities between 2005 and 2007 but failed to do so.

[24] The Board determined that the Applicants had not provided clear and convincing evidence of the inability of the Mexican government to ensure their protection because they had not exhausted all remedies available in Mexico and provided by the state before seeking international protection. It was reasonable for the Board to find that the Applicants had not established by clear and convincing evidence that Mexico was unable to protect him and his family.

[25] The Court finds that the Board's decision is reasonable. The Board conducted a full assessment of the evidence, including the Applicant's testimony and the totality of the documentary evidence on file. The Applicants did not attempt to seek out other means of state protection and they did not demonstrate that state protection was not reasonably forthcoming in Mexico. The decision was reasonable in the circumstances and the Court's intervention is not justified. The application for judicial review is therefore dismissed.

[26] No question was proposed for certification and there is none in this case.

JUDGMENT

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

"Richard Boivin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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