Federal Court  Cour fédérale

Date: 20100122

Docket: IMM-3473-09

Citation: 2010 FC 57

Ottawa, Ontario, January 22, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

JONATHAN ADRIAN VAZQUEZ CARDONA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of member Michel Byczak from the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated June 17, 2009, wherein the applicant was found to be neither a "Convention refugee" nor a "person in need of protection" within the meaning of the definitions provided in sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27.

[2] The Board rejected the application because the applicant was found not to be credible, there was state protection, and an internal flight alternative was available to the applicant within his country of origin, Mexico.

[3] The applicant's failure to specify in his personal information form (PIF) that he had received death threats undermined his credibility. In addition, the Board pointed out that the applicant had omitted to mention in his PIF that he had followed up on his complaints by telephone. The lack of evidence, such as a copy of the complaint filed by the applicant at the police station, made his narrative even more questionable. Moreover, the Board did not consider valid the applicant's explanation that it was impossible for his parents, who were still in Mexico, to obtain a copy of that complaint. Finally, the lack of evidence about the steps undertaken by the applicant to obtain state protection satisfied the Board that his narrative was not credible.

[4] The applicant basically contests the assessment of the facts made by the Board, which is reviewable on the standard of reasonableness (see *Khokhar v. The Minister of Citizenship and Immigration*, 2008 FC 449, at paragraph 22; *Navarro et al. v. The Minister of Citizenship and Immigration*, 2008 FC 358, at paragraphs 11 to 14, and *Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 47).

[5] After reviewing the evidence and hearing counsel for the parties, it seems to me that the conclusion reached by the Board about the applicant's lack of credibility is completely reasonable, considering that the Board's expertise and specialization give it a privileged status to

assess the credibility of the witnesses and the evidence submitted (*Aguebor v. Canada (M.E.I.)* (1993), 160 N.R. 315 (F.C.A.)).

[6] Since the applicant has failed to show that the Board based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Court's intervention is not warranted (see paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. (1985), c. F-7).

[7] As far as state protection is concerned, it was up to the applicant to rebut the presumption that his state was able to offer him adequate protection. He failed to do so. Recent case law of this Court, including *José Luis Cuna Ballesteros et al. v. The Minister of Citizenship and Immigration*, 2009 FC 352, accurately describes the steps that an applicant seeking state protection must take. In this case, the fact that the persecution alleged by the applicant was committed by state officials is not sufficient to discharge the applicant of his burden (*Navarro*, above). In addition, the Board's conclusion that the applicant's narrative was insufficient to support the fact that state protection was not available to him is consistent with case law (*Carillo v. The Minister of Citizenship and Immigration*, 2008 FCA 94, at paragraph 32; *Zhuravlvev v. Canada (The Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3, at paragraph 31; *Soberanis v. The Minister of Citizenship and Immigration*, 2007 FC 985, at paragraph 11). Lastly, the applicant's fear is not sufficient to reverse the burden resting on him to rebut the presumption of the existence of protection offered by Mexican authorities (*Santiago v. The Minister of Citizenship and Immigration*, 2008 FC 247; *Judge v. The Minister of Citizenship and Immigration*, 2004 FC 1089).

[8] Finally, the applicant provided nothing of a probative value to counter the Board's finding that he had an internal flight alternative within his own country. Therefore, the Board's finding, which was based on the evidence, that the applicant's alleged persecutors were not interested in finding him in the proposed places and that it was therefore not unreasonable for him to seek refuge in those places, must be upheld.

[9] For these reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dated June 17, 2009, is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Claude Brodeur	FOR THE APPLICANT
Suzanne Trudel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claude Brodeur Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT