

Federal Court		Cour fédérale
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Date: 20100208

Docket: IMM-5647-08

Citation: 2010 FC 126

Toronto, Ontario, February 8, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

CLAUDIA JACQUELINE GARCIA BAUTISTA

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 dated November 28, 2008, where the Board found that the Applicant was not a refugee pursuant to sections 96 and 97 of the Act.

[2] Claudia Jacqueline Garcia Bautista (the Applicant) is a citizen of Mexico who lived in the Federal District of Mexico City. In 2000, she began a relationship with her now ex-partner, Pedro Guerra, when she was 15 years old and he was 23.

[3] She was physically abused by her ex-partner in 2006, 2007 and 2008. She came to Canada leaving her two daughters with her mother and filed a refugee claim upon arrival.

[4] She fears that if returned, she will be beaten and killed by this man.

[5] While in Mexico, she sought help three times without success or results.

[6] The Board found that the Applicant's testimony was credible for the most part.

[7] However it rendered a negative decision based on the existence of state protection in Mexico.

[8] The Board relied on its findings that Mexico is a functioning democracy with civil, administrative and criminal legislation which prohibits domestic violence. It acknowledged that there was conflicting evidence on the enforcement of the legislation. However, it did not specify what this evidence was. In reaching its decision it was important that the Board be satisfied that the protection offered is more than efforts and attempts at improvement. In weighing the contradictory evidence, the Board stated at page 7 of its reasons:

There has been criticism regarding the present levels of enforcement of the new legislation and hence the effectiveness is somewhat in question. However, weighed against this is reliable and persuasive evidence which indicates that Mexico candidly acknowledges its past problems, but is taking active steps to rectify corruption and impunity. Mexico is making serious and genuine efforts to address the problem of domestic violence and that police are both willing and able to protect such victims.

[9] In evaluating the reasonableness of the decision, the Court must look “into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. ... But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 47).

[10] I believe that the Board erred on two grounds in coming to its finding. First of all, it weighed the evidence of criticisms of the effectiveness of the legislation against evidence on the efforts made to address the problems of domestic violence. This is not enough to ground a finding of state protection; regard must be given to what is actually happening and not what the state is endeavoring to put in place (*A.T.V. v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1229, 75 Imm. L.R. (3d) 215 at paragraph 14).

[11] Secondly, although the Board does acknowledge the contradictory evidence, it does not truly address the reasons why it considers it to be irrelevant (*Zepeda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 491, [2009] 1 F.C.R. 237 at paragraph 28). The Board does not say how this evidence was weighed against that of the Applicant that she had sought help at the

Public Ministry only to be turned away for various reasons. Furthermore, many of the documents relied on by the Board also contain portions which would bring one to reach a different conclusion, are never truly addressed.

[12] For example, one report indicated that domestic abuse occurs in one in three homes in Mexico and that almost half of the homicides in Mexico can be linked to domestic violence. The same report indicates that domestic violence is generally viewed as a private issue and police are reluctant to intervene (Canada, Immigration and Refugee Board, *Mexico: Domestic Violence and Other Issues Related to the Status of Women* (March 2003)).

[13] Another report relied on by the Board adds that, while a number of laws have been adopted to combat violence against women, a gap exists between legal initiatives and actual practice (Canada, Immigration and Refugee Board, *Situation of Witnesses to Crime and Corruption, Women Victims of Violence and Victims of Discrimination on Sexual Orientation*, (February 2007) at section 4.3.1). Also, many women do not follow through on complaints to the public prosecutor because they believe that staff at these offices (mainly lawyers and other public servants) tend to be insensitive or indifferent to victims of gender violence. Public prosecutor officials sometimes try to discourage women from registering a complaint as they believe the victim will withdraw charges following reconciliation with her partner. The complaint process at the public prosecutor's office is lengthy, in some cases taking an entire working day (*Situation of Witnesses to Crime and Corruption, Women Victims of Violence and Victims of Discrimination on Sexual Orientation*, (February 2007) at section 4.3.1).

[14] In its 2008 Report, Human Rights Watch declared that Mexico lacks adequate legal protections for women and girls against violence and sexual abuse. Another report points out that the new law enacted on February 1, 2007, will require at least one year to be implemented and is greatly dependent on increased funding to allow for its enforcement. Furthermore, there is insufficient infrastructure, which will pose a challenge to implementation. (Research Directorate, Immigration and Refugee Board of Canada, *Mexico: The new federal law to combat violence against women (2007)* (7 June 2007)).

[15] The Applicant relies in part on the recent decision in *Zepeda* where this Court held that there must be a complete analysis of the evidence in order to determine whether Mexico is able or unable to protect its citizen. "Mexico is a democracy and generally willing to protect its citizens, its governance and corruption problems are well documented. This assessment should include the context of the country of origin in general, all the steps that the applicants did in fact take, and their interaction with the authorities" (at paragraph 20). All of the examples drawn from the documentary evidence show that there is strong evidence that protection is inadequate. This evidence should not be weighed against efforts being made to rectify the situation, but rather against evidence of actual protection. Furthermore, there is little, to no evidence that protection is actually adequate and that the resources in place are effective. The Applicant was not even aware of the existence of many of the suggested alternatives, which makes one wonder how well known and effective they truly are. The documentary evidence also shows that corruption is prevalent in Mexico. In addition to this, the Applicant's own attempts to seek protection from the Public Ministry were unsuccessful for reasons

that are evoked in the criticisms of the system. Accordingly, I am not satisfied that the decision falls within an acceptable range of outcomes.

[16] In light of my determination on the issue of state protection, judicial review will be granted.

No question for certification was proposed and none arises.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed. The matter is referred back for redetermination by a newly constituted Board. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5647-08

STYLE OF CAUSE: CLAUDIA JACQUELINE GARCIA BAUTISTA v.
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PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 8, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** BEAUDRY J.

DATED: February 8, 2010

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