

Federal Court



Cour fédérale

**Date: 20100309**

**Docket: IMM-4049-09**

**Citation: 2010 FC 259**

**Ottawa, Ontario, March 9, 2010**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**I. M. P. P.**

**and**

**Applicant**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to 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 July 21, 2009, wherein it was determined that the applicant is not a Convention refugee and is not a person in need of protection.

[2] This is a second application for judicial review in the case of the applicant. The facts at issue concern an alleged sexual assault and whether the applicant has a viable Internal Flight Alternative (IFA).

[3] These are my reasons for dismissing the application.

### **Background**

[4] The applicant is a 24-year old citizen of Mexico.

[5] The applicant fears violence at the hands of David Antonio Velasco Chedraui (Antonio) who is presently mayor of her home town of Xalapa, Veracruz. Antonio was not mayor at the time of the assault.

[6] On November 18, 2004, the applicant and her friend Alma met with two men, Andres and Antonio, at a concert in Xalapa. On their way back from the concert, they had to stop at Andres's office. The applicant felt ill and lost consciousness. When she recovered consciousness, the applicant found Antonio in the midst of assaulting her. Hearing her friend Alma with Andres in the office at the end of the hallway, the applicant screamed for help but was unable to secure assistance.

[7] When the applicant reported to the police that Antonio had assaulted her, the officer taking her complaint told her that Antonio would be arrested. The perpetrator was never arrested.

[8] After having reported the assault to the authorities, the applicant and her family received threatening telephone calls.

[9] In March 2005, the applicant's brother was beaten by three men who threatened that the police complaint should be withdrawn. The applicant's aunt was also attacked several times on the street.

[10] Having hired a lawyer in September 2005, it was found in January 2006 that no complaint was ever laid against Antonio at the police station and that there was no medical file on record to document the assault.

[11] Due to her complaint against a wealthy, powerful and influential person in her town, the applicant's mother and brother were fired from their jobs in July 2006.

[12] In February 2007, the applicant's father was beaten by two men and told him that the charges must be withdrawn. Both her father and brother were taken to the police station after a neighbour called to report a domestic fight. They were released without charges. After this incident, the applicant asked her lawyer to stop investigating the matter.

[13] In June 2007, the applicant received a phone call from Antonio who told her that he wanted to experience again what had happened on November 18, 2004. The applicant concluded that Antonio was obsessed with her and would assault her again. On August 23, 2007, the applicant left Mexico and sought refugee status in Canada.

[14] The applicant's brother moved to Mexico City in February 2008 in the hopes of contacting television stations there for help. When Antonio's name was mentioned, the television stations refused to help the applicant's brother.

[15] While the applicant's brother lived in Mexico City, it is alleged that Antonio's men were able to locate him. The applicant's brother therefore left Mexico City in January 2009 and his whereabouts are unknown.

[16] The applicant's initial refugee determination was denied. On January 26, 2009, an application for judicial review of that decision was granted and the matter returned to another panel for redetermination. The Court found that there had been no reference to the Board's guidelines on women refugee claimants fearing gender-related persecution. It was also found that the Board's conclusions as to credibility and plausibility were unreasonable and that the Board's reasons were inadequate considering some of the evidence with respect to state protection: *I.M.P.P. v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 76, [2009] F.C.J. No. 96.

### **Decision Under Review**

[17] On the rehearing of the claim, the determinative issue was the existence of an Internal Flight Alternative (IFA).

[18] Before making its decision the Board indicated that it took into consideration the guidelines on "Women Refugee Claimants Fearing Gender-Related Persecution."

[19] The Board identified the Mexico City/Federal District for the IFA.

[20] Considering that the reason why people associated with the perpetrator may have found the applicant's brother in Mexico City was his association with family members there, the Board found that if the applicant moved to Mexico City, she could live far away from the relatives since the city is so large.

[21] The Board did not dispute the applicant's testimony that the perpetrator is wealthy, powerful, influential, and the mayor of Xalapa, Veracruz. The Board found no convincing evidence that the perpetrator's influence would extend to Mexico City. The member was not persuaded to believe that the perpetrator's influence would help him in Mexico City.

[22] The member noted that Mexico City is a city of over eight million people, the largest city in the country, and has made serious efforts to address crime and corruption and violence against women.

[23] It was determined that if by some chance the applicant was located in Mexico City, which the Board was not persuaded to believe, the documentary evidence demonstrated that state protection is available to the applicant.

[24] While the Board accepted that Mexico does have problems with violence against women, based on the documentary evidence, it was found that Mexican authorities are making serious

efforts to combat violence against women. Mexico has enacted civil, administrative and criminal legislation which prohibits gender related violence.

[25] The Board noted that there is a new federal law to combat violence against women. The General Law on Women's Access to a Life Free of Violence requires "federal and local authorities to prevent, punish, and eradicate violence against women. Under article 5 of the Federal District Law, a woman who is a victim of any type of violence has the right to free and prompt legal assistance. This law is in effect in the Federal District.

[26] Taking into consideration a psychological report prepared in 2008, the Board found that the applicant would be able to obtain psychological services to help her in Mexico City.

[27] As the applicant is an educated woman, it was found that she would be able to find employment as Mexico City is a modern metropolis with all of the amenities.

[28] It was concluded that it would not be unduly harsh for the applicant to move to Mexico City. Therefore, the Board found that it was not unreasonable for the applicant to move there.

[29] As Mexico City was found to be an available IFA to the applicant, the Board found that there is not a serious possibility that the applicant would be persecuted on the ground that she is a member of a particular social group as a victim of gender based violence or that she would be subjected personally to a risk of cruel and unusual treatment or punishment or to a danger of being tortured if she returned to Mexico.

## Issues

[30] The sole issue is whether the Board member erred in her finding that the applicant has a viable IFA in Mexico City?

## Analysis

[31] Several decisions of this Court have held that *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, has not changed the law in respect of factual findings subject to the limitation in paragraph 18.1(4)(d) of the *Federal Courts Act*: *De Medeiros v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 386, [2008] F.C.J. No. 509; *Obeid v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 503, [2008] F.C.J. No. 633; *Naumets v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 522, [2008] F.C.J. No. 655. It has also been held that a tribunal'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 paras. 11-15.

[32] The Board member's analysis of the evidence and exercise of discretion are central to the member's role as a trier of fact. As such, these findings are to be given significant deference by the reviewing Court. The member's factual findings should stand unless the reasoning process was flawed and the resulting decision falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Dunsmuir*, above, at para. 47.

[33] In a case such as this, there might be more than one reasonable outcome. As long as the process adopted by the member and the outcome fit 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 para. 59.

*Internal Flight Alternative (IFA)*

[34] In *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)* (C.A.), [1994] 1 F.C. 589, [1993] F.C.J. No. 1172, at para. 12, the Federal Court of Appeal held that if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.

[35] In this case, the Board asked the applicant if she could live in Mexico City/Federal District or in Guadalajara. The applicant stated that it would be easier to find her in Guadalajara than Mexico City because of its size. Accordingly, the member used Mexico City/Federal District for the IFA analysis.

[36] The Board considered the two-pronged test in determining if an IFA was viable to the applicant; as prescribed in *Rasaratnam v. Canada (Minister of Employment and Immigration)* (F.C.A.), (1991), 140 N.R. 138, [1991] F.C.J. No. 1256. The two-pronged test was recently applied in *Sokol v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1257, [2009] F.C.J. No. 1606, at para. 38:



- (i) there is no serious possibility of the claimant being persecuted or subjected, on a balance of probabilities, to persecution or to a danger of torture or to a risk to life or of cruel and unusual treatment or punishment in the proposed IFA area, and
- (ii) conditions in the IFA area must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[37] Notwithstanding that (a) the Board did not question the applicant's testimony that the perpetrator is wealthy, powerful and influential, (b) that the Board recognized that Mexico does have problems with violence against women, and (c) that the Board considered that the applicant's brother was allegedly found by the perpetrator's men in Mexico City, based on the totality of the evidence, it remained open to the member to determine that an IFA is available to the applicant in Mexico City. I note that the member considered Guadalajara as an alternate IFA but the applicant indicated that it would be easier to be found in Guadalajara due to its smaller size.

[38] Accordingly, I do not find a reviewable error in the Board's conclusion that there is not a serious possibility that the applicant would be persecuted for a Convention ground or would be subjected personally to a risk of cruel and unusual treatment or punishment or to a danger of being tortured if she returned to Mexico. I find that conditions in Mexico City make it reasonable in the circumstances for the applicant to seek refuge there.

[39] As I have previously explained in *Flores v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 723, [2008] F.C.J. No. 969, at para. 10:

**10** ... As noted by the Federal Court of Appeal in *Carillo*, the decision of the Supreme Court in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 stressed that refugee protection is a surrogate for the protection of a claimant's own state. When that state is a democratic society, such as Mexico, albeit one facing significant challenges with corruption and other criminality, the quality of the evidence necessary to rebut the presumption will be higher. It is not enough for a claimant merely to show

that his government has not always been effective at protecting persons in his particular situation: *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.). [My Emphasis]

[40] I do not accept the applicant's argument that the Board erred in considering Mexico City as an IFA simply because of its size: *Reynoso v. Canada (Minister of Citizenship and Immigration)*, (1996), 107 F.T.R. 220, [1996] F.C.J. No. 117, at para. 13. In the case at bar, while the member considered the size of the IFA, she made additional specific findings that the authorities in Mexico City were making serious efforts to combat violence against women by the enactment of civil, administrative and criminal legislation. Also, in the case at bar, the record does not indicate that the applicant was personally targeted by her perpetrator in Mexico City.

[41] The applicant failed to establish that state protection in Mexico City would be inadequate considering that she would have recourse to the legislated remedies and a multitude of governmental agencies mandated to protect the rights of women victim of violence: *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] F.C.J. No. 399, at para. 36.

[42] Acknowledging that the perpetrator is now the mayor of the town in which the assault occurred, the evidence before the member did not clearly establish that Antonio's wealth, power and influence was such as to allow him to find the applicant anywhere in Mexico (including in the Federal District) or that he would be able to corrupt anyone in his attempts to find the applicant.

[43] In her decision on the rehearing of the claim, the member has been careful, not only to state the applicable law correctly, but also to set out in her Reasons the various pieces of evidence that were considered in coming to a conclusion that Mexico City offered an appropriate IFA.

[44] I do not think it appropriate for the member to suggest that the applicant should avoid contact with family members in order to avoid the risk of being located in Mexico City. Nonetheless, this error does not make the determination of a viable IFA unreasonable as a whole.

[45] Accordingly, I find that such a determination was reasonable under the standard of review established in *Dunsmuir*, above: *Ayala v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1258, [2008] F.C.J. No. 1572, at para. 15.

*The Board's guidelines on gender-related persecution*

[46] In this case, contrary to the applicant's argument, I am of the view that the gender guidelines were given more than lip service: *Njeri v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 291, [2009] F.C.J. No. 350, at para. 16. I am unable to find that the proceeding was not conducted in accordance with the guidelines and I do not find evidence indicating that the member conducted herself as being unaware of the principles and cautions in dealing with evidence of sexual assault.

[47] This Court has recognized that the gender guidelines are not intended to serve as a cure for deficiencies in a refugee claim: *Karanja v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 574, [2006] F.C.J. No. 717, at paras. 5-6.

*The psychological report*

[48] I agree with the respondent that Dr. Devin's psychological report was not ignored by the member. It was open to the tribunal to conclude that the report was not determinative of the refugee claim.

[49] I am of the view that the psychological report goes to support the applicant's subjective fear. The report does not assist in relation to the objective issues of the viability of the IFA in Mexico City and state protection: *Canseco v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 73, [2007] F.C.J. No. 115, at para. 10.

*Conclusion*

[50] Unfortunately for the applicant, recognizing that she is a victim of gender based violence, and that her brother is alleged to have been found by the perpetrator's men in Mexico City after an attempt to go public with the family's story, I can only conclude that the member's decision regarding the viability of the IFA in Mexico City is reasonable and falls within the range of possible and acceptable outcomes: *Dunsmuir*, above, at para. 47.

[51] Having found that the decision was a reasonable result in this case, it is not open to this Court to substitute its own view of a preferable outcome: *Khosa*, above, at para. 59.

[52] Accordingly, I must dismiss the application. No questions were proposed for certification.

[53] The applicant has requested that a confidentiality order be issued to protect her identity. I note that the prior decision of this Court concerning the applicant was issued with her initials substituted for her name in the style of cause and without any reference to her name in the reasons. I am satisfied that in light of the facts of this case it is necessary to protect the applicant's identity at least to the extent that her name not appear in this set of reasons for judgment and judgment for publication.

**JUDGMENT**

**IT IS THE JUDGMENT OF THIS COURT** that:

1. the application is dismissed;
2. the style of cause of this application is amended to replace the applicant's name with her initials;
3. there are no questions to certify.

“Richard G. Mosley”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4049-09

**STYLE OF CAUSE:** I. M. P. P.

AND

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 16, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** March 9, 2010

**DATED:**

**APPEARANCES:**

Carole Simone Dahan

FOR THE APPLICANT

Leena Jaakkimainen

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

CAROLE SIMONE DAHAN  
Barrister & Solicitor  
Toronto, Ontario

FOR THE APPLICANT

JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT