Federal Court  Cour fédérale

Date: 20100413

Docket: IMM-5100-09

Citation: 2010 FC 394

Ottawa, Ontario, April 13, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MARIE SOLANGE GUERILUS
NADEGE OSNE

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision made by the Refugee Protection Division of the Immigration and Refugee Board on September 21, 2009, determining that the applicants are not Convention refugees or persons in need of protection.

Factual background

[2] The principal applicant, Marie Solange Guerilus, and her daughter, Nadège Osne, are both citizens of Haiti. They are claiming refugee protection in Canada. The principal applicant alleges that she and her daughter would be persecuted in their country because her deceased husband was a political supporter of President Aristide.

[3] The principal applicant also submits that her husband was involved in political activities. Between 1991 and 1999, he was beaten many times by opponents of Aristide, who also threatened her husband and family members on account of her husband's activism.

[4] The family house was burned down on October 1, 1999. The applicant's husband and their two sons fled for Gonave Island. The applicant, who was not at the house at the time of the fire, left Haiti on October 10, 1999.

[5] The applicant was then informed that her husband had gone missing after the ship he had set off in sank.

[6] The applicant and her daughter applied for asylum in the United States on December 12, 1999, but their asylum claims were denied. The applicants remained in the United States until October 23, 2007, when they arrived in Canada and claimed refugee protection, fearing that they would be deported to Haiti.

Impugned decision

[7] The panel concluded that the applicants failed to meet their burden of proof (*Hernandez v. Canada (Citizenship and Immigration)*, 2008 FC 1126, [2008] F.C.J. No. 1397 (QL); *Valenzuela Del Real v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 140, 168 A.C.W.S. (3d) 368) and determined that they are not Convention refugees or persons in need of protection. According to the panel, the risks listed by the applicants are generalized, not personalized. The panel also concluded that an internal flight alternative in Haiti is available to the applicants.

Issues

[8] This application sets out the following issues:

1. Did the panel err in concluding that the applicants were not subjected to a personalized risk in Haiti?
2. Did the panel err in concluding that there is an internal flight alternative (IFA) available to the applicants?

Standard of review

[9] The review of a claim made under subsection 97(1) of the Act calls for an individualized inquiry (*Prophète v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31, 387 N.R. 149 at paragraph 7 (*Prophète* (FCA)). Accordingly, the appropriate standard of review is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Gabriel v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1170, [2009] F.C.J. No. 1545 (QL)

at paragraph 10; *Parada v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 845, [2009] F.C.J. No. 1021 (QL)).

[10] The standard of review applicable to issues relating to an internal flight alternative (IFA) was patent unreasonableness (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 44, 136 A.C.W.S. (3d) 912; *Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, 238 F.T.R. 289). Following *Dunsmuir*, the Court must continue to exercise deference with regard to the determination of an IFA. Consequently, the Court will only intervene if the decision does not fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir*, above at paragraph 47). The reasonableness of a decision is concerned with the existence of justification, transparency and intelligibility within the decision-making process

1. Did the panel err in concluding that the applicants were not subjected to a personalized risk in Haiti?

[11] Paragraph 97(1)(*b*) of the Act requires that the applicants be subjected to a personalized risk, not a generalized risk affecting other persons in the country.

[12] It is known that the risk of all forms of crime is a general risk experienced by all Haitians. Case law has consistently reiterated that safety is a situation affecting the entire population of Haiti. This risk, faced by the entire population, does not meet the criteria of sections 96 and 97 of the Act (*Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, 167

A.C.W.S. (3d) 151 (Prophète (FC)); *Cius v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1, 164 A.C.W.S. (3d) 142)).

[13] In this case, the principal applicant testified fearing the persons who persecuted her husband 10 years ago. However, when the panel asked her whether specific and identifiable persons could potentially represent a danger to her, the applicant was unable to answer (stenographer's notes at paragraphs 146–150) and did not establish that she would face a personalized risk if she returned to Haiti. Upon reading the file, this Court is of the opinion that, on a balance of probabilities, the applicant has failed to show the objective and subjective components of her fear of persecution.

[14] It is well established that refugee claimants must provide the evidence that they consider to be necessary to show that their refugee protection claim is well founded (*Rahmatizadeh v. Canada (Minister of Employment and Immigration)*, 48 A.C.W.S. (3d) 1427, [1994] F.C.J. No. 578 (QL) at paragraph 9). Refugee protection claimants have the burden of proof to demonstrate that it would be unreasonable for them to seek refuge in another part of the country or to prove that there are in fact conditions which would prevent them from relocating elsewhere (*Ramirez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1214, [2008] F.C.J. No. 1533 (QL); *Palacios v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 816, 169 A.C.W.S. (3d) 619 at paragraph 9). As noted in *Kovacs v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1473, [2006] 2 F.C.R. 455 at paragraph 33:

> In the refugee claim, the onus was on the applicants to supply evidence that supports their claim (*Rahmatizadeh v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 578 (T.D.) (QL), at paragraphs 9–10; *Kante v. Canada (Minister of*

> *Employment and Immigration)*, [1994] F.C.J. No. 525 (T.D.) (QL), at paragraph 8) …

[15] The fact that the principal applicant alleged many times that she does not want to return to Haiti because the country is generally unsafe is insufficient for her to be considered a refugee under section 96 of the Act or a person in need of protection under section 97 of the Act. The assessment of the applicants' fear must be made *in concreto*, and not from an abstract and general perspective (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 808, 134 A.C.W.S. (3d) 493 at paragraph 22). With regard to the evidence in the record, the applicant has failed to meet her burden of proof to show that she would experience a personalized risk. The panel's conclusion on this point is therefore reasonable.

2. Did the panel err in concluding that there is an internal flight alternative (IFA) available to the applicants?

[16] According to the principal applicant, it was unreasonable for the panel to conclude that there is an internal flight alternative, taking into account the unreasonableness of that alternative and considering her particular situation (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, 163 N.R. 232 (F.C.A.) at paragraph 12).

[17] The applicant had the burden of showing that she had no internal flight alternative to another part of her country. The onus was on her to demonstrate that there was a serious possibility of her being persecuted everywhere in Haiti and that it was objectively unreasonable for her to avail herself of an internal flight alternative (*Thirunavukkarasu*, *Rasaratnam v. Canada (Minister of Employment and Immigration*, [1992] 1 F.C. 706, 140 N.R. 138).

[18] There are two components to consider in establishing an IFA: first, the panel must be satisfied on a balance of probabilities that there is no serious possibility of the applicants being persecuted at the location proposed to the applicants; and, second, the conditions at the proposed location must be such that it would not be unreasonable for the applicants to seek refuge there (*Thirunavukkarasu*).

[19] For the first component of the analysis, the panel concluded there was no serious possibility of the applicant being persecuted by her alleged persecutors. The applicant failed to demonstrate that the risk which she would face would be personalized because she was unable to provide the exact identities of her persecutors (stenographer's notes at pages 148–150. Consequently, the applicants were unable to show that the risk is personalized and did not submit any evidence showing that they would be unable to relocate to another part of the country.

[20] The applicants had the onus of demonstrating why, on a balance of probabilities, there is a serious possibility that they would be persecuted in another part of the country where an internal flight alternative might be available (*Thirunavukkarasu*). The applicants must meet a very high threshold in order to show that the IFA is unreasonable. As explained in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, 266 N.R. 380 (F.C.A.) below at paragraph 15,

> … It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that

> threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized …

[21] The applicants have failed to satisfy this Court that the internal flight alternative is unreasonable and that the panel committed an error warranting this Court's intervention.

[22] Therefore, this application for judicial review is dismissed. No question for certification was submitted by the parties.

JUDGMENT

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

"Richard Boivin"
Judge

Certified true translation
Sarah Burns

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	Marie Solange Guerilus et al v. MCI
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