Federal Court  Cour fédérale

Date: 20100420

Docket: IMM-4906-09

Citation: 2010 FC 413

Ottawa, Ontario, April 20, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

ALEXANDER VILLANUEVA PINON
MAYRA PAULETTE JIMENEZ CERVANTES
MELANIE JOHALY VILLANUEVA JIMENEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C., 2001, c. 27 (the Act) for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated September 9, 2009, determining that the applicants are not Convention refugees or persons in need of protection.

Factual background

[2] The principal applicant, Alexander Villanueva Pinon, his wife, Mayra Paulette Jimenez Cervantes, and their minor daughter, Mélanie Johaly Villanueva, are all citizens of Mexico.

[3] The principal applicant alleges that he went to a party with his family members, including Gabriel Cervantes, his wife's cousin, on September 1, 2007. Some young men who were at the party insulted him and struck him for no reason. The young men allegedly made death threats against the applicant and his friends.

[4] A week later, Gabriel Cervantes was stabbed 16 times by the young men who had threatened them at the party on September 1, 2007. Gabriel Cervantes told the applicant that his assailants had also made threats against the applicant.

[5] The applicant and his family members filed a complaint, but nothing came of it since, it is alleged, members of the assailants' families worked for the judicial police.

[6] Fearing for his life, the applicant left his country on September 10, 2007, and arrived in Canada on the same date. After he arrived in Canada, the applicant learned that the same individuals had shot at Gabriel Cervantes on November 2, 2007.

[7] The applicant's wife states that she was also threatened by the same men, who were trying to find out where her husband was. Fearing for her safety, she arrived in Canada on July 29, 2008, with her minor daughter. Both of them claimed refugee protection in early August 2008.

Impugned decision

[8] The panel concluded that the applicants had not discharged their burden of proving on a balance of probabilities that they would be subject to a danger of torture, a risk to their life or a risk of cruel and unusual treatment or punishment if they returned to Mexico. The panel also concluded that the applicants had an internal flight alternative in Mexico, in Sonora state. The applicants did not discharge their burden of proving that returning them to Mexico would subject them to a risk to their lives or a risk of cruel and unusual treatment or punishment or a danger of torture.

Issues

[9] This application raises the following issues:

1. Did the panel err when it found that the applicants were not credible?
2. Did the panel err when it found that the applicants had an internal flight alternative (IFA) in Sonora state?

Standard of review

[10] Assessing credibility and assessing the evidence are matters within the authority of the administrative tribunal, which must assess a refugee claimant's allegation of subjective fear (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, (1998), 157 F.T.R. 35

(F.C.T.D.), 83 A.C.W.S. (3d) 264 at para. 14). Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the standard of review that has applied in circumstances like these is reasonableness.

[11] As stated in *Dunsmuir*, the standard of review applicable to questions of state protection is reasonableness (*Chaves v. Canada (Minister of Citizenship and Immigration*), 2005 FC 193, 137 A.C.W.S. (3d) 392 at paragraphs 9 to 11 and *Gorria v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 284, 310 F.T.R. 150 at paragraph 14).

1. Did the panel err when it found that the applicants were not credible?

[12] The Court would note that the burden of proof rests on the applicants, who must present all the evidence that is available and that they consider to be necessary to establish their claim at the hearing (*Zheng v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1244, 213 F.T.R. 39; *Hazell v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1323, 158 A.C.W.S. (3d) 807).

[13] It is also settled law that the panel has jurisdiction to assess the evidence submitted by the applicants and to identify implausibilities (*Aguebor v. Canada (Minister of Employment and Immigration)* (F.C.A.) [1993] F.C.J. No. 732, 160 N.R. 315; *He v. Canada (Minister of Employment and Immigration)*, (1994), 49 A.C.W.S. (3d) 562; [1994] F.C.J. No. 1107 (F.C.A.) (QL); *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415 (F.C.A.) (QL)).

[14] In this case, the panel identified several points that undermine the applicants' credibility.

[15] First, the applicant received medical care at the Margarita Salinas hospital following the fight at the party on September 1, 2007. He received a medical certificate, which stayed in Mexico and was not submitted in support of his claim. The panel found that the medical certificate was an important piece of evidence to be submitted in support of his claim for refugee protection since the injuries alleged were suffered on the date that marked the beginning of his problems in Mexico. The panel concluded that the medical certificate could easily have been obtained since it was at the applicant's home in Mexico. The applicant was not diligent in that he did not try to obtain an important document that could have corroborated his testimony. Under Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228, the applicant had to provide documents establishing this crucial element, which is central to his claim.

[16] It is clear from section 7 of the *Refugee Protection Division Rules* that a claimant has a duty to provide the documents and other elements of the claim. While the French version states that "[l]e demandeur transmet […]", the English speaks more directly to the duty imposed on the claimant: "The claimant must provide […]".

[17] Second, the claimant replied that the fresh threats made against him after the attack on Gabriel Cervantes had made him fear for his safety if he were to return to Mexico. However, the applicant failed to mention this important piece of information in reply to question 31 in his Personal Information Form (PIF). The panel noted that if death threats had really been made against

him at the alleged event on November 2, 2007, the applicant would have thought to report them in his PIF. The courts have held that all important elements of a claimant's claim must be stated in the PIF and omissions are conclusive when it comes to central and important events in the narrative, as in this case (*Ovais v. Canada (Minister of Citizenship and Immigration)*, (2000), 100 A.C.W.S. (3d) 1045, [2000] F.C.J. No. 1702 (QL); *Arunasalam v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1070, 108 A.C.W.S. (3d) 518).

[18] Third, in answer to how Gabriel Cervantes could have been stabbed 16 times, including in the back and abdomen, without suffering major injuries, the applicant explained that he did not know what Gabriel Cervantes was stabbed with and he also did not know whether he suffered cuts or other injuries. In spite of the many questions the panel asked on this point (transcript at pp. 199-200), the Court finds that the applicant's replies were at all times vague and imprecise.

[19] As the final point, the applicant's wife also testified, and stated that she had been threatened several times after her husband left. She alleged that she had moved in with her parents, who lived a few blocks from her home, to be safe. The panel concluded that this was not the behaviour of a person who had to live in hiding for the safety of herself and her minor daughter. In the Court's view, the panel could reasonably have considered the behaviour of the female applicant, who had not taken serious steps to protect herself, in assessing whether her fear was well-founded (*Mardones v. Canada (Minister of Citizenship and Immigration)*, (1997), 72 A.C.W.S. (3d) 907; [1997] F.C.J. No. 351 (QL)). It was therefore reasonable for the panel to conclude that the female applicant had

no subjective fear, because of her behaviour, which was inconsistent with the behaviour of a person who feared for her safety.

[20] The evidence in the record shows that in assessing the applicants' credibility, the panel had regard to their explanations concerning the implausibilities and inconsistencies identified, but did not consider them to be satisfactory.

[21] After analyzing and considering the documentary evidence, the written and oral submissions of the parties and the case law submitted, the Court is of the opinion that the panel's conclusion falls within the range of outcomes that are acceptable, having regard to the evidence. The panel is in the best position to assess the explanations given by the applicants regarding the apparent contradictions and implausibilities. It is not the role of the Court to substitute its judgment for the findings of fact made by the panel regarding the applicants' credibility (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, 146 A.C.W.S. (3d) 325 at paragraph 36; *Mavi v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1 (QL)).

[22] Having regard to all of the foregoing, the Court concludes that the panel did not err when it found that the applicants were not credible.

2. Did the panel err when it found that the applicants had an internal flight alternative (IFA) in Sonora state?

[23] The burden of proving that they did not have any internal flight alternative in another part of Mexico rests on the applicants. It was therefore up to the applicants to prove that they were at serious risk of being persecuted throughout Mexico and that it was objectively unreasonable for them to avail themselves of an internal flight alternative (*Thirunavukkarasu v. Canada (Minister of Citizenship and Immigration)*, [1994] 1 F.C. 589, 163 N.R. 232; *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, 140 N.R. 138 (F.C.A.)). In this situation, the threshold is set very high for the unreasonableness test (see *Ranganathan* v. *Canada (Minister of Citizenship and Immigration*), [2001] 2 F.C. 164 at paragraph 14).

[24] More specifically, to quote Justice Létourneau in that decision:

> ... 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. …

[25] In the case before us, the panel's decision is based on the applicants' testimony and the documentary evidence in the record. The panel had regard to the applicants' personal situation and the reasonableness of them relocating to Sonora state. Moreover, the applicants presented no credible evidence to show that they could not live in Sonora state. On the contrary, the evidence shows that Gabriel Cervantes, who is targeted by the same men as the applicant, has lived in that state since November 2007.

[26] The applicants have therefore not discharged their burden of proving that the panel erred in identifying an internal flight alternative. The Court considers that decision to be reasonable and in accordance with the case law.

[27] The application for judicial review is accordingly dismissed. This application does not involve a serious question of general importance.

JUDGMENT

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

"Richard Boivin"
Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	Alexander Villanueva Pinon et al v. MCI
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