Federal Court

Cour fédérale

Date: 20101123

Docket: IMM-1715-10

Citation: 2010 FC 1174

Ottawa, Ontario, November 23, 2010

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

GERMAN IVAN FLORES DOSANTOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Applicant is a citizen of Mexico who seeks protection in Canada pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IPRA*). The Applicant's claim is based on his fear of a rival businessman and the businessman's brother, who is an employee of the state attorney general's office. The Applicant claims that both men have connections with all

levels of the Mexican police and with the Public Ministry. The Applicant believes that he is being targeted by both men on account of his more successful business venture and his religion as a Jehovah's Witness.

[2] In a decision dated March 4, 2010, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Board) determined that the Applicant was not a Convention refugee or a person in need of protection. The determinative issue for the Board was that of state protection. The Board concluded that the Applicant had failed to rebut the presumption of state protection.

[3] The Applicant seeks to have the decision quashed.

II. Issues

[4] The following issues were raised by this application:

1. Did the Board err in applying the appropriate test for state protection?

2. Did the Board err in ignoring documentary evidence when considering the evidence on state protection?

3. Did the Board err in applying an undue burden on the Applicant to demonstrate that he had sought state protection?

A. *Standard of Review*

[5] The standard of review for determination of the issue of state protection, a question of mixed fact and law, is the standard of reasonableness. On this standard, the Court should not intervene where 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 para. 47).

B. *The Board's Decision*

[6] In its reasons, the Board began its analysis of state protection with a framework:

> . . . I considered whether or not there is adequate state protection in Mexico, whether or not the claimant took all reasonable steps to avail himself of that protection; and whether he has provided clear and convincing evidence of the state's inability to protect.

[7] On the first issue, of whether there is adequate state protection in Mexico, the Board recognized the initial presumption that the state is capable of protecting its citizens. The Board further observed that protection need not be perfect, and that local failures to provide protection will not necessarily mean that a state has failed to protect. The more democratic are a state's institutions, the greater the onus on the claimant to demonstrate that he has properly sought state protection.

[8] The Board found that Mexico is a reasonably well-functioning democracy with a number of law enforcement authorities and agencies, including anti-corruption agencies. The Board detailed

the many efforts undertaken by the Mexican government to combat corruption within the public service. The Board also considered the contrary evidence submitted by the Applicant.

[9] At paragraph 27 the Board concluded:

> The Board recognizes that there are some inconsistencies among several sources within the documentary evidence; however, the preponderance of the objective evidence regarding current country conditions suggests that, although not perfect, there is adequate state protection in Mexico for victims of crime, that Mexico is making serious and genuine efforts to address the problem of criminality, and that the police are both willing and able to protect victims.

[10] On the second issue of whether the Applicant took all reasonable steps to avail himself of available state protection, the Board noted the requirement from *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74 (Q.L.), that the refugee claimant must approach the state for protection in cases where such protection might be reasonably forthcoming. The Board concluded that the evidence demonstrated that the Applicant received proper police attention each time that he reported an incident. At paragraph 23 the Board stated:

> There is no information to suggest that the police were not making genuine and earnest efforts to investigate the claimant’s allegations and apprehend the claimant’s perpetrators if warranted.

[11] Furthermore, the Board found that the Applicant failed to avail himself of the opportunities to contact higher levels of the Mexican security forces or go through other state channels that he ought to have pursued had he been dissatisfied with the services provided to him at the local level.

[12] At paragraph 25 the Board stated:

> Therefore, I find that the claimant simply did not reasonably exhaust courses of action open to him to obtain state protection in Mexico, and hence, he has not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect him.

[13] As a result, the Board concluded that the Applicant had failed to rebut the presumption of state protection with clear and convincing evidence.

III. <u>Analysis</u>

A. *Issue #1: Did the Board err in applying the appropriate test for state protection?*

[14] The reasons of the Board demonstrate a careful and legally sound analysis of the issue of state protection. The conclusion of the Board with regard to the question of the adequacy of state protection in Mexico is quoted above. As that paragraph makes clear, the Board was not solely relying upon "serious efforts" made by the Mexican government to protect its citizens. To the contrary, the Board clearly concluded that the "preponderance of the objective evidence regarding current country conditions suggests that, although not perfect, there is adequate state protection in Mexico for victims of crime. . .".

[15] The Board considered numerous indicators of the Mexican government's ability to provide state protection. These included the size of its security forces, the extent of their control over Mexican territory, their structure and hierarchical organization, and the mechanisms available to Mexican citizens to respond to corruption within the Mexican security forces. The Board also

considered statistics regarding the number of people charged and sentenced within Mexico, thereby demonstrating that the system of bringing criminals to justice is working.

[16] The personal circumstances of the Applicant were considered and no evidence was ignored. In my view, the Board's analysis was complete.

[17] As the Federal Court of Appeal stated in *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.), 99 D.L.R. (4th) 334:

> No government that makes any claim to democratic values or protection of human rights can guarantee the protection of all of its citizens at all times. Thus, 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.

[18] The Board understood the meaning of "adequate state protection" and the evidence required to demonstrate its existence.

B. *Issue #2* *Did the Board err in ignoring documentary evidence when considering the evidence on state protection?*

[19] The Applicant submits that the Board did not adequately address the issue of the effectiveness of state protection for individual victims of abuse. The Applicant submits that there was much evidence before the Board that, despite the efforts of the Mexican government to assure the security of its citizens and to fight corruption within its security forces, major problems persist.

[20] In its decision, the Board recognized that there are problems with corruption within Mexico's security services. The Board also explicitly referred to some of the Applicant's evidence

regarding the inadequacy of Mexico's state protection, and noted that it had read all of the material submitted by counsel, including that not explicitly cited in its decision.

[21] Nevertheless, as discussed above, after considering the contrary evidence submitted by the Applicant, the Board concluded that the documentary evidence demonstrated that there is adequate state protection available in Mexico. This was a finding reasonably open to the Board.

[22] The Applicant asserts that much of the Board's recitation of statistics was irrelevant to the Applicant. I disagree. The Applicant was claiming that he was unable to obtain justice for a situation involving allegations of corruption. The Board was entitled to refer to the objective statistical evidence to show that, on balance, the country was taking successful measures to curb corruption.

C. *Issue #3:* *Did the Board err in applying an undue burden on the Applicant to demonstrate that he had sought state protection?*

[23] The Applicant maintains that the Board placed an "impossible burden" on him to rebut the presumption of state protection. The Applicant submits that, because of the fact that one of his agents of persecution was a state employee and the fact that on two occasions two police officers accompanied that person when he attacked the Applicant, the Applicant did not need to seek further protection from the authorities. Moreover, the Applicant submits that in this case complaining about the abuse that he received only made the incidents worse.

[24] Furthermore, the Applicant submits that the he did not need to approach the state authorities on each occasion during which he was targeted. Instead, the Applicant submits that the fact that he

approached state authorities on a number of occasions and that the persecution never stopped is sufficient to constitute the "clear and convincing" evidence necessary to rebut the presumption of state protection.

[25] In this case, the Board reasonably found that the Mexican state is a functioning democracy and that the presumption of state protection therefore operated. The burden was on the Applicant to provide clear and convincing evidence that, in his case, the state was unable to provide such protection.

[26] The Applicant is correct that state complicity is not required in order to find persecution on a Convention ground. Rather, persecution under the Convention can exist where the state is unwilling or unable to provide adequate protection to the refugee claimant. At paragraph 50 of *Ward*, the Supreme Court explained how such a finding of persecution is to be determined:

> The issue that arises, then, is how, in a practical sense, a claimant makes proof of a state's inability to protect its nationals as well as the reasonable nature of the claimant's refusal actually to seek out this protection. On the facts of this case, proof on this point was unnecessary, as representatives of the state authorities conceded their inability to protect Ward. Where such an admission is not available, however, clear and convincing confirmation of a state's inability to protect must be provided. For example, a claimant might advance testimony of similarly situated individuals let down by the state protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialize. Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus, such as that recognized in Lebanon in Zalzali, it should be assumed that the state is capable of protecting a claimant.

[27] The Applicant provided evidence of numerous instances of attacks made upon him by his persecutors. He also noted several occasions on which he reported the abuse to state authorities. The Board considered this evidence and found that the state's response was adequate in each case. The Board noted that when the Applicant first went to the police, they recommended that he avoid the agent of persecution. Once the Applicant reported threats and attacks, the police asked the Applicant for evidence and told him that the threats were matters for conciliation. Following the May 2005 shooting incident, the attorney general's office conducted months of investigations before deciding that there was insufficient evidence to proceed. The Applicant's final interaction with the authorities was the denunciation that he filed on November 16, 2007. He was told that the denunciation is a statement of facts that would be sent to the Public Ministry office to determine the appropriate manner of following up.

[28] The Board concluded at paragraph 23:

> I find that the claimant received police attention every time the claimant approached the authorities. There is no information to suggest that the police were not making genuine and earnest efforts to investigate the claimant's allegations and apprehend the claimant's perpetrators if warranted.

[29] This conclusion is reasonable on the facts. It can be contrasted to the cases cited by the Applicant in which courts have found that refugee claimants did not need to seek protection because of factual findings by the Board that either (1) the state itself was involved in the persecution, or, (2) seeking state protection would not remedy the problem. As the Federal Court of Appeal stated in

Kadenko v. Canada (Solicitor General) (1996), 206 N.R. 272, [1996] F.C.J. No. 1376 (Q.L.), at paragraph 3:

> Once it is assumed that the state (Israel in this case) has political and judicial institutions capable of protecting its citizens, it is clear that the refusal of certain police officers to take action cannot in itself make the state incapable of doing so. The answer might have been different if the question had related, for example, to the refusal by the police as an institution or to a more or less general refusal by the police force to provide the protection conferred by the country's political and judicial institutions. [Emphasis added.]

[30] The Board reasonably concluded that the state authorities were properly investigating the Applicant's claims. The Board also reasonably found that, had the state authorities found sufficient evidence to prosecute the perpetrators, they would have done so, and that would have sufficiently protected the Applicant. The fact that the perpetrator was a state employee does not affect the reasonableness of this finding.

[31] In addition, the Board noted that, had the Applicant been concerned that he was not receiving adequate police attention because of corruption arising from the perpetrator's relationship to the local authorities, the Applicant had a duty to make use of the other avenues of protection reasonably available. The Board concluded that the Applicant did not attempt to report his problems to any authority beyond the local police station.

[32] This is similar to the case of *Lozada v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 397, [2008] F.C.J. 492 (Q.L.), where the court held at paragraph 31:

> The Board took note of the documentary record which included reports of problems with police corruption and measures to address those issues. The Board concluded the Applicant had not pursued further options available to him, namely providing further

> information to the police or filing a complaint directly to Ministry officials. The Board concluded the Applicant had not rebutted the presumption of state protection.

[33] The Applicant's evidence fell short of being sufficient to demonstrate that the police investigation was deliberately curtailed and that state protection was not available. The Applicant himself did not make further effort to secure state protection by pursuing other options to obtain police or other state protection. The Board could have been more explicit in its description of how alternative options might have assisted the Applicant. However, its failure to do so is far from a reviewable error.

IV. Conclusion

[34] In conclusion, the Board's reasons were very clear, legally sound and supported by the evidence. There are no grounds upon which this Court should intervene.

[35] Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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