Federal Court  Cour fédérale

Date: 20101105

Docket: IMM-1510-10

Citation: 2010 FC 1093

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 5, 2010

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

HANAN HUSSSEIN RAMADAN
EVELYN HAIDAR RESLAN RAMADAN
SIRENA HAIDAR RESLAN RAMDAN

Applicants

et

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA), of a decision of the Immigration and Refugee Board (the panel) dated February 25, 2010, rejecting the refugee protection claims of

the applicant and her daughters on the ground that they were not Convention refugees or persons in need of protection.

FACTS

[2] The principal applicant is a citizen of Lebanon. In July 1996, she went to Paraguay to join her husband and lived there for over 10 years. Her two minor daughters are citizens of Paraguay.

[3] The applicant alleges that her family situation deteriorated beginning in 2002, when her husband would often spend time outside the home, squandering the family's money on drinking and gambling.

[4] She also alleges that physical and psychological abuse became frequent and that her husband even tried to use force to make her sign legal documents authorizing him to sell a property in Lebanon that she had inherited from her father.

[5] At that point, the applicant went back to Lebanon, but then returned to live in Paraguay to try to resolve her problems with her husband.

[6] When she returned to Paraguay, she obtained a position as an accountant with the Lebanese embassy, but her husband continued to squander the money she earned.

[7] In July 2005, her husband returned to Lebanon and, in mid-September, she was told over the telephone that her husband intended never to return to Paraguay.

[8] She states that toward the end of September 2005, she began receiving telephone calls from persons of Lebanese and Paraguayan origin wanting to speak with her husband. When she informed them that her husband no longer lived in Paraguay, these persons demanded money from her that they claimed to have lent him.

[9] The applicant alleges that as time went by, the calls became increasingly frequent, abusive and violent and that she received kidnapping and death threats and had to take security precautions to protect her children. She also submits that during this time, her husband telephoned her regularly, insulted her and threatened her.

[10] She states that Lebanon's ambassador advised her to leave the country and told her that it would do her no good to inform the Paraguayan authorities because she was running a greater risk, like other families who had been kidnapped and executed.

[11] In January 2006, the applicant began selling her possessions to pay off the persons who were threatening her most. At that time, she asked her brother to help them flee Paraguay. Her brother sent her a letter of invitation, and the Canadian embassy issued her a visa.

[12] On March 5, 2007, the applicant and her daughters left Paraguay. They claimed refugee protection in Canada on March 22, 2007.

ISSUES

(1) Did the panel err in determining that the applicant and her daughters were excluded under Article 1E of the *Convention Relating to the Status of Refugees* (the Convention)?

(2) Was the panel's determination that the applicant and her daughters could have received Paraguayan state protection unreasonable?

APPLICABLE STANDARDS OF REVIEW

[13] The case law tells us that two standards of review apply in respect of the exclusion under Article 1E of the Convention. The correctness standard is used to determine whether the correct legal test was applied, and the reasonableness standard is used to ascertain whether the panel correctly applied the facts to the law (*Canada (Citizenship and Immigration) v. Zeng*, 2010 FCA 118; *Mai v. Canada (Citizenship and Immigration)*, 2010 FC 192).

[14] The panel's determination on the matter of state protection is a question of mixed fact and law and is therefore subject to the reasonableness standard (*Hinzman v. Canada (Citizenship and Immigration)*, 2007 FCA 171; *Rocque v. Canada (Citizenship and Immigration)*, 2010 FC 802).

ANALYSIS

(1) Did the panel err in determining that the applicant and her daughters were excluded under Article 1E of the Convention?

[15] Section E of Article 1 of the Convention provides as follows:

> This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[16] According to section 98 of the *IRPA*, any person referred to in section E of Article 1 of the Convention is not a Convention refugee or a person in need of protection.

[17] The applicant submits that the panel erred in its assessment of the evidence and in finding that there was *prima facie* evidence that on the day the hearing finished, February 9, 2010, she had the right to return to settle in Paraguay. The panel could not require her to renew her documents in Paraguay when she feared for her and her children's safety in that country.

[18] The case law has developed a framework to determine whether a person meets the criteria of Article 1E of the Convention. First, the Minister must establish a *prima facie* case that the claimant can return to his or her country and enjoy the rights of the nationals of that country. If that step is completed successfully, the burden then shifts to the claimant, who must show that he or she cannot in fact enjoy the rights of his or her residence status (*Mai v. Canada* (above); *Romero v. Canada (Citizenship and Immigration)*, 2006 FC 506; *Hassanzadeh v. Canada (Citizenship and Immigration)*, 2003 FC 1494).

[19] The rights which the claimant must enjoy in order for this *prima facie* case to be established have also been identified in the case law. They are the right to return to the claimant's country of residence, the right to work without restrictions, the right to study and the right to have full access to social services (*Vifansi v. Canada (Citizenship and Immigration)*, 2003 FCT 284, at paragraph 27).

[20] *Zeng v. Canada* (above), at paragraph 34, proposes a three-pronged analysis to determine the time at which the claimant has status in the third country granting him or her rights equivalent to those of nationals. The claimant must have that status when making his or her claim in Canada and on the date the claimant's refugee protection claim is determined. If that is the case, the exclusion under Article 1E of the Convention applies. If the claimant did not have that status, the panel must ascertain whether the claimant could have preserved his or her right to enter the country or if the claimant had good and sufficient reason for having failed to do so. The Federal Court of Appeal confirmed this analysis in *Canada v. Zeng* (above).

[21] In its decision, the panel was of the opinion that in light of the documentary and testimonial evidence, a *prima facie* case was established that the applicant met the criteria of Article 1E of the Convention.

[22] The panel took into consideration the information provided by the applicant in her Personal Information Form, in which she stated that she had permanent residence status in Paraguay. The panel also relied on the applicant's testimony at the hearing that she had had

permanent residence status since 1996 and on the objective evidence that permanent residence in Paraguay grants a right to stay in the country indefinitely.

[23] Considering that evidence and the case law, the panel found that a *prima facie* case had been established that on the day the hearing finished, February 9, 2010, the claimant had "the right to return to her country of residence, the right to work there freely without restrictions, the right to study there and the right to access the social services in Paraguay with no restrictions other than those that apply to Paraguayan citizens".

[24] The panel's finding that there was *prima facie* evidence that the applicant was still a permanent resident of Paraguay was made on the basis of objective and credible evidence, and the Court must afford the panel deference.

[25] The panel then determined that the applicant had failed to rebut the presumption that from the time she filed her refugee protection claim until the end of the hearing on February 9, 2010, she was still recognized by Paraguay as having permanent resident status.

[26] The applicant did not submit any evidence that her permanent resident status might have expired. In addition, when she testified at the hearing, she admitted that she had not **enquired** about the validity of her permanent residence status in Paraguay, which her brother's testimony corroborated.

[27] As a result, the finding that the applicant failed to meet her burden of proving that she was no longer recognized in Paraguay as a permanent resident and was unable to benefit from the rights attached to that status is also reasonable.

[28] Consequently, I am of the opinion that the panel did not err in determining that the applicant was excluded under Article 1E of the Convention.

(2) Was the panel's determination that the applicant and her daughters could have received Paraguayan state protection unreasonable?

[29] In the case at bar, the applicant submitted that she did not try to obtain Paraguayan citizenship when she was a permanent resident of that country because she was being threatened by her husband and his creditors. Yet, at the hearing before the panel, the applicant even admitted that she had not taken any steps to obtain Paraguayan state protection.

[30] After hearing that testimony, the panel found, in light of the documentary evidence, that although the human rights situation is not perfect and there are problems of corruption and violence against women, the objective documentary evidence indicates that significant efforts are being made to fight against domestic violence and that it can be reported to various state agencies. There are also a number of national and international non-governmental organizations and government-funded organizations that specialize in human rights and are active in Paraguay, which could have assisted or guided the applicant in her efforts.

[31] The applicant submits that this finding by the panel is unreasonable.

[32] *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at page 725, clearly established that unless there is a complete breakdown of state apparatus, a state must be presumed capable of protecting its nationals, and it is necessary to first avail oneself of the protection measures available in one's own country before claiming refugee protection in another country.

[33] In that respect, the case law has insisted on the quality of the evidence that had to be presented in order for the claimant to meet the evidentiary burden necessary to reverse the presumption:

> . . . The evidence will have sufficient probative value if it convinces the trier of fact that the state protection is inadequate. In other words, a claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate (*Carrillo v. Canada (Citizenship and Immigration)*, 2008 FCA 94, at paragraph 30)

[34] *Ward* (above), at page 724, tells us that, in a practical sense, the claimant can "mak[e] 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" in refusing to ask for the authorities' protection by advancing, for example, testimony of individuals in a similar situation for whom the measures taken by the state to assist them were ineffectual. The claimant could also advance his or her own testimony of past personal incidents in which the claimant asked for state protection, but it did not materialize.

[35] However, the applicant testified that she took no steps to approach the authorities, whereas had she done so, she could have shown that the state was unable to ensure her protection.

[36] While taking into consideration the applicant's vulnerability as a woman separated from her husband, the panel was of the opinion, in light of the case law, that "her testimony does not constitute relevant, reliable and convincing evidence that, in her personal case and that of her minor daughters, rebuts the presumption that the Paraguayan authorities are capable of protecting their citizens and permanent residents". The panel's view was that in this situation, it was not unreasonable to expect the principal applicant and her daughters to take steps to obtain state protection.

[37] Similarly, in a recent decision, the Federal Court confirmed that in Paraguay there are currently services for women who are victims of violence:

> It is clear from the documentary evidence that domestic violence is fairly common in Paraguay, but the documentary evidence also shows that many victims file complaints and make use of the services available. Consequently, it was open to the Board to find that the principal applicant had not rebutted the presumption of her state's protection (*Ruiz v. Canada (Citizenship and Immigration)*, 2009 FC 903).

[38] The Court does not have to substitute its own assessment of the facts for that of the panel. Taking into account the facts and law in this case, the panel's determination regarding state protection seems to me to fall within the range of reasonable, acceptable outcomes.

[39] Furthermore, the claimant alleged that the children's fear was founded on her own. The panel therefore did not err in assessing the children's fear in conjunction with that of the principal applicant.

[40] Accordingly, there is no basis for the Court to intervene.

JUDGMENT

This application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

Certified true translation
Sarah Burns

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1510-10

STYLE OF CAUSE:

HANAN HUSSSEIN RAMADAN
EVELYN HAIDAR RESLAN RAMADAN
SIRENA HAIDAR RESLAN RAMDAN

Applicants

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THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 3, 2010

REASONS FOR JUDGMENT: TREMBLAY-LAMER J.

DATED: November 5, 2010

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