

Federal Court



Cour fédérale

Date: 20110126

Docket: IMM-4031-10

Citation: 2011 FC 95

Vancouver, British Columbia, January 26, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

**KARLA BERENICE GARCIA RAMIREZ
CESAR ERNESTO CASSO RAMIREZ**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The present Reasons for Judgment and Judgment pertain to the Immigration and Refugee Board's ("IRB") decision to refuse to grant the Applicants (wife and husband) status as Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA"). Leave was granted by Justice Phelan on October 27, 2010.

[2] The principal Applicant, Karla Berenice Garcia Ramirez, was an employee at CONACULTA, a federal cultural institution in Mexico. During the course of her employment, she uncovered evidence of fraud and also went through a labour dispute. She allegedly received threats in regards to her wish to make this fraud public, which she did by means of a denunciation to a senator. Over the span of six years, she alleges having received various threats and having her car's taillights broken.

[3] In its decision, the IRB refused status to the Applicants for the following reasons:

- The principal Applicant did not satisfy the requirements to establish the existence of well-founded fear.
- The principal Applicant's delay in leaving Mexico and some lack of documentary evidence to sustain the subjective fear.
- The Applicants failed to rebut the presumption of state protection and did not present any evidence to establish that such protection was actively sought.

[4] Essentially, this Court is asked to review factual questions, as the Applicants' argumentation pertains to the IRB's analysis of the evidence before it. The applicable standard of review is that of reasonableness, as is instructed by the Supreme Court's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9. The reviewing Court must assess the impugned decision in order to address if the decision falls within the range of acceptable outcomes in fact and law (*Dunsmuir*, at para. 47). The Court must not reassess the evidence and substitute its decision for that of the IRB. Hence, the Court will proceed to analyze the grounds by which the IRB denied the Applicants asylum in Canada.

Subjective and Well-Founded Fear of Persecution

[5] The IRB's decision in this respect is detailed and addressed the relevant evidence. The Court has noted that the IRB did not make a clear credibility finding, but that it had made selected findings which, as a result, questioned some part of the version of the events given by the principal Applicant or the interpretation given to them. All things considered, her story did not obtain the seal of credibility from the IRB and this was reflected in the reasons given.

[6] Also, the IRB qualified the alleged threats suffered by the principal Applicant as not having the importance and scope that the principal Applicant alleges. These threats and their impact are essential to establish a well-founded fear of persecution. As the IRB noted, these threats were allegedly suffered months after the relevant events. It was reasonable for the IRB to conclude that if these threats were connected with her wish to expose the corruption, these would have occurred much sooner.

[7] The IRB also took note of the fact that at no time, despite having had the opportunity to do so, did the principal Applicant submit evidence in her possession that was of such importance that persons would be brought down from their high positions. This Court did inquire about this situation and counsel for the Applicants was not able to show that such critical information was available. This can only impact seriously on the well-founded fear of persecution.

[8] Furthermore, the corruption at CONACULTA was made public by other journalists, as the Applicants themselves submitted. It is also important to note, as the IRB did, that the principal Applicant did not publish any article in regards to the corruption, whether in Canada or in Mexico.

The IRB's findings in regards to the Applicant's journalistic activities and the threats received are reasonable and supported by the evidence.

[9] In regards to the principal Applicant's subjective fear, the IRB's finding that she had been able to stay and work in Mexico for six years is sufficient to support a conclusion that her alleged subjective fear was inconsistent with her history and behaviour in Mexico. As the IRB noted, the evidence does not support the fact that her alleged threats came from her former employers. In any event, the argument pertaining to state protection is in and of itself sufficient to resolve the present application for judicial review.

Sufficiency of State Protection

[10] The IRB's analysis of the sufficiency of state protection is wholly reasonable. Put simply, the Applicants did not approach police authorities at any given time to complain about threats, or even about the damage to their car. It was reasonable for the IRB to cite this Court's conclusion in *Rio Ramirez v. Canada (Citizenship and Immigration)*, 2008 FC 1214 in order to establish that "doubting the effectiveness of protection offered by the state when she has not really tested it does not rebut the existence of presumption of state protection". Furthermore, the IRB complemented this finding by counting on case law submitted by the Applicants where even journalists that had taken a more active role in denouncing crime were required to approach the state before seeking asylum in Canada. It also made some distinguishing as to the role of journalists and how the activities of the principal Applicant were not of the type of an investigative journalist. As the IRB noted, no clear and convincing evidence was submitted to rebut this presumption, other than general statements that powerful people were involved.

[11] The IRB's decision falls within the range of acceptable outcomes defensible in fact and law: it is clear, reasoned and finds its basis in the evidence before it. This Court cannot substitute its decision for that of the IRB in the case of factual findings, unless these are unreasonable. In the case at bar, the IRB's findings were reasonable.

[12] No question for certification has been submitted, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified.

“Simon Noël”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4031-10

STYLE OF CAUSE: KARLA BERENICE GARCIA RAMIREZ et al.
v. MCI

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: January 25, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** NOËL J.

DATED: January 26, 2011

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