Federal Court		Cour fédérale

Date: 20110208

Docket: IMM-3117-10

Citation: 2011 FC 139

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 8, 2011

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

JOSE ALFREDO VEGA ZARZA
ABIGAIL PICHARDO ROMERO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act), of a decision dated May 7, 2010, by the Immigration and Refugee Board, Refugee Protection Division (panel). In its decision, the panel ruled that the applicants were not Convention refugees or persons in need of protection as defined in sections 96 and 97 of the Act.

Factual background

[2] The applicants, Jose Alfredo Vega Zarza and his spouse, Abigail Pichardo Romero, are citizens of Mexico.

[3] On November 6, 2007, an individual allegedly approached Mr. Vega Zarza to propose that he sell drugs on behalf of someone named El Gavilan. Mr. Vega Zarza stated that he refused the proposal immediately.

[4] Two days later, on November 8, 2007, an individual allegedly came another time for an answer. Mr. Vega Zarza purportedly turned down the offer again. The same day, four men appeared at their home claiming to be police officers. Ms. Pichardo Romero refused to open the door for them. They apparently told her that they would return. The applicants allege that their house was watched for about a week.

[5] On November 16, 2007, Mr. Vega Zarza allegedly went to the courthouse in Toluca to file a protection request. The people there apparently made him return several times, and nothing came of the request.

[6] On November 20, 2007, Mr. Vega Zarza was purportedly taken, beaten and kidnapped by five (5) individuals who allegedly reiterated their proposal that he sell drugs for them. The individuals apparently left him unconscious by the side of the road. After he returned home, the couple apparently decided to find refuge elsewhere.

[7] On November 21, 2007, the applicants went to the home of some of Ms. Pichardo Romero's uncles in San Mateo. They had to leave because the attackers apparently found them.

[8] On November 24, 2007, the applicants then went to stay with one of Ms. Pichardo Romero's other uncles in the Federal District. On December 16, 2007, two of the four (4) men who purportedly appeared at the couple's home came to the uncle's residence and allegedly threatened the applicants and their unborn child with death.

[9] On February 11, 2008, the applicants came to Canada and claimed refugee protection the same day.

Impugned decision

[10] In its decision dated May 7, 2010, the panel rejected the applicants' refugee claim for two reasons. In the first place, the panel found that the applicants were not credible because the hearing revealed inconsistencies, incongruities and contradictions in the testimonies.

[11] However, the panel noted that it did not focus on validating or rebutting the applicants' allegations or demonstrating a lack of credibility because even if the applicants were credible, the panel arrived at the conclusion that the applicants had an internal flight alternative.

[12] In this regard, the panel analyzed the case law applicable to internal flight alternatives (IFA). The panel noted that during the hearing, it gave the applicants the opportunity to submit their

evidence on this matter and that they were unable to explain why the suggested cities were unreasonable and/or why there was be a serious possibility that they would be persecuted there.

[13] The panel identified two cities as IFAs and found that the applicants would not be faced with a fear of persecution by their attackers in those cities. The panel believed that a move to one of the identified cities by the applicants was a realistic and reasonable option. The panel therefore found that the applicants had not discharged their burden of showing that there was no possibility of an IFA for them.

Relevant provisions

[14] Sections 96 and 97 of the *Immigration and Refugee Protection Act* read as follows:

Convention refugee	Définition de « réfugié »
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection	Personne à protéger
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*a*) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins

medical care.	médicaux ou de santé adéquats.
Person in need of protection	Personne à protéger
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Issue

[15] This application raises the following question:

> Did the panel err in finding that there is an internal flight alternative (IFA) for the applicants?

Standard of review

[16] The Court found in *Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354, [2009] FCJ No 438, at para 26, that in light of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the standard of review applicable to credibility findings and IFA decisions was that of reasonableness:

> [26] In relation to the standard of review for an IFA, the Court in *Diaz v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1543 (F.C.) summarized the case law at paragraph 24 as follows:
>
> > . . . *Ortiz* v. *Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1716, summarizes the features of IFA determinations in judicial review, "[Justice Richard] held at paragraph 26 that Board determinations with respect to an IFA deserve deference because the question falls squarely within the special expertise of the Board. The determination involves both an evaluation of the circumstances of the applicants, as related by them in their testimony,

> and an expert understanding of the country conditions" from *Sivasamboo v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 2018. In light of these issues, this Court has found the standard of review to be patent unreasonableness pre-*Dunsmuir* above.
>
> . . .
>
> Thus, it was well-settled that this Court should not disturb the Board's finding of a viable IFA unless that finding was patently unreasonable. The standard of review, therefore, is reasonableness as a result of *Dunsmuir* above.

Analysis

[17] The applicants pointed out that the panel erred in its analysis of the credibility of the facts. According to the argument submitted by the applicants' counsel, the panel had to elaborate on the credibility issue. Despite the able presentation by the applicants' counsel, the Court cannot agree with her arguments.

[18] In fact, in reading paragraph 6 of the panel's decision in context, it is apparent that the panel's comments are that it would not focus on validating or rebutting the applicants' allegations because, in this case, the panel could dispose of the refugee claim on the basis of an IFA. In this case, the case law of this Court states that when a panel makes an IFA finding, this finding is sufficient to dispose of the refugee claim because the internal flight alternative is inherent in the very notion of refugee and person in need of protection (*Estrella v Canada (Minister of Citizenship and Immigration)*, 2008 FC 633, [2008] FCJ No 806). Thus, the Court is of the opinion that, under the circumstances, addressing the applicants' allegations point by point was unnecessary because the panel's decision does not rely on the credibility issue but rather on an internal flight alternative.

The case law submitted by the applicant's counsel during the hearing *(Canada (Minister of Citizenship and Immigration) v Koriagin*, 2003 FC 1210, [2003] FCJ No 1534; *Kedelashvili v Canada (Minister of Citizenship and Immigration)*, 2010 FC 465, [2010] FCJ No 547) does not raise the IFA issue and therefore does not apply in the case under review.

[19] The Court points out that the panel is assumed to have considered all the evidence unless the contrary is shown, and is not required to refer to all the evidence (*Florea v Canada (Minister of Employment and Immigration*) (FCA), [1993] FCJ No 598).

[20] Referring to *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1214, [2008] FCJ No 1533, at para 32, the panel emphasized the following in its decision:

> [32] It is settled law that the burden of proof regarding an internal flight alternative rests on the claimant (*Del Real v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 140 at paragraph 18). Thus, the applicant had to establish either that it would be unreasonable for her to seek refuge in another part of the country or that there were, in fact, conditions preventing her from relocating elsewhere in Mexico, and she failed to do so.

[21] In *Julien v Canada (Minister of Citizenship and Immigration)*, 2005 FC 313, [2005] FCJ No 428, at para 9, the Court reiterated the IFA concept relying on *Rasaratnam v Canada (Minister of Employment and Immigration)* (FCA), [1992] 1 FC 706, [1991] FCJ No 1256, by the Federal Court of Appeal:

> [9] For a refugee claim to be approved under sections 96 or 97 of the Act, there must be an internal flight alternative in the applicant's country of nationality:
>
> > As to the third proposition, since by definition a Convention refugee must be a refugee from a country, not from some subdivision or region of a

> country, a claimant cannot be a Convention refugee if there is an IFA. It follows that the determination of whether or not there is an IFA is integral to the determination whether or not a claimant is a Convention refugee. . . . (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.), at paragraph 8.)

[22] The applicants are alleging that it is unreasonable to believe that their persecutors would be unable to find them in the cities suggested by the panel because they succeeded in finding them in the Federal District of Mexico City, the biggest and most populated city in Mexico.

[23] The Court cannot agree with this argument for the following reasons. First, the two cities in which the applicants found refuge, San Mateo and the Federal District of Mexico City, are located close to their city of residence, Toluca. Secondly, the applicants found refuge with Ms. Pichardo Romero's uncles. It is therefore not unreasonable to believe, as the respondent's counsel pointed out, that, under these circumstances, it is easier to find them with a simple search. Thirdly, the cities suggested by the panel, Hermosilla (Sonora) and La Paz (Baja California), are located on the other side of Mexico. It is reasonable to doubt that the persecutors would succeed in locating the applicants.

[24] The applicants are also alleging that their persecutors are police officers and would therefore be able to find them more easily. However, the evidence in the file is far from being clear on the matter. In fact, the transcript refers to [TRANSLATION] "people who claim to be police officers" (Tribunal Record, p. 178), and the applicants' affidavit refers to [TRANSLATION] "so-called police officers" (Tribunal Record, p. 33).

[25] It is worth remembering that the burden of demonstrating that an IFA is unreasonable is heavy (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164) and this burden rests on the applicants.

[26] In this case, the applicants submitted no evidence that it was impossible for them to find refuge in the two cities suggested by the panel. Furthermore, nothing permits the Court to find that the panel committed an error and that its decision is unreasonable. For these reasons, the Court finds that the impugned decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*).

[27] Consequently, the application for judicial review will be dismissed. There is no question for certification arising and this matter does not contain any.

JUDGMENT

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

"Richard Boivin"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3117-10
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