Federal Court  Cour fédérale

Date: 20110616

Docket: IMM-7119-10

Citation: 2011 FC 712

Toronto, Ontario, June 16, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

I.M.P.P.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult female citizen of Mexico. She applied for refugee status in Canada and was denied. An application for judicial review in this Court was unsuccessful. The Applicant then sought a pre-removal risk assessment (PRRA) alleging personalized risk if she were to be returned to Mexico. In a decision dated November 4, 2010 the PRRA Officer determined that she would not be at risk if she were to be returned to Mexico. The Applicant seeks judicial review of that decision.

[2] For the reasons that follow, I am allowing this judicial review. The decision of the PRRA Officer will be set aside and returned for re-determination by a different Officer. There is no question for certification.

[3] A brief recitation of some of the background facts is in order, with many of the references being anonymous due to the sensitivity of the matters. The Applicant attended a concert in 2004 with some friends. On the way home, she was diverted by X, who drugged and raped her. The Applicant, on arriving home, complained to her mother and was taken to the hospital for examination. She retained a lawyer, who was harassed and told to stop the investigation he was making. The Applicant's family members were fired from their jobs, apparently because of influence from X. Her father was beaten up, apparently under the instructions of X. It appears that X was obsessed with the Applicant and contacted her, threatening to rape her again. X was a politically very powerful person, as well as a prominent entrepreneur. The Applicant and her brother moved to other places in Mexico and were pursued by agents of X, who continued to threaten and harass both of them. The Applicant fled to Canada and made a refugee claim.

[4] The Refugee Protection Board determined that the Applicant had an internal flight alternative in Mexico City. In its reasons, the Board found, among other things:

> *"If by some chance the claimant was located, which the panel is not persuaded to believe, documentary evidence demonstrates that state protection is available to the claimant."*

[5] The Applicant sought a pre-removal risk assessment. She filed evidence which persuaded the PRRA Officer to make a funding that:

> *"…I am persuaded that [X] would be able to track down the applicant throughout the country…"*

[6] The only issue in dispute in respect of the PRRA Officer's decision is that of state protection. In that regard, the Officer determined:

> *"…I am not satisfied that there is clear and convincing evidence of the state's inability to provide protection."*

[7] The evidence apparently relied upon by the Officer is set out in the Officer's reasons, as follows:

> *…Although the documentary evidence relating to protection for women is uneven and certainly far from ideal, the objective evidence shows that in the Federal District, there is legislation in place and services available to provide protection and assistance for women.*
>
> *Furthermore, with respect to the problem of corruption within the police force, the DOS reports that to better manage the corruption problem, in January 2009, the government enacted legislation establishing a four-year deadline to vet personnel in all of the country's 2,600 police forces using a series of testing mechanisms. The DOS notes that the legislation requires all police forces to meet certain compensation and training standards, and it also makes it easier for authorities to fire corrupt or unfit officers.*
>
> *According to DOS, in seeking to improve human rights practices, the SSP during the year conducted 131 courses specifically on human rights or with modules pertaining to the topic, training a total of 19,048 personnel. In the SSP training academy in San Luis Potosi,*

> *human rights were institutionalized as a standard part of the curriculum. The DOS reports that the SSP also worked with the International Organization for Migration to hold three courses training 112 federal police officers. With experts from the ICRC, the SSP held two courses to train 24 personnel. Additionally, the CNDH trained 4,344 SSP officials. The SSP in collaboration with the National Autonomous University of Mexico also continued to provide human rights training to federal police officers throughout the country. The DOS notes that separately, the CNDH provided training to approximately 3,600 PGR personnel.*
>
> *Based on the evidence before me, I am not persuaded that the applicant has provided clear and convincing evidence of the inability to access state protection in the Federal District.*

[8] Thus, the Officer relied on DOS (US Department of State) reports which discussed training efforts implemented in Mexico. The Officer concluded that the Applicant had not provided "clear and convincing" evidence that the Applicant could not access state protection in the Federal District (Mexico City).

[9] The Applicant's lawyers had filed with the PRRA Officer a number of documents reflecting conditions in Mexico, including in Mexico City. One such document was a report that while domestic violence laws were enacted, many states had not put them into effect, and that Mexico City was second only to Juarez in female homicides. Most telling is a certified copy of a sworn statement of Dr. Alicia Elena Pérez Duarte y Noroña, a lawyer, former judicial magistrate in Mexico City, a professor of law in the National Autonomous University of Mexico; and until her resignation in frustration respecting change in the attitude towards women's rights in Mexico, the first special prosecutor for Attention to Crimes of Violence Against Women. In other words, she was the very person in charge of the enforcement of the laws that the PRRA Officer only speculates would afford protection to persons such as the Applicant. This affidavit is lengthy. I repeat

paragraph 2:

> *2. It is my opinion that in Mexico, deep and persistent insensitivity to gender issues, as well as generalized discrimination against women in social and governmental structures, are the cause of widespread gender-based violence throughout society, as well as in domestic relationships. They also result in sexist attitudes, and in an unresponsive and ineffective legal system and justice officials who are unwilling or unable to protect women from gender-related harms in their homes and elsewhere, despite recent efforts to change this in recent years. As I will describe in detail below, I believe that – despite the passage of recent legislation aimed at addressing issues related to violence against women – Mexico remains a country in which women have limited, if non-existent, means to escape violence in our relationships, particularly within family relationships. Women who are the victims of this violence confront major obstacles when – in trying to put an end to abuse that they are suffering – they seek the protection of judicial authorities: if they attempt to move to other locations within the country, they are unprotected and there is no way to hide their whereabouts; there are no guarantees for their safety, and they can be tracked down relatively easily through a variety of means.*

[10] I also repeat paragraphs 11 and 12, in part, to demonstrate that these conditions are present *throughout* Mexico:

> *a. Despite the guarantees provided under the Mexican Constitution (including the right to prompt and expeditions justice), as well as under international treaties which Mexico has ratified, our national legal framework continues to reflect the culture of patriarchy from which it emerged. This remains the case, notwithstanding recent changes in the law.*
>
> *b. My research and professional experience have convinced me that the extreme dangers faced by women throughout Mexico are a result of this bias and discrimination. The most dangerous place for a woman or girl is in the home, where they may suffer from gender-based abuses at the hands of their male relatives – spouses, partners, lovers, fathers, stepfathers, brothers and uncles. There is enormous*

> *social and cultural tolerance of this abuse, resulting in the virtual complicity of authorities who should prevent and punish these violent acts. My conclusions on this issue are supported by a variety of studies, reports, and legal decisions, including those of the following entities:*

[11] The PRRA Officer committed at least two errors in coming to the decision at issue, which are errors in law and subject to review on the standard of correctness:

1. The Officer confused the requirement that evidence be "clear and convincing" with the requirement that, once such evidence has been led, the matter must be determined "on the balance of probabilities"; and

2. The Officer failed to have regard to what was the actual effectiveness of the laws and programmes that may have been put in place.

[12] I repeat what I said at paragraphs 6 to 8 in *Lopez v. Canada (Minister of Citizenship and Immigration*, 2010 FC 1176:

> ***6*** *First as to the legal issues, the Federal Court of Appeal in answering a certified question in Carillo* v. *Canada (Minister of Citizenship and Immigration), 2008 FCA 94, [2008] 4 F.C.R. 636 wrote at paragraph 38:*
>
> *38. I would answer the certified questions as follows:*
>
> *A refugee who claims that the state protection is inadequate or non-existent bears the evidentiary burden of adducing evidence to that effect and the legal burden of persuading the trier of fact that his or her claim in this respect is founded. The standard of proof applicable*

> *is the balance of probabilities and there is no requirement of a higher degree of probability than what that standard usually requires. As for the quality of the evidence required to rebut the presumption of state protection, the presumption is rebutted by clear and convincing evidence that the state protection is inadequate or non-existent.*
>
> ***7*** *The Board Member in the present case confused the issue as to* quality of evidence *which must be "clear and convincing" with the issue of* standard of proof *which is the usual "balance of probabilities". Thus vague evidence as to a phone call or document that cannot be found possibly may not be "clear and convincing" whereas, as in the case here, a report from an agency such as Amnesty International and a news agency such as Reuters or the Wall Street Journal is. Where such "clear and convincing" evidence is present it must be weighed on the "balance of probabilities".*
>
> ***8*** *Another error of law is with respect to what is the nature of state protection that is to be considered. Here the Member found that Mexico "is making serious and genuine efforts" to address the problem. That is not the test. What must be considered is the actual effectiveness of the protection. I repeat what I said in Villa v. Canada (Minister of Citizenship and Immigration) 2008 FC 1229 at paragraph 14:*
>
> *14. The Applicants lawyer was given an opportunity to make further submissions as to IFA and did so in writing. In doing so reference was made to a number of reports such as those emanating from the United Nations and the United States and to decisions of this Court including Diaz de Leon v. Canada (MCI), [2007] F.C.J. No. 1684, 2007 FC 1307 at para. 28; Peralta Raza v. Canada (MCI), [2007] F.C.J. No. 1610, 2007 FC 1265 at para.10; and Davila v. Canada (MCI), [2006] F.C.J. No. 1857, 2006 FC 1475 at para. 25. Those and other decisions of this Court point to the fact that Mexico is an emerging, not a full fledged, democracy and that regard must be given to what is actually happening and not what the state is proposing or endeavouring to put in place.*

[13] In the present case, the Officer must accept the Applicant’s evidence as clear and convincing. There are no vague phone calls or missing documents; instead, there is a sworn affidavit as to the situation throughout Mexico, as well as other reports, and DOS reports. All of this is “clear

and convincing". What the Officer must do is weigh *all* of this evidence and determine *on the balance of the probabilities* whether there is *effective* state protection.

[14] Given the evidence in this case, the Officer handled it incorrectly. Handled correctly, a reasonable conclusion would be that the Applicant cannot be afforded effective state protection in the circumstances of this case.

[15] The application will be allowed, no Counsel requested certification.

JUDGMENT

FOR THE REASONS PROVIDED;

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed;
2. The matter is returned for re-determination by a different Officer;
3. There is no question for certification; and
4. No Order as to costs.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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