Federal Court Cour fédérale

Date: 20110627

Docket: IMM-6581-10

Citation: 2011 FC 775

Ottawa, Ontario, June 27, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

RAFAEL SOTELO VELAZQUEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated October 15, 2010, wherein the Applicant was determined to be neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Board found that the Applicant had not rebutted the presumption of state protection, nor had he taken all reasonable steps to avail himself of that protection.

[3] For the reasons that follow, this application is dismissed.

I. Background

A. *Factual Background*

[4] The Applicant, Rafael Sotelo Velazquez, is a citizen of Mexico. He alleges that he was assaulted, abducted and tortured due to his political beliefs.

[5] The Applicant claims to be a long-standing supporter of the Party of the Democratic Revolution (PRD). In August 2008 he decided to campaign for a PRD candidate in the municipality of Jiutepec's municipal presidential election. The Applicant's role was to visit different towns in the municipality and meet with community leaders in order to build support for the PRD candidate.

[6] After leaving a meeting on the night of September 16, 2008, the Applicant claims he was attacked by five men. They carried machineguns, and told the Applicant that they would kill him if he continued to support the PRD. The Applicant was frightened, so he waited until the next day to file a denunciation at the Public Ministry. The Public Ministry, however, told him that they could not help him without any witnesses to the attack.

[7] The Applicant claims that due to fear, he stopped attending PRD meetings. Nonetheless, on September 26, 2008 as the Applicant was about to enter his home, he alleges that he was abducted by four men who forced him into a black truck. He was taken to a house where he was given electroshocks to the soles of his feet. He was told that he was a dead man if he continued to work for the PRD. The next day, the men dumped the Applicant outside of the city.

[8] The Applicant claims that his wife witnessed the abduction. While the Applicant was being held, his wife went to the Public Ministry. The officer at the Public Ministry allegedly told his wife, "it's better if you tell your husband to disappear because they will kill him."

[9] The Applicant decided to flee to Canada. He arrived on a visitor's visa on October 2, 2008. He filed a claim for refugee protection in August 2009.

B. *Impugned Decision*

[10] The determinative issue for the Board was state protection. The Board found that the Applicant did not provide clear and convincing evidence that, on a balance of probabilities, state protection in Mexico is inadequate. The Board reviewed the documentary evidence and found that the preponderance of the evidence supported the view that Mexico is a functioning democracy. As such, the Applicant was obliged to take all reasonable steps to seek protection. The Board found that the Applicant made very little effort to avail himself of the protection available in Mexico before fleeing to Canada. He did not report his abduction to the Public Ministry because his wife allegedly reported the abduction and received a response the Board found to be illogical. The officer told the

Applicant's wife that she should tell her husband to disappear, even though he was currently being held captive and would not be able to disappear if he were dead. Furthermore, the Board found that after his release, the Applicant would have been in a position to provide the police with more evidence about his ordeal, but he failed to do so. The Applicant also failed to inform anyone from the PRD about his problems, even though in the Board's opinion, someone from the PRD may have been able to help him provide the authorities with more evidence.

[11] Additionally, there was no evidence to suggest that the Applicant was in any way politically influential, or that members of opposing political parties would be motivated to pursue him. His efforts to garner support for the PRD candidate included speaking to neighbourhood representatives that he knew, receiving attendees at community meetings, showing them to their seats and providing them with refreshments. The Board found that the Applicant was only speculating that his alleged persecutors were members of the opposition parties.

[12] As a result, the Board was not persuaded that the authorities would not investigate all of the Applicant's allegations if they were reported in sufficient detail. The Board did not find the Applicant's responses regarding the effectiveness of state protection to be persuasive, since they were not credible, largely unsubstantiated and not consistent with the documentary evidence.

II. Issues

[13] The Applicant raises the following issues:

(a) Did the Board ignore evidence?

(b) Was the Board's state protection analysis unreasonable?

III. Standard of Review

[14] The weight assigned to evidence and the interpretation and assessment of evidence are all reviewable on a standard of reasonableness (*NOO v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045, [2009] FCJ No 1286 at para 38).

[15] The Board's conclusion regarding the application of the test for state protection and the disregard of evidence in applying the test are issues of mixed fact and law and are reviewable on a standard of reasonableness (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12; [2009] 1 SCR 339; *Barajas v Canada (Minister of Citizenship and Immigration)*, 2010 FC 21 (QL) at para 21 and *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 696, 170 ACWS (3d) 168 at para 11).

[16] As set out in *Dunsmuir*, above, reasonableness requires consideration of the existence of justification, transparency, and intelligibility within the decision-making process. It is also

concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

IV. Argument and Analysis

A. *Did the Board Ignore Evidence Before it?*

[17] The Applicant submits that the Board ignored documentary evidence.

[18] The Applicant provided medical reports detailing the medical attention he received subsequent to the first assault, when he presented with injuries to the chest, abdomen and cheek, and following the abduction. The report from the latter incident states that the Applicant presented with "many hits to the face, thorax, and abdomen as well as presenting burns on the soles of his feet."

[19] To support his assertion that he was targeted due to his political involvement, the Applicant submitted various letters all indicating that the Applicant had campaigned for the PRD and been persecuted for his political involvement. The Board mentions none of these documents in its reasons.

[20] The other allegedly ignored documentary evidence consists of sections of reports that challenge the Board's determination that Mexico is a functioning democracy. The Applicant argues that the Board selectively cited documentary evidence to support its conclusion.

[21] The Respondent takes the position that the Board neither ignored country condition evidence nor made selective use of the documents, as a review of the reasons clearly indicates that the Board acknowledged the weaknesses in the Mexican justice system, but gave more weight to evidence indicating that laws attacking corruption and bribery were having a marked effect.

[22] The Applicant relies on the principal enunciated in the oft-cited case *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, 83 ACWS (3d) 264. The Applicant concedes that the Board is entitled to prefer some documentary evidence and is not required to refer to every piece of evidence before it. However, if the Board fails to discuss important, contradictory evidence, the Applicant argues that the Court is more likely to conclude that the Board ignored or misapprehended the evidence.

[23] In the present matter, the ratio of *Cepeda*, above, does not apply. The country condition documents that the Applicant claims were ignored or selectively utilized only go to show what the Board openly acknowledged – that corruption and criminality remain a problem that is currently being tackled in Mexico. The Board is entitled to view the evidence as a whole, and come to the conclusion that the balance tips in favour of showing that Mexico's efforts are translating into adequate, operational results. The allegedly ignored country conditions documents do not necessarily contradict the Board's conclusion, nor do they support the Applicant's own account.

[24] The allegedly ignored personal documents are equally unhelpful to the Applicant's cause on judicial review. They support the Applicant's account of being beaten, electro-shocked and indicate that he did campaign for the PRD, as he testified. However, what the Board did not find persuasive,

credible or plausible, was the Applicant's explanation for failing to approach the authorities for protection. The onus is on the Applicant to adduce clear and convincing evidence of the state's inability to offer adequate protection. An unsupported unwillingness to make reasonable efforts to access the protection that is purportedly available will usually not be sufficient to convince the Board to disbelieve the documentary evidence. For instance, the Applicant did not go to the authorities following his abduction, but rather fled to Canada. The Applicant was unable to give a reasonable explanation for this choice. The Board did not ignore or misapprehend important or contradictory evidence in coming to the conclusion that the Applicant failed to rebut the presumption of state protection.

B. *Was the Board's State Protection Finding Unreasonable?*

[25] The Applicant argues that the Board erred in its state protection analysis because, 1) the Board failed to consider the effectiveness of the protection measures implemented by Mexico, 2) the Board failed to consider that the Applicant had gone to the police, but the police failed to act, and 3) the Board's analysis was generic, and did not take into account that the Applicant was a victim of political persecution.

[26] With respect, I do not find that any of the issues raised by the Applicant to point to the existence of a reviewable error.

[27] The test for state protection requires the Applicant to adduce clear and convincing evidence that the state is unable or unwilling to offer adequate protection. The Federal Court of Appeal

clearly stated in *Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, 69 Imm LR (3d) 309, that adequate is not synonymous with effective. Case law does support the contention that serious efforts by a state will only translate into adequate state protection where there is the capacity to implement policy changes at an operational level (*Hernandez v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1211, 164 ACWS (3d) 842). Again, as argued by the Respondent, a review of the reasons indicates that the Board did consider evidence showing the operational implementation of some of the measures taken by Mexico. Various anti-corruption efforts have resulted in changed policies and laws responsible for the arrest, prosecution and conviction of officials and members of the security forces. This evidence provides justification and intelligibility for the Board's decision.

[28] Although the Applicant was not required to endanger his life to prove the ineffectiveness of state protection, he was obliged to exhaust all courses of action reasonably available to him in Mexico prior to seeking protection abroad (*Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491, 167 ACWS (3d) 144 at para 16; *Santos v Canada (Minister of Citizenship and Immigration)*, 2007 FC 793, 159 ACWS (3d) 267 at para 15). A "subjective reluctance" or single bad experience with local police is not a sufficient reason to seek surrogate, international protection. The Board was not persuaded that the Applicant made reasonable efforts to seek protection in Mexico. Although the Applicant submits that he would have placed himself in danger had he delayed his flight in order to seek further state protection, he has provided no evidence to support this contention.

[29] The Applicant also refers in his submissions to the proposition advanced in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1, that a claimant may establish the inadequacy of state protection by adducing evidence of similarly situated individuals who were unable to access state protection. I agree that this is an accurate statement on the law; however, the Applicant has not adduced sufficiently probative evidence to show that the state has been unable to protect other PRD campaigners. The Applicant testified that a fellow-campaigner was in a suspicious car accident following the election, but it was only speculation on the part of the Applicant that members of the opposition party might have been involved.

[30] As for any lack of specificity in the state protection analysis, the Applicant has not provided any evidence to show that his situation of alleged political persecution is any different from the information on general criminality and corruption contained in the country conditions documents. The Board sufficiently engaged with his particular factual situation.

[31] This Court is not in the position to interfere with a decision that cannot be shown to lack justification, transparency and intelligibility. Based on the evidence before the Board, it was not unreasonable to conclude that the Applicant failed to rebut the presumption of state protection.

V. Conclusion

[32] No question to be certified was proposed and none arises.

[33] In consideration of the above conclusions, this application for judicial review is dismissed.

JUDGMENT

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

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-6581-10**
STYLE OF CAUSE:	**RAFAEL SOTELO VELAZQUEZ v. MCI**
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