Federal Court Cour fédérale

Date: 20110725

Docket: IMM-7069-10

Citation: 2011 FC 926

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 25, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

JORGE OCTAVIO PINEDA SANCHEZ, MARIELA RIVERO MURILLO, MAYRA KAREN PINEDA RIVERO, LISSET MARIEL PINEDA RIVERO, JORGE LUIS PINEDA RIVERO

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision by the Immigration and Refugee

Board (Board) dated November 10, 2010, that the applicants are not refugees or persons in need of protection.

I. Background

[2] The applicants are citizens of Mexico. The claim of the male applicant's spouse, Mariela Rivero Murillo (female applicant), and of their children is based on that of the principal applicant, Jorge Octavio Pineda Sanchez (male applicant), and on the events that occurred after the male applicant left Mexico.

[3] The male applicant's refugee claim was based on the following allegations.

[4] The male applicant worked as a self-employed driver for the Mexico-Tultepec automotive transportation cooperative company (the cooperative), located in Villa de las Flores, municipality of Coacalco, State of Mexico, starting in 2000. The cooperative was in a conflict situation with the Mexican Social Security Institute (IMSS) because it had failed to remit the contributions collected from its drivers. In November 2005, the IMSS seized property belonging to the cooperative as well as trucks belonging to drivers. Some drivers filed complaints. The heads of the cooperative then hired lawyers to contest the seizure, and forced the drivers to help pay the lawyers' fees. At a certain point, the male applicant and other coworkers noticed that the IMSS officials who had seized the property and the representatives of the cooperative seemed to be in collusion. The male applicant voiced his discontent and the situation with the heads of the cooperative became adversarial.

[5] In March 2007, the male applicant quit his job because of the conflicts and because he feared for his life. He left to run a business with the female applicant. When the male applicant quit, the cooperative owed him severance pay for his years of service. On February 18, 2008, the male applicant was called to a general meeting of the cooperative in which several employees participated. They were to discuss, among other things, the amounts that were to be paid as severance pay. During this meeting, the male applicant was informed that the cooperative would not be paying him the amounts owing because of problems within the cooperative and a lack of funds.

[6] The meeting between the workers and the heads of the cooperative was heated. During the meeting, the male applicant took exception to the cooperative's position and threatened to file a complaint to reveal the embezzlement committed by the heads of the cooperative and of the IMSS. He also distributed a confidential document that he had managed to obtain, listing the cooperative's debts to the IMSS and mentioning a possible agreement on the repayment of the cooperative's debt to the IMSS that the cooperative had refused to sign. At the end of the meeting, the male applicant was threatened by cooperative officials. The male applicant states that [TRANSLATION] "they threatened [him] by telling [him] that if this got complicated, there would be consequences."

[7] Two days later (on February 20, 2008), three individuals showed up at his business with firearms and threatened him with death. The threats were also directed at his family. The applicants took refuge with an aunt of the female applicant for two days and, on February 22, 2008, they went to Tomatlan, State of Veracruz, to the home of a cousin of the female applicant. The male applicant left Mexico on March 6, 2008, to come to Canada. The female applicant stayed in Mexico until May 6, 2008.

[8] After the male applicant's departure, the female applicant and her children continued to live with her cousin. On April 4, 2008, the female applicant was accosted by two individuals in the municipality of Cordoba, State of Veracruz, where she had found work. The individuals showed her a photo of the male applicant and asked her [TRANSLATION] "Do you know him? Do you have a relationship with him? Is this your husband?". The individuals uttered death threats against her and told her that she was going to be sorry if she did not tell them the truth. After that incident, the female applicant decided to join her husband in Canada with her children and seek refugee protection.

II. The Board's decision

[9] The Board did not question the applicants' credibility. It found that the applicants were not refugees because their fear did not fall under any of the five Convention grounds. It then analyzed the refugee protection claim under subsection 97(1) of the IRPA and rejected the claim on the ground that there was an internal flight alternative (IFA) for the applicants. The Board identified the city of Merida in Yucatan and the Federal District of Mexico as IFAs.

[10] The Board found that the applicants had not established, on a balance of probabilities, that they could not live safely in the two locations identified. The Board's finding is based on the following:

a. The Board found that the available evidence showed that the claimants' problems were in Ecatepec, in the State of Mexico, where the male applicant was living with his family.

b. The Board noted that the male applicant had left his job in March 2007 and had had no problems between March 2007 and February 2008. The Board therefore concluded that when the male applicant cut ties with the cooperative, his problems stopped.

c. The Board analyzed the documentary evidence that was contradictory and accepted the evidence supporting the claim that it was difficult to trace individuals using government databases. The Board inferred from that that the documentary evidence did not indicate that the applicants would be traced in the Federal District of Mexico or Merida.

d. As for the reasonableness of the proposed IFA, the Board found that, aside from the male applicant's statement, it had no credible information suggesting that the applicants would be traced in the Federal District of Mexico or Merida in Yucatan.

e. The Board found that the evidence did not indicate that the heads of the cooperative could easily trace the applicants or that they would have an interest in pursuing them in the cities identified as IFAs. The Board added that it seemed highly unlikely that the heads of the cooperative would be interested in the applicants, particularly since the applicants had not filed a complaint about the embezzlement they had witnessed and the threats they had received.

III. Issue

[11] This application for judicial review raises the following issue:

Did the Board err in its assessment of the evidence that led to the finding that there was an IFA for the applicants?

IV. Standard of review

[12] It is settled law that the standard of review applicable to the Board's finding of an IFA is reasonableness (*Guerilus v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 394 at para. 10 (available on CanLII); *Krasniqi v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 350 at para. 25 (available on CanLII); *Martinez Ortiz v. Canada (Citizenship and Immigration)*, 2011 FC 726 at para. 10 (available on CanLII); *Ramos Villegas v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 699 at para. 11 (available on CanLII)).

[13] The same standard applies to the Board's assessment of the evidence. The Court owes deference to the Board's findings and will intervene only if the Board's findings are perverse or capricious or made without regard for the evidence (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R.339).

V. Analysis

[14] The applicants argue that the Board made several errors in its assessment of the evidence. They contend, among other things, that the Board failed to consider and/or address evidence that clearly contradicts its findings that the applicants' problems were local and that the heads of the cooperative would have neither the ability nor the interest in tracing the applicants in the Federal District of Mexico or in the city of Merida, in Yucatan. The applicants also maintain that the Board made an unreasonable assessment of the evidence by finding that the applicants' problems stopped when the male applicant quit his job in March 2007. The applicants also argue that the Board made an unreasonable assessment of the documentary evidence concerning the possibilities of tracing individuals through national registries.

[15] The respondent argues that the Board's analysis of the evidence and the conclusions it drew from it are entirely reasonable and fall within the range of possible outcomes with regard to the evidence adduced. In addition, the respondent maintains that it must be understood from the decision that the Board found that when the male applicant had cut ties with the cooperative in 2007, his problems had ended and that the events of 2008 were sporadic and insufficient to preclude an IFA.

[16] With respect, I consider that the Board drew inferences that cannot reasonably be supported by the evidence and that it failed consider evidence that was important and that is inconsistent with its findings.

[17] It is important to keep in mind that the Board did not question the applicants' credibility. This means that it believed their account, which must be accepted as fact.

[18] The Board found that when the male applicant had cut his ties with the cooperative, his problems stopped. It based this conclusion on the fact that the male applicant had no problems between March 2007 (the period when he quit) and February 2008.

[19] The applicants contend that this finding is unreasonable because the evidence shows that the most serious problems that led to their leaving Mexico and seeking refugee protection started on February 18, 2008, during the cooperative's general meeting. I share their opinion.

[20] The evidence shows that the male applicant had not cut all ties with the cooperative in March 2007 because he was still waiting to receive the amounts owing to him as severance pay. In February 2008, the male applicant still had ties to the cooperative and the positions he took during the February 18, 2008 meeting rekindled his dispute with the heads of the cooperative. In addition, the applicants' principal allegations rely on the fact that it was the events that occurred on February 18 and 20 and on April 4, 2008, that led them to leave Mexico and seek refugee protection in Canada. The fact that the male applicant had no problems between March 2007 and February 2008 is in no way determinative in the applicants' refugee protection claim.

[21] The events that took place between February and April 2008 were, moreover, highly relevant, not only for addressing the risk alleged by the applicants, but also for determining the IFA issue. Yet, the Board did not consider them in its analysis.

[22] During the hearing, counsel for the respondent argued that the Board had mentioned the events that occurred in February and April 2008 in its decision, which shows that it did consider them in its analysis. She added that it must be understood from the decision that the Board found that it was the male applicant who rekindled his ties with the cooperative in February 2008, that the incidents were isolated and that when the male applicant did not maintain contact with the cooperative, his problems ended. She also noted that it must be inferred from the decision that the Board also considered that the passage of time since the incidents made it even less likely that the heads of the cooperative would retain any interest in the applicants.

[23] With respect, that is making the decision say more than it actually says. It is true that the Board mentioned in its decision the events that occurred during the meeting of February 18, 2008 (paragraph 12 of the decision), the threats received by the male applicant on February 20, 2008 (paragraph 13 of the decision), and the incident of April 4, 2008, during which the female applicant was accosted by individuals who asked for her husband (paragraph 14 of the decision).

[1] However, it was not enough for the Board to mention these events in its summary of the facts; it had to also consider them in its analysis, which it did not do. The case law has established that the Board must mention in its decision the pieces of evidence that concern an important element and that contradict the findings made by the decision-maker. In *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R.. 35, 83 A.C.W.S. (3d) 264 (FC), Justice Evans aptly stated the applicable principles:

> [15] The Court may infer that the administrative agency under review made the erroneous finding of fact "without regard to the

> evidence" from the agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency….
>
> [16] On the other hand, the reasons given by administrative agencies are not to be read hypercritically by a court (*Medina v. Canada (Minister of Employment and Immigration)* (1990), 12 Imm. L.R. (2d) 33 (F.C.A.)), nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it (see, for example, *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (F.C.A.). That would be far too onerous a burden to impose upon administrative decision-makers who may be struggling with a heavy case-load and inadequate resources. A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its findings of fact.
>
> [17] However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.)….

[24] In the case at bar, the incidents of February 18, February 20 and April 4, 2008, which, it must be remembered, must be accepted as fact, are central to the applicants' refugee protection claim and to their allegation that there is no IFA for them. The Board could not simply ignore them, especially since they tend to contradict certain findings of the Board.

[25] The Board also found that the evidence showed that the applicants' problems were local and that it did not support a finding that the heads of the cooperative had the ability and interest to trace the applicants elsewhere than in the city of Ecatepec. This finding completely overlooks the fact that the female applicant had been traced after the events of February 2008 to the municipality of

Cordoba, and not Ecatepec. This is a relevant indicator as to the ability and willingness of the heads of the cooperative to trace the male applicant and his family outside of Ecatepec. Yet, the Board did not take these facts into account in its analysis.

[26] I therefore consider that the Board made errors in its assessment of the evidence that warrant the Court's intervention.

[27] In view of my finding, it is not necessary to address the alleged errors concerning the Board's analysis of the documentary evidence.

[28] The parties have not submitted any question of general importance for certification and this matter does not give rise to any.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is allowed and that the matter is referred back for reconsideration by a differently constituted panel.

"Marie-Josée Bédard"
Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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