Federal Court  Cour fédérale

Date: 20120301

Docket: IMM-4533-11

Citation: 2012 FC 279

Ottawa, Ontario, March 1, 2012

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

HECTOR MENDEZ ESTRADA
NORMA ISABEL LUGO LOPEZ
JENNIFER MICHAELLE MENDEZ LUGO
HECTOR JAHIR MENDEZ LUGO
DIEGO FABIAN MENDEZ LUGO
KEVIN DANIEL MEDEZ LUGO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision made by the Refugee Protection Division of the Immigration and Refugee Board (the Board), rendered orally on May 27, 2011 and written reasons completed on June 15, 2011, wherein it rejected Mr. Hector Mendez Estrada and his family's application for refugee protection in Canada. The Board determined that the applicants

were neither Convention refugees within the meaning of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) nor people in need of protection within the meaning of section 97 of the Act.

[2] For the following reasons, this application is dismissed.

I. Background

[3] The applicants are citizens of Mexico. On September 10, 2008, while driving his taxi cab, Mr. Mendez Estrada heard gun shots. Five armed men being pursued by the police hijacked his taxi and forced him at gunpoint to help them flee. The assailants took Mr. Mendez Estrada's wallet and threatened to kill him and his family if he denunciated them. They forced him out of the taxi and fled in it. While Mr. Mendez Estrada did not report the incident to the police, he reported it to his taxi company, which in turn made a denunciation to the police.

[4] The suspects were subsequently apprehended by the police. On September 12, 2008, Mr. Mendez Estrada was summoned to participate in suspect identification proceedings and he identified one of his assailants in a line-up. This man was identified as a member of the organized crime group called "La Familia Michoacana". He confessed to the crime shortly thereafter. That same night, two armed men tried to break into the applicants' house while Mr. Mendez Estrada's wife, Ms. Lugo Lopez, and their children were home. Ms. Lugo Lopez called the police. Police officers arrived quickly and the men fled.

[5] Mr. Mendez Estrada left for Canada less than two weeks later while the rest of the family stayed with his in-laws. Ms. Lugo Lopez and the children eventually returned to the family home.

However, in October 2008, there was another break-in attempt at their house. The police were called again and arrived quickly at the scene which prompted the attackers to flee. Police said that they could put the house under surveillance for three days but the family chose to return and stay with Ms. Lugo Lopez' family. During this time, she received threatening phone calls on her cellular phone and on the landline at their home.

[6] Ms. Lugo Lopez and the children fled to Canada in November 2008, where they joined Mr. Mendez Estrada.

[7] Mr. Mendez Estrada's assailants continued to pursue him. In September 2010, Ms. Lugo Lopez's brother began to live in the applicants' house. On one occasion, culprits broke into the house and assaulted him before realizing that they had mistaken him for Mr. Mendez Estrada. Ms. Lugo Lopez's father was also approached about Mr. Mendez Estrada's whereabouts and was threatened.

[8] The Board believed the applicants' allegations to be credible. It determined that the applicants were not Convention refugees since their allegations did not have a nexus to a Convention ground and that being a victim of criminality, alone, could not form the basis of a particular social group. The Board further assessed the applicants' claim under section 97 of the Act and concluded that they were not persons in need of protection. The determinative issue was the availability of state protection as the Board concluded that state protection was available to the applicants.

II. Issue and standard of review

[9] The single issue in this case relates to the reasonableness of the Board's conclusion regarding state protection. Both parties agree that the issue of state protection involves questions of fact and law which are reviewable according to the standard of reasonableness (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para 38, 282 DLR (4th) 413 [*Hinzman*]).

III. Analysis

[10] The applicants argue that the Board made several reviewable errors in its assessment of the evidence.

[11] First, they argue that the Board erred in its assessment of the documentary evidence on country conditions. More specifically, they contend that the presumption of availability of state protection should be more easily overturned in a developing democracy such as Mexico than in a true democracy such as the United States. They also argue that the Board based its conclusion that state protection was available on evidence establishing Mexico's willingness to protect its citizens without addressing the effectiveness of the measures put into place. Further, the applicants contend that the Board ignored compelling evidence that contradicted its findings without explaining why it discarded that contradictory evidence. In addition, they argue that the Board erred by placing greater probative value on the country conditions evidence than on the evidence that the applicants presented.

[12] Next, the applicants submit that the Board ignored compelling elements regarding their own personal circumstances. More specifically, the applicants contend that the Board ignored that

Mr. Mendez Estrada's assailant stated that he would kill the applicants in retaliation for the denunciation, the applicants' situation worsened after they sought protection from the police, the police said they could only offer them protection for a limited period of three days, and Ms. Lugo Lopez's brother and father were threatened after the applicants' departure from Mexico. The applicants argue that the Board erred by ignoring this evidence and by failing to explain why it was discounted. Further, the applicants find fault with the Board for relying on the fact that six of the suspects were apprehended while the evidence is silent as to whether all of the suspects were imprisoned for their actions.

[13] With respect and despite the able submissions of counsel for the applicants, I am of the view that the Board's findings and conclusions are reasonable and ought not to be disturbed.

[14] First, the Board applied the appropriate legal principles in its assessment of the availability of state protection.

[15] The applicants bear the burden of rebutting the presumption of state protection by showing, through relevant, reliable and convincing evidence, that state protection is inadequate (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30, [2008] 4 FCR 636). Unless they can establish that protection might not have been forthcoming, claimants are generally required to show that they made reasonable efforts in their home state to exhaust local avenues of protection before requesting international protection (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 49, 103 DLR (4th) 1).

[16] In *Hinzman*, above, at para 45, the Federal Court of Appeal reiterated the principle it enunciated in *Kadenko v Canada (Minister of Citizenship and Immigration)* (1996), 143 DLR (4th) 532, 68 ACWS (3d) 334 (FCA), that "the more democratic a country, the more the claimant must have done to seek out the protection of his or her home state."

[17] This Court has extensively discussed the issue of state protection in Mexico (*Mendoza v Canada (Minister of Citizenship and Immigration)*, 2010 FC 119 at para 32, 88 Imm LR (3d) 81). In some cases, it found that state protection was adequate while in others it held that it was inadequate. In analyzing the case law, it is important to keep in mind that the determination of the adequacy of state protection involves a contextual and fact-specific analysis. The Board must assess the evidence on country conditions and the extent to which claimants must seek internal state protection within the context of circumstances of each case (*Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359 at para 27, 295 FTR 35; *Hurtado-Martinez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 630 at para 12, 167 ACWS (3d) 966; *Flores v Canada (Minister of Citizenship and Immigration)*, 2010 FC 503 at para 38 (available on CanLII); *C.J.H. v Canada (Minister of Citizenship and Immigration)*, 2010 FC 499 at para 10 (available on CanLII); *Torres v Canada (Minister of Citizenship and Immigration)*, 2010 FC 234 at para 37 [2011] FCR 480).

[18] In this case, the Board thoroughly considered the country conditions evidence. While it acknowledged that the Mexican state faces "serious challenges in terms of severe crime as well as police corruption and impunity", it found that the evidence showed that the state protection in Mexico in the applicants' circumstances was adequate. I disagree with the applicants' statement that

the Board did not address the adequacy of the measures put in place by the Mexican government. Evidence of remedies is not necessarily evidence of practical effect (*Avila*, above, at para 34). However, in this case, the Board did consider the practical effect of the measures taken by the Mexican government to address corruption. For example, the Board mentioned that:

a. Public officials are being indicted for corruption;
b. Police officers in all 2600 police departments are being vetted under a four year initiative;
c. The military is being brought in where serious concerns about police corruption and organized crime exist;
d. Thousands of police officers have thus far been dismissed for misconduct or for failing the vetting process;
e. Investigation, arrests and convictions of criminals do occur;
f. Police reform is at the top of the Mexican national agenda and some important advances have been made;
g. Unprecedented financial resources have been invested in public security and have allowed for improvements in equipment and technology;
h. The Federal Government of Mexico is said to have far greater law enforcement effectiveness than it had 15 years ago;
i. Mexican Federal Police officers alone have more than tripled in numbers in the past decade.

[19] I agree with the applicants that the Board did not mention every aspect of the country conditions, but in reading the Board's reasons and the record, I find that the Board weighed the

evidence available to it in a reasonable manner, including those aspects that were contradictory to its findings. The Board is not required to refer to every piece of evidence for the decision to stand (*Cepeda-Guttierez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 17, 83 ACWS (3d) 264 (FCTD)). In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, 424 NR 220 [*Newfoundland and Labrador Nurses' Union*], the Supreme Court stated that the decision maker's reasons must be read together with the outcome and that the decision cannot be overturned simply because the reasons do not mention every argument raised by a party:

> 14 . . . It is a more organic exercise -- the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).
> . . .
>
> 16 Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[20] It also appears from the Board's decision that it thoroughly considered the applicants' circumstances, including the fact that one of the assailants made a statement to the police (see para 12 of the Board's decision) and the fact that Mr. Mendez Estrada's assailants continued to pursue

him after the applicants left Mexico. However, the Board found that the state had taken active steps to protect the applicants. The Board summarized its findings as follows:

> [23] I understand your testimony that you were concerned that with time, police will forget you and criminals are not afraid of police anyway. I also acknowledge that other members of this crime group continue to pursue you as evidenced by the problems experienced by your brother-in-law and father-in-law. Obviously, in no country can police guarantee protection, but in this case, they pursued suspects, made at least one arrest, offered assistance, responded to calls causing suspects to flee, and had success in terms of jail time. This is all sufficient evidence to find that adequate state protection is available in these circumstances.

[21] I am satisfied that the Board considered all of the relevant evidence and I find that its assessment of the evidence is reasonable. The fact that a different reasonable conclusion could have been reached is not a reason for the Court to set aside the decision. As outlined by the Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190, there may exist more than one reasonable outcome:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.
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> [Emphasis added]

[22] In *Newfoundland and Labrador Nurses' Union*, above, the Supreme Court emphasized the need for the reviewing Court to be cautious not to substitute its own view of the proper outcome:

> 17 The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably lead to the conclusion that the arbitrator's decision should be set aside if the decision itself is in the realm of reasonable outcomes. Reviewing judges should pay "respectful attention" to the decision-maker's reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful.

[23] In sum, I am satisfied that the Board's reasoning is reasonable and its conclusion falls within the realm of reasonable outcomes and is defensible in light of the law and of the facts. Further, the Board's reasons are adequate.

[24] The parties did not propose any question for certification and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No questions certified.

"Marie-Josée Bédard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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