Federal Court Cour fédérale

Date: 20130926

Docket: IMM-10726-12

Citation: 2013 FC 984

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 26, 2013

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

Mauro SANDOVAL ARAMBURO

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, (Act) for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board (RPD), which refused to grant the applicant refugee status.

[2] Upon reading the memoranda of the parties and the Tribunal Record and upon hearing the submissions of counsel for the parties on June 18, 2013, the only issue is whether the applicant would have an internal flight alternative (IFA) in Mexico City if he had to return to Mexico.

[3] The RPD's decision is based essentially on the finding that the applicant, who is homosexual and suffers from polio, could go to live in the Mexican capital, Mexico City, thereby benefiting from an IFA. It is therefore assumed for the purposes of my decision that the harassment and persecution the applicant suffered could constitute persecution giving rise to sections 96 and 97 of the Act. If there is a reasonable internal flight alternative in Mexico, the applicant cannot succeed on his application for judicial review (*Lopez v Minister of Citizenship and Immigration*, 2010 FC 990).

[4] At the very end of its reasons, the RPD questioned whether the combination of incidents could amount to persecution (paragraph 53 of the decision). However, all the reasons for the decision deal with the IFA and, in respect of the determination, the RPD found that there is an internal flight alternative in Mexico City. Accordingly, it was on that basis that the case was examined.

[5] It will not be necessary to review in detail the facts of this case. The applicant, as he noted many times in his memorandum, is [TRANSLATION] "a homosexual perceived as very effeminate and, in addition, disabled". For a good part of his life, he was mocked, insulted, ridiculed and

was even threatened. The only issue is whether, having left the city of Guadalajara in the state of Jalisco on November 10, 2008, for Canada, he could have been relocated in Mexico City.

[6] The RPD's decision is subject to review on a reasonableness standard. It involves mixed questions of fact and law, which call for a reasonableness standard. The jurisprudence in this regard is extensive and, to my knowledge, unanimous. In fact, even the interpretation of its home statute or of a statute connected to its functions that an administrative tribunal is particularly familiar with will be judicially reviewed on a reasonableness standard (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011] 3 SCR 654). In any event, no question of law has appeared.

[7] The issue of determining the test to apply to decide whether there is an internal flight alternative available comes to us from the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration) (CA)*, [1992] 1 FC 706. The test, found at page 710, is the following:

> . . . the Board must be satisfied on the balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.

The French version of this passage reads as follows:

> . . . la Commission doit être convaincue selon la prépondérance des probabilités que the applicant ne risque pas sérieusement d'être persécuté dans la partie du pays où, selon elle, il existe une possibilité de refuge.

[8] The second part of the test is presented as follows at page 709:

> Second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[9] Moreover, it must be remembered that where the issue is determining what is unreasonable, we are talking about ". . . the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions" (*Ranganathan v Canada (Minister of Citizenship and Immigration) (CA),* [2001] 2 FC 164 at paragraph 15). The law is clear. Before seeking a haven in Canada, claimants must first seek refuge in their own countries. The Federal Court of Appeal emphasized this point in *Thirunavukkarasu v Canada (Minister of Employment and Immigration) (CA),* [1994] 1 FC 589, at page 598:

> [13] Let me elaborate. It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. . . .

[10] Because the applicable test in this matter is the reasonableness standard, reference must be made to paragraph 47 of *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 [*Dunsmuir*], which reads as follows:

> [47] . . . 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.

[11] At the hearing, counsel for the applicant gave an excellent demonstration of the difficulties the applicant would face if he had to return to Mexico. He reviewed the documentary evidence on Mexico, arguing that the RPD improperly assessed that evidence, which should have led them to conclude that the applicant could not find refuge in Mexico and, in particular, in the capital. Undoubtedly, the applicant would prefer to stay in Canada. But that is not the test.

[12] Unfortunately for the applicant, the respondent also unequivocally demonstrated that the Mexican capital region is a reasonable alternative. This is not to say that this internal flight alternative is not without difficulty, or that Mexican society is completely open about homosexuality. But to succeed, there would have had to be actual and concrete evidence of conditions that would jeopardize the applicant's life and safety.

[13] The evidence before the RPD supported a finding that the demonstration had not been done. The conclusion that the RPD reached was reasonable in the sense that it was one of the possible acceptable outcomes, considering the facts in the record and the law. In any event, the burden was on the applicant to establish that there was no IFA (*Suarez v Minister of Citizenship and Immigration*, 2011 FC 1474), and he did not discharge that burden. Not only was the applicant's burden not discharged, but the documentary evidence tends to show that the Mexican capital region could receive the applicant.

[14] My conclusion is consistent with the one that my colleague Justice James O'Reilly reached in *Gomez Nieto v Minister of Citizenship and Immigration*, 2010 FC 1202 [*Gomez Nieto*]. As in

this case, that decision was about persecution based on sexual orientation in a region in Mexico. In that case, the documentary evidence also showed different aspects. I note that the Court in *Gomez Nieto* also observed that the documentary evidence showed that Mexico City protects and promotes the rights of homosexuals. But it is the administrative tribunal's role to weigh the evidence and to make choices that must satisfy the reasonableness test. As the Supreme Court of Canada recently pointed out, it is the tribunal's decision as a whole, in the context of the record, that must be considered to assess reasonableness, in keeping with *Dunsmuir*, above (see *Agraira v Minister of Public Safety and Emergency Preparedness*, 2013 SCC 36 at paragraph 53).

[15] Finally, the applicant relied heavily on the psychological report that, he says, the RPD did not consider. He finds support on this subject in *Dink v Minister of Citizenship and Immigration*, 2003 FCT 334, where our Court criticized the fact that such a report had been adduced but not dealt with.

[16] The applicant's argument is hampered by the RPD's decision itself. It weighed this report against the other pan containing the test that conditions must be such that the claimant's life and safety would be jeopardized if he were relocated. The RPD found that this would not be the case and explained why. In doing so, the administrative tribunal satisfied the reasonableness test in *Dunsmuir*, above, as well as the quality of the reasons to be provided according to *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708:

> [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.

[17] It is not for this Court to substitute its assessment of the evidence for that of the RPD. In fact, the administrative tribunal is authorized to choose one of the reasonable solutions that arise in respect of the facts and the law. In this case, I see nothing wrong with the RPD's decision in its finding that the evidence largely supports the conclusion that Mexico City is an alternative, having regard to the applicable test, and specifically that there is no serious possibility that the applicant will be persecuted in the part of the country where he would be called upon to settle. It is the serious risk of persecution, as the term is used in immigration law, that is the yardstick the decision-maker is to use. Taking the record into consideration, I cannot find that the RPD applied an erroneous principle or that it erred in arriving at its conclusion. Its conclusion is part of the various rational acceptable solutions. As such, the Court cannot intervene.

ORDER

The application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board dated September 27, 2012, is dismissed. No question of general importance is certified.

"Yvan Roy"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10726-12
STYLE OF CAUSE:	Mauro SANDOVAL ARAMBURO and MINISTER OF CITIZENSHIP AND IMMIGRATION
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REASONS FOR ORDER AND ORDER:	Roy J.
DATED:	September 26, 2013

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