

Federal Court



Cour fédérale

Date: 20161004

Docket: IMM-198-16

Citation: 2016 FC 1102

Ottawa, Ontario, October 4, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

CYNTHIA DAMARIS GOMEZ Y GOMEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on September 12, 2016)

I. Overview

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD] dated December 21, 2015, in which it rejected the claim that Cynthia Damaris Gomez Y Gomez [Ms. Gomez Y Gomez] is a

Convention refugee and a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2011, c. 27 [the IRPA].

[1] For the reasons set out herein, I would dismiss the application for judicial review.

II. Background

[2] Ms. Gomez Y Gomez is a citizen of El Salvador, born on December 27, 1977. After completing high school, she undertook post-secondary studies, which included studies in English. For approximately 18 months between 2004 and 2006, Ms. Gomez Y Gomez perfected her English skills while living in California. In July 2006, she began working as a customer service agent at Sykes, an outsourcing call company in San Salvador. Three years later, she was promoted to team leader of a new division at Sykes which handled English accounts.

[3] In February 2015, Ms. Gomez Y Gomez interviewed candidates for a position. One of the candidates, who I will refer to as John Doe, had close ties to the Mara Salvatrucha gang [MS-13 gang]; Ms. Gomez Y Gomez did not hire John Doe. His applications for other positions at Sykes were also refused. John Doe, apparently erroneously, blamed Ms. Gomez Y Gomez for his inability to secure employment with the company.

[4] One evening, Ms. Gomez Y Gomez returned to her car to find her windshield covered in mud with the MS-13 gang logo written on it. She heard rumours that her co-workers, Cesar and Torta, were saying that she, Ms. Gomez Y Gomez, did not know with whom she was dealing.

[5] Shortly thereafter, on March 3, 2015, an unknown individual punctured her car tires. She reported this incident to the police. The police apparently told her to return to them if and when she had the name of a suspect. Despite the fact that Ms. Gomez Y Gomez's two co-workers, Cesar and Torta, knew John Doe's real name and that his name would have been readily apparent upon a review of his job application, she did not provide the police with the name of a suspect.

[6] On April 13, 2015, Ms. Gomez Y Gomez was approached by a former Sykes co-worker, Danilo. Danilo had connections to the MS-13 gang. He was carrying a gun. Ms. Gomez Y Gomez contends that Danilo told her he had received instructions to kill her. He told her that if he were to see her again, "he has to do what he has to do". Ms. Gomez Y Gomez did not report this threat to the police.

[7] I note here that the police had offered to investigate the property damage crime, subject to Ms. Gomez Y Gomez providing the name of a suspect. The police clearly indicated a desire to assist her. However, instead of contacting the police with further information regarding the property damage and, instead of reporting the death threat, Ms. Gomez Y Gomez's chose to visit her aunt in San Salvador and then travel to Italy.

[8] Ms. Gomez Y Gomez returned to San Salvador on June 4, 2015, where she opened an English language school. Shortly after opening the school, neighbours told her that gang members were looking for her. She left El Salvador on July 3, 2015, and travelled to the United States. On September 11, 2015, she arrived in Canada, where she sought refugee protection.

III. Impugned Decision

[9] The RPD found that Ms. Gomez Y Gomez was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the IRPA. It found that she had not rebutted, on a balance of probabilities, the presumption of state protection. The RPD also concluded that Soyapango and even San Salvador, where the damage occurred and the threats were made, were reasonable internal flight alternatives [IFA] available to Ms. Gomez y Gomez.

IV. Issues

[10] While the RPD dealt with multiple issues, including the IFA, I am of the view this application for judicial review is to be solely decided upon the issue of the presumption of state protection. That is to say, was the RPD's decision that Ms. Gomez Y Gomez did not rebut the presumption of state protection reasonable? See, *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] SCJ No. 9.

V. Analysis

[11] First, I note that Ms. Gomez Y Gomez failed to provide John Doe's name to the police, even though it was readily available to her. One can only speculate about the protection which would have been available to her had she acted upon the police request for more information. Second, Ms. Gomez Y Gomez failed to report Danilo's death threat to the police.

[12] Furthermore, after traveling to San Salvador and Italy, Ms. Gomez Y Gomez returned to El Salvador. El Salvador has a democratically elected government. Despite the presence of gang-related violence, there is a presumption the state is capable of providing protection to its citizens: *Torres v Canada (CIC)*, 2010 FC 234, [2010] FCJ No. 264; *Canada v Ward*, [1993] 2 SCR 689, [1993] SCJ No. 74 [*Ward*]. Her actions in returning to El Salvador are not demonstrative of someone who questions the state's ability to provide protection.

[13] The RPD analyzed Ms. Gomez Y Gomez's circumstances and actions within the context of objective information regarding El Salvador's current country conditions. She urges me to adopt the contextual approach of state protection advanced by Justice Zinn in *Torres*, notably by taking into consideration the profile of the MS-13 gang. Even applying such an approach, I am satisfied as to the reasonableness of the RPD's decision that Ms. Gomez Y Gomez failed to rebut the presumption of state protection (*Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 at para 29, [2013] F.C.J. No. 1099; *Ward*, above, at paras 57 and 59).

[14] For the reasons set out above, I must dismiss the application for judicial review. No question for certification has been proposed and none is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. No question is certified.

"B. Richard Bell"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

STYLE OF CAUSE: CYNTHIA DAMARIS GOMEZ Y GOMEZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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