

Date: 20070810

Docket: IMM-4300-06

Citation: 2007 FC 830

Ottawa, Ontario, August 10, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**JANE EGRE SONIA CAMACHO
ALEJANDRA JACINTA ELISE PHILLIP
(a.k.a. Alejandra J.E. Phillip)**

Applicant(s)

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent(s)

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Jane Egre Sonia Camacho and her minor daughter, Alejandra Jacinta Elise Phillip, from a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) given at Toronto on June 28, 2006.

Background

[2] Ms. Camacho is a citizen of Venezuela and of Trinidad and Tobago (Trinidad). Her daughter is a citizen of Trinidad. Their protection claim was based upon allegations of spousal

abuse in both Venezuela and Trinidad. Ms. Camacho claimed to have been abused in Venezuela at the hands of a boyfriend in the early 1990's. This caused her to flee Venezuela to return to her birthplace in Trinidad.

[3] In 1997 in Trinidad, Ms. Camacho formed a common-law relationship with the manager of the casino where she was employed. This was also an abusive relationship from which Ms. Camacho attempted to escape but, when Alejandra was born in 1999, she returned to her spouse. Nevertheless the threats and physical abuse continued unabated and in 2004 the Applicants left for Canada ostensibly to visit Ms. Camacho's mother. Several months after arriving in Canada, Ms. Camacho initiated her protection claim.

[4] It was acknowledged by Ms. Camacho that she did not seek out any form of police or state protection in either Venezuela or in Trinidad before she left those countries. Her explanations for not seeking protection in Venezuela were that she could not speak Spanish and that she doubted that the police would help. Her explanation for not seeking protection in Trinidad was that she did not believe the police would take her complaint seriously.

The Board Decision

[5] The Board recognized that domestic abuse was a serious problem in Venezuela and in Trinidad. It found, however, that both countries were functioning democracies with independent judiciaries and with available protective institutions and resources for victims of abuse.

[6] The Board concluded that Ms. Camacho had failed to rebut the presumption of state protection principally because she had not made a “determined effort” to exhaust the available “avenues of protection.” It also concluded that her failure in that respect was “objectively unreasonable.”

Issues

- [7] (a) What is the standard of review applicable to the issues raised on this application?
- (b) Did the Board commit any reviewable errors in its decision?

Analysis

[8] The Applicants contend that the Board erred by failing to take appropriate account of evidence which identified deficiencies in the state protection services available to the victims of spousal abuse in both Venezuela and Trinidad. They say that the evidence before the Board was sufficient to displace the presumption of state protection in both countries and that the failure to recognize the probative significance of this evidence was a reviewable error. These are matters of mixed fact and law which are reviewable on a standard of reasonableness: see *Hinzman v. Canada (Minister of Citizenship)*, 2007 FCA 171, [2007] F.C.J. No. 584 at para. 38.

[9] This is a case which turned on the Board’s assessment of the reasonableness of Ms. Camacho’s failures to pursue any avenues of police or state protection before leaving Venezuela and, later, Trinidad. The Board considered Ms. Camacho’s explanations for those decisions and found them to be objectively deficient. That determination was reasonable on the

evidence before the Board. A reasonable decision is, of course, one which is supported by a tenable explanation and need not be, in the eye of Court, a compelling explanation: see *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247 at para. 55.

[10] The Applicants' arguments in this proceeding essentially call for the Court to reweigh the evidence bearing on the adequacy of state protection in Venezuela and in Trinidad and to reassess Ms. Camacho's conduct in light of that evidence. That is not the function of the Court on judicial review. Indeed, it is difficult to be critical at all of the Board's decision in this case having regard to the recent admonition of the Federal Court of Appeal in *Hinzman*, above, at para. 57:

“*Kadenko* and *Satiacum* together teach that in the case of a developed democracy, the claimant is faced with the burden of proving that he exhausted all the possible protections available to him and will be exempted from his obligation to seek state protection only in the event of exceptional circumstances: *Kadenko* at page 534, *Satiacum* at page 176. Reading all these authorities together, a claimant coming from a democratic country will have a heavy burden when attempting to show that he should not have been required to exhaust all of the recourses available to him domestically before claiming refugee status. In view of the fact that the United States is a democracy that has adopted a comprehensive scheme to ensure those who object to military service are dealt with fairly, I conclude that the appellants have adduced insufficient support to satisfy this high threshold. Therefore, I find that it was objectively unreasonable for the appellants to have failed to take significant steps to attempt to obtain protection in the United States before claiming refugee status in Canada.”

I take it from the above statement that, in the absence of a compelling explanation, a failure to pursue state protection opportunities within the home state will usually be fatal to a refugee claim – at least where the state is a functioning democracy with a willingness and the apparatus necessary to

provide a measure of protection to its citizens. Ms. Camacho's excuses for not seeking help in Venezuela and in Trinidad were hardly compelling. Here, I would adopt the remarks by my colleague, Justice Michael Phelan, in *Kim v. Canada (Minister of Citizenship)*, 2005 FC 1126, [2005] F.C.J. No. 1381 where he stated that a refugee claimant does not rebut the presumption of state protection in a functioning democracy by asserting only a "subjective reluctance to engage the state."

[11] In conclusion, this application for judicial review is dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

“ R. L. Barnes ”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4300-06

STYLE OF CAUSE: JANE EGRE SONIA CAMACHO ET AL v. MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 25, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** BARNES, J.

DATED: August 10, 2007

APPEARANCES:

DEBRA SHELLY FOR THE APPLICANT

MARIANNE ZORIC FOR THE RESPONDENT

SOLICITORS OF RECORD:

BARRISTER & SOLICITOR
ROBERT GERTLER & ASSOCIATES FOR THE APPLICANT
5341 DUNDAS STREET WEST
TORONTO, ON M9B 1B1
P: 416-231-9188 EXT. 35
F: 416-231-9492

JOHN H. SIMS, QC FOR THE RESPONDENT
TORONTO, ON
P: 416-954-8046
F: 416-954-8982