



Date: 20071001

Docket: IMM-895-07

Citation: 2007 FC 980

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 1, 2007

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

MARIA GUADALUPE DOMINGUEZ BANDO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) on February 6, 2007, according to which the applicant is not a Convention refugee or a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

I. Facts

[2] Born on October 9, 1980, the applicant is a Mexican citizen. She arrived in Canada on February 26, 2006, and did not apply for refugee protection until May 16, 2006, three months later.

[3] From December 3, 2004 to February 26, 2006, the applicant suffered harassment, extortion, bribery and sexual abuse by ophthalmologist Dr. Julio Cesar Machorro and his cousins dressed as police. While she was working with the doctor, he allegedly raped her during a business trip on February 22, 2005. As well, the applicant allegedly reported him three times to the authorities on June 15, August 10 and December 13, 2005. As her efforts to join her brother in the United States were unsuccessful, she flew to Canada on February 26, 2006.

[4] After reviewing all the evidence, the RPD found that the applicant was credible regarding her account of sexual assault against her and what she recounted after the events.

[5] However, the RPD decided that she was not a refugee or a person in need of protection because there was an internal flight alternative. The applicant did not establish that she could not receive protection from the Government of Mexico if she were to return to the country. In that regard, the panel stated the following:

[TRANSLATION]

The incidents alleged by the applicant occurred in Puebla. They were committed by the specialist physician Julio Cesar Machorro and his two cousins dressed as police, according to the applicant's oral and written testimony.

However, according to the documentary evidence presented by the Refugee Protection Officer (RPO), Mexico has over 120 million residents throughout the country. That evidence shows that Mexico is a federation with 31 states, in addition to the Federal District of Mexico City. There are also several cities of more than one million residents, such as Guadalajara, León and Monterrey. When asked about the possibility of seeking refuge in one of those cities, such as

Monterrey, the applicant replied that it would be easy to find her wherever she went throughout Mexico, but never explained how. She also indicated that her goal was to flee Mexico.

The applicant did not demonstrate that that the internal flight alternative was unreasonable in her case. The applicant is young, articulate, resourceful and comfortable in sales. The panel felt that she has an internal flight alternative in one of Mexico's large cities. Moreover, the panel did not believe that her alleged persecutor, who had a high-level profession as an ophthalmologist, would abandon his reputation and credibility to risk another complaint against him and thus tarnish his reputation to spend financial and human resources to search everywhere in Mexico for the applicant.
[. . .]

The applicant did not demonstrate that the internal flight alternative was unreasonable in her case.

[6] The RPD also found that the applicant's explanations were insufficient regarding the three-month delay between her arrival in Canada and the filing of her refugee claim. In her testimony, the applicant stated the following:

Certified copies, p. 157:

[TRANSLATION]

Q. Why did you come to Canada?

R. I came to Canada because I was afraid. I could not continue in my country.

Q. Why did you wait three months to apply for protection in Canada?

R. Although I intended to come here after trying to go to the United States, I knew nothing about the government here in Canada and that I could apply for refugee protection.

Q. What did you do for three months?

A. First, I arrived at a hotel. I was in a type of hostel for students, and I did not expect to stay here a long time. I thought I would return to my country quickly. I saw that I could not return and that is why I decided to apply for refugee protection after three months.

That delay, according to the RPD, undermines the element of subjective fear. For these reasons, her application was dismissed.

IV. Analysis

Standard of review

[7] This Court has stated many times that the standard of review applicable to RPD decisions when there is an internal flight alternative is that of a patent unreasonableness. In *Barrionuevo v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1908, 2006 FC 1519, Justice Yvon Pinard noted the following at paras 5 and 7:

5 The standard of review applicable to the IRB's conclusion regarding an internal flight alternative is patent unreasonableness (see, *inter alia*, *Chorny v. Minister of Citizenship and Immigration*, [2003] F.C.J. No. 1263, 2003 FC 999, and *Ramachanthran v. Minister of Citizenship and Immigration*, [2003] F.C.J. No. 878, 2003 FCT 673).
[. . .]

7 The onus is on the applicant to prove that there is a serious possibility he will be subject to persecution everywhere in Argentina, in accordance with the principle aptly stated by the Federal Court of Appeal in *Thirunavukkarasu*, above, at page 595:

On the one hand, in order to prove a claim to Convention refugee status, as I have indicated above, claimants must prove on a balance of probabilities that there is a serious possibility that they will be subject to persecution in their country. If the possibility of an IFA is raised, the claimant must demonstrate on a balance of probabilities that there is a serious possibility of persecution in the area alleged to constitute an IFA. . .

[8] In this case, the applicant argues that her assailant had raped her in Teziutlan Puebla, on February 22, 2005. When she left the state of Puebla on June 17, 2005, to live in Mexico City, the

assailant and his cousins followed her there and, since then, even through her family, who have received threats since she arrived in Canada. They were able to contact her in a large city in Mexico, which suggests a desire on their part to find her anywhere in Mexico.

[9] The problem in this decision is that the RPD found that the applicant was generally credible but, because there was an internal flight alternative, it did not find in her favour.

[10] To reach that conclusion, the panel felt that the persecutor and his cousins were not looking for the respondent. However, the evidence presented by the applicant shows that they pursued her where she was in Puebla, Mexico, and even in Canada by threatening her through her family (see Tribunal Record, at pages 158, 159, 162 and 163 etc....). If the applicant is credible, that evidence remains, and the panel cannot be of the opinion that the persecutor and his agents are not “looking for her”. The RPD noted that the applicant did not explain how the persecutor could find her anywhere in Mexico, but did not comment on the facts related to Mexico. Such a finding is contrary to the applicant’s “credible” evidence. This seems to me to be a clearly unreasonable conclusion under the circumstances. If there are nuances to be made regarding credibility, the panel must do so. There must be consistency in such decisions. It is important for the credibility of the applicant to be reassessed in light of the demands of the case.

[11] In light of this conclusion, the application for judicial review is allowed and the matter is referred back to be heard by a different panel.

[12] I asked counsel if they had any questions for certification and they did not submit any.

JUDGMENT

THE COURT ORDERS AND ADJUDGES THAT:

- This application for judicial review is allowed, the decision is set aside, and the matter is returned for a different panel to re-examine the case as a whole.
- No question will be certified.

“Simon Noël”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-895-07

STYLE OF CAUSE: MARIA GUADALUPE DOMINGUEZ BANDO
and MINISTER OF CITIZENSHIP AND
IMMIGRATION (MCI)

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Simon Noël J.

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