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Docket: IMM-6357-06

Citation: 2008 FC 257

BETWEEN:

**EDEL HEBERTO CRUZ ROSALES
BLANCA AURORA LOPEZ BAEZ
ADELA PAULINA CRUZ LOPEZ
MIROSLAVA CRUZ LOPEZ**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON J.

INTRODUCTION

[1] These reasons follow the hearing of an application for judicial review of a decision of the Refugee Protection Division (the “RPD”) of the Immigration and Refugee Board wherein the RPD determined the Applicants not to be Convention refugees or persons otherwise in need of Convention refugee-like protection in Canada. The decision under review is dated the 6th of November, 2006.

BACKGROUND

[2] Edel Heberto Cruz Rosales (the “principal applicant”) and Blanca Aurora Lopez Baez (“Blanca”) are husband and wife. Adela Paulina Cruz Lopez and Miroslava Cruz Lopez are young children of the principal applicant and his wife. The Applicants are citizens of Mexico. The Applicants fear persecution if they are required to return to Mexico at the hands of the principal applicant’s former partner, Judith del Pilar Morales Lara (“Judith”), her current partner and their associates. Apparently Judith and her current partner are members of wealthy and well connected families in Mexico.

[3] The Applicants arrived in Canada on the 15th of January, 2006. They claimed protection in Canada on arrival. The principal applicant filed a seventy-eight (78) paragraph narrative as part of the Applicants’ Personal Information Form submitted in support of their claim. The narrative recites that the principal applicant lived in a common law union with Judith from 1988 to 1996. The principal applicant and Judith had two (2) children. In December of 1996 Judith left the principal applicant and the children.

[4] In January of 1998, the principal applicant met Blanca. They were married in August of 1998.

[5] From at least as early as March, 1998, the principal applicant and Blanca experienced threats, harassment, financial and other demands, unnerving surveillance, at least one assault, extortion and robberies allegedly all at the hands of Judith or, in their submission, engineered by

Judith and her partner. Two particular incidents are described in the principal applicant's narrative in some detail.

[6] In February of 2002, the principal applicant was "arrested" in circumstances that could better be described as a kidnapping. He was incarcerated for some forty-eight (48) hours. He only obtained release after bribing a judge. That being said, through another judge and the support of a lawyer, he was able to obtain a judicial order designed to prevent a reoccurrence of the "kidnapping event", at least for a limited period of time. In July of 2002, while returning by highway from a business trip, a van with three (3) men inside pulled alongside the principal applicant's vehicle and guns were pointed at the principal applicant. There followed a high speed chase. The principal applicant fortunately came upon a police checkpoint. The police pursued the vehicle from within which the principal applicant had been threatened. The pursuit was in vain. Nonetheless the principal applicant was provided a police escort for the balance of his journey.

[7] To this point in time in the saga, the Applicants lived in Veracruz where the principal applicant, and for a brief period of time, Blanca, had businesses. The Applicants determined that they should leave Veracruz. A business opportunity presented itself to the principal applicant in Guadalajara. By the end of October, 2002, the Applicants had relocated to Guadalajara. They remained there until February of 2004 and, throughout their stay, their life was relatively peaceful. Unfortunately, the principal applicant's business venture in Guadalajara was not successful. In the result, the Applicants returned to Veracruz where their odyssey recommenced.

[8] In late November 2005, the principal applicant and his wife determined that they had no alternative but to leave, not only Veracruz, but Mexico. The principal applicant sold his business. The Applicants' flight to Canada followed.

THE DECISION UNDER REVIEW

[9] In a relatively lengthy decision, the RPD, while it made no negative credibility finding with regard to the Applicants' story, found against them on the basis that adequate state protection for them was available in Mexico, as was a viable internal flight alternative. The RPD noted the presumption that a state is capable of protecting its citizens and determined that the Applicants did not rebut that presumption with clear and convincing evidence. It noted that, on the two (2) occasions when the principal applicant did attempt to avail of state protection, those being the two (2) incidents earlier described in these reasons, state protection was provided, albeit that, in the incident involving the detention of the applicant, his release was only obtained after the provision of a bribe to a judge. In the other instance, the police check point incident, police support was apparently readily provided. In no other circumstance during the Applicants' long period of difficulties, did the Applicants seek state protection.

[10] The RPD determined that the Applicants had a viable internal flight alternative to Guadalajara. It wrote:

The claimant [in these reasons the principal applicant] testified that he had no problems in Guadalajara where he lived for about 20 months. He operated a business in Guadalajara, a business in Cordoba and a business in Veracruz. Although his PIF narrative indicates that Judith and Fernando [Judith's companion] had contacts within the state agencies in Veracruz State, there is no persuasive evidence to suggest that Judith and Fernando had any contacts within the state agencies in Guadalajara in Jalisco. Furthermore, during 20 months in Guadalajara,

he was not harmed or threatened by anybody. In Guadalajara, his only concern was regarding the general violence in that city.

THE ISSUES

[11] In the Memorandum of Fact and Law filed on behalf of the Applicants, the issues relied on by the Applicants are set out in the following terms:

Whether the Board Member erred in law by placing too high a burden on the Applicant to seek state protection.

Whether the Board Member erred in law by misconstruing and ignoring evidence.

Whether the Board Member erred in law by reaching a patently unreasonable conclusion with regards to internal flight alternative.

ANALYSIS

a) Standard of Review

[12] Generally speaking, decisions of the RPD based on adequacy of state protection are reviewed on a standard of reasonableness *simpliciter*. That being said, determinations of fact within the context of a state protection analysis are reviewable on a standard of patent unreasonableness or on the basis that they were made in a perverse or capricious manner or without regard for the material before the decision-maker.¹

[13] A finding of the existence of an internal flight alternative is, by and large, a finding of fact. It should be reviewed on a standard of patent unreasonableness or on the basis that it was made in a perverse or capricious manner or without regard for the material before the decision-maker.²

¹ See *Chaves v. Canada (Minister of Citizenship and Immigration)* [2005] F.C.J. No. 232, February 8, 2005 and *Davila v. Canada (Minister of Citizenship and Immigration)* [2006] F.C.J. No. 1857, December 11, 2006.

² See *Ortiz v. Canada (Minister of Citizenship and Immigration)* [2006] F.C.J. No. 1716 at paragraphs 34 and 35.

b) The burden on the Applicants with regard to a finding of state protection

[14] In its reasons, the RPD wrote:

The law states that there is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing “clear and convincing proof of lack of state protection” in the country of origin. The claimant must approach his or her state for protection, providing state protection might be reasonably forthcoming.

Evidence that protection being offered is “adequate though not necessarily perfect” is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authority in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify a claim that the victims are unable to avail themselves of protection.

When the state in question is a democratic state, the claimant must do more than simply show that he or she went to see some member of the police force and that his or her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of the democracy of the state in question: the more democratic the state’s institutions, the more the claimant must have done to exhaust all courses of action open to him or her.

[15] For the foregoing summary of the law on state protection, the RPD cites *Canada (Attorney General) v. Ward*³, *Zalzali v. Canada (Minister of Employment and Immigration)*⁴ *Canada (Minister of Employment and Immigration) v. Villafranca*⁵ and *Canada (Minister of Citizenship and Immigration) v. Kadenko*⁶. I am satisfied that the foregoing is an accurate summary of the fundamental principles regarding state protection and that the authorities relied on in support of the RPD’s summary fully support the summary.

³ [1993] 2 S.C.R. 689.

⁴ [1991] 3 F.C. 605 (F.C.A.).

⁵ (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

⁶ (1996), 143 D.L.R. (4th) 532 (F.C.A.).

[16] In reviewing the evidence before it, the RPD makes specific reference to the two (2) significant incidents described earlier in these reasons and concludes:

Based on the aforementioned evidence, the panel does not find that there was [a] lack of state protection for the claimant in Mexico. The state made serious efforts to provide protection when he asked for it.

I agree with the foregoing conclusion of the Board that state protection must be adequate, not perfect and in this case, the state made serious efforts to provide protection. The state protection available to the principal applicant was not rendered null because his release from detention was only effected on the payment of a bribe to a judge. After his release, the principal applicant used legal mechanisms available to him in Mexico to obtain a judicial order destined to prevent a reoccurrence of the “kidnapping event”.

[17] The RPD notes that, apart from the state protection sought and obtained on the two (2) incidents, the Applicants never otherwise sought to avail themselves of state protection. No adequate explanation for that failure was provided by the Applicants.

[18] I conclude that, against a standard of review of reasonableness *simpliciter*, the RPD did not err by placing too high a burden on the Applicants on the issue of seeking state protection.

c) Misconstruing and ignoring evidence

[19] The RPD rather briefly references the documentary evidence before it. In *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*⁷, Justice Evans wrote at paragraphs [16] and [17] of his reasons:

...the reasons given by administrative agencies are not to be read hypercritically by a court..., nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it... . That would be far too onerous a burden to impose upon administrative decision-makers who may be struggling with a heavy case-load and inadequate resources. A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its findings of fact.

However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence" In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[citations omitted]

[20] I am satisfied that it is fair to say that the RPD's summary of the documentary evidence on state protection in Mexico that was before it is less than well balanced. It is trite to say that the documentary evidence on state protection in Mexico that regularly comes before this Court indicates that state protection in Mexico is far from perfect and indeed, for some, may well be less than adequate. However, perfection is not the standard and even if protection is not adequate for some, that is not the test. The question is whether, for persons similarly situated to these Applicants in Mexico, state protection is adequate. The evidence before the Court demonstrates that the principal applicant and Blanca are intelligent, articulate and reasonably sophisticated.

⁷ (1998), 157 F.T.R. 35.

[21] I conclude that the RPD's review of the documentary evidence before it, on the particular facts of this claim, is adequate against a standard of review of patent unreasonableness. I decline to infer that the RPD overlooked contradictory evidence when making its findings of fact regarding these Applicants.

d) Internal flight alternative

[22] The RPD quite properly cites the test for determination of an internal flight alternative as set out in *Rasaratnam v. Canada (Minister of Employment and Immigration)*⁸, that being, to establish that persons such as the Applicants have a viable internal flight alternative, it must be shown that: first, there is no serious possibility of persecution for them in the area of the identified internal flight alternative; and secondly, that the conditions in that area are such that it is not unreasonable for persons such as the Applicants to move there.

[23] The RPD notes that the Applicants resided in Guadalajara for more than a year during their troubles, that the principal applicant testified that he and his family had no problems related to their experiences in Veracruz during the time that they lived in Guadalajara and that the principal applicant's testimony regarding the reason for returning to Veracruz was the failure of his business in Guadalajara. In fact, as the RPD notes, the principal applicant expressed only one concern regarding residing in Guadalajara, that being the pervasive violence in that city.

⁸ [1992] 1 F.C. 706 (C.A.).

[24] The RPD concluded that both elements of the test for a viable internal flight alternative are met in the case of these Applicants.

[25] I am satisfied, against a standard of review of patent unreasonableness, that the RPD made no reviewable error in so concluding.

CONCLUSION

[26] Based on the foregoing analysis, this application for judicial review will be dismissed.

CERTIFICATION OF A QUESTION

[27] At the close of the hearing of this matter, counsel were advised of the Court's conclusion. Counsel were consulted on the issue of certification of a question. Neither counsel recommended certification of a question. The Court itself is satisfied that this matters turns on its particular facts and the totality of the evidence that was before the RPD. No serious question of general importance arises. In the result, no question will be certified.

“Frederick E. Gibson”

JUDGE

Ottawa, Ontario
February 27, 2008

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: EDEL HEBERTO CRUZ ROSALES
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THE MINISTER OF CITIZENSHIP AND
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