

Date: 20080327

Docket: IMM-972-06

Citation: 2008 FC 387

Ottawa, Ontario, March 27, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

**DIANA MONICA VALDEZ MENDOZA
CAMILA FUENTES VALDEZ
ALEXA FUENTES VALDEZ**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Diana Monica Valdez Mendoza and her daughters, Camila Fuentes Valdez and Alexa Fuentes Valdez, are citizens of Mexico who claimed refugee protection. Ms. Valdez Mendoza claimed a well-founded fear of persecution at the hands of her former husband who physically abused her and threatened her children. The Refugee Protection Division of the Immigration and Refugee Board (Board or RPD) dismissed the claim to protection because it found that adequate state protection existed and because the claimants had an internal flight alternative "elsewhere in Mexico."

[2] This application for judicial review is allowed because the Board's finding with respect state protection was unreasonable and because it erred in law with respect to its consideration of an internal flight alternative.

The Decision of the RPD

[3] The Board found "that on a balance of probabilities, the claimant's story with regard to the domestic abuse she was exposed to, is generally credible."

[4] The Board went directly from its credibility finding to the issue of state protection.

[5] The Board did not consider whether Ms. Valdez Mendoza would have a well-founded fear of persecution if she returned to Mexico. This is surprising, given that Ms. Valdez Mendoza testified that the last episode of threatened violence occurred in September of 2001. Subsequently, Ms. Valdez Mendoza divorced her husband and he entered into a new relationship. The only evidence of any difficulty subsequent to 2001 was one occasion in November of 2002 when Ms. Valdez Mendoza's former husband yelled from outside the house, asking for one of his daughters to come to the window. There was also a series of anonymous phone calls in November of 2004, where the anonymous caller would hang up before the phone was answered. Thereafter, in December of 2004, Ms. Valdez Mendoza and her children left for Canada and, in January of 2005, they claimed protection.

[6] With respect to state protection, the RPD noted Ms. Valdez Mendoza's evidence that she had approached the police "more or less" eight times, but each time she was refused help because it was a domestic dispute. The RPD made no clear finding that this evidence was untrue, although it observed that it was "at odds" with the documentary evidence of country conditions. A clearer finding was required if the Board was rejecting Ms. Valdez Mendoza's evidence on this point.

[7] The Board then went on to analyze the documentary evidence. In material part, its reasons were:

There is documentary evidence that some police officers in Mexico are corrupt and that women are being abused there. However there are remedies available to women and the document deals with the current situation in Mexico, the legislative contact [sic] and legal remedies and the initiatives and services available to women, especially in the Federal District in Mexico City. The panel refers to other documents which are germane to this "issue".
[footnotes omitted]

[8] The documents relied upon by the Board reported that:

- Mexico has administrative, civil, and criminal laws that sanction family violence;
- state and federal legislation in Mexico includes remedies for women who are victims of violence;
- a number of initiatives, programs, and projects have been instituted in Mexico for women who are victims of violence;
- shelters are available in Mexico to temporarily accommodate women and children who are victims of violence; and

- Mexican government initiatives to assist women confronted with violence include telephone helplines, support for shelters, and prevention and awareness campaigns.

[9] The RPD then concluded that "state protection is adequate in Mexico."

[10] For reasons that are not clear, having found that state protection existed throughout all of Mexico, the Board went on to consider whether Ms. Valdez Mendoza had an internal flight alternative. The Board concluded that it "does not believe that the claimant cannot be elsewhere in Mexico in safety and that it would not be unreasonable to seek refuge there."

Standard of Review

[11] The Board's conclusion about the adequacy of state protection is, in my view, reviewable against the standard of reasonableness. See: *Hinzman v. Canada (Minister of Citizenship and Immigration)* (2007), 362 N.R. 1 at paragraph 38 (F.C.A.), and *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraphs 55, 57, 62, and 64.

[12] Reasonableness requires consideration of the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law. See: *Dunsmuir* at paragraph 47.

Application of the Standard of Review to the Board's Finding with respect to State Protection

[13] As noted above, in its reasons, the RPD concluded that the documentary evidence established that "some police officers in Mexico are corrupt and that women are being abused there." However, this acknowledgment did not accurately assess the documentary evidence that the Board relied upon.

[14] The documents relied upon by the Board also stated:

- violence against women in Mexico was widespread;
- Mexican society generally considers domestic violence to be a private matter and views it as completely normal behavior; and
- violence against women remains largely unpunished in Mexico.

[15] The RPD failed to explain its selective reliance upon the documentary evidence and specifically failed to deal with the evidence that directly contradicted its finding that protection was available to women in Mexico.

[16] By failing to deal with the evidence that directly contradicted the information the RPD relied upon (and that supported the testimony of Ms. Valdez Mendoza), the Board's decision lacks, in the words of the Supreme Court of Canada in *Dunsmuir*, justification and intelligibility. It follows that the decision is not defensible in respect of the facts and law and so the decision does not fall within the range of acceptable outcomes. As a result, the decision with respect to state protection is unreasonable and must be set aside.

The Finding of an Internal Flight Alternative

[17] In *Rabbani v. Canada (Minister of Citizenship and Immigration)* (1997), 125 F.T.R. 141 (T.D.), the Court wrote, at paragraph 16, as follows:

The conclusion of the Board as to the existence of an IFA is equally flawed. The Board in its decision fails to identify exactly, where in Afghanistan the Applicant could reasonably be expected to find a safe haven. Rather, the Board refers to "the area controlled by General Dostam", the "area outside Kabul" and "the areas outside the control of the Jamiat-e-Islami" as the general areas where the Applicant could be expected to flee. The conclusion as to the existence of an IFA requires more than the identification of the approximate area where the agent of persecution is thought to be in control and a general conclusion that the claimant is free to flee elsewhere. A specified geographic location must be identified where the conditions are such as to make it a realistic and attainable safe haven. That in turn requires some discussion as to the prevailing conditions within the identified location. [footnotes omitted]

[18] I am satisfied that the RPD committed the same error in the present case. If one substituted the word "Mexico" for the word "Afghanistan" and the phrase "elsewhere in Mexico" for the three general areas described in *Rabbani*, the RPD's error is fully explained.

[19] This is an error of law that vitiates the finding of an internal flight alternative.

Conclusion

[20] For these reasons, the application for judicial review will be allowed. Counsel posed no question for certification, and I agree that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed and the decision of the Refugee Protection Division dated February 1, 2006, is hereby set aside.
2. The matter is remitted for redetermination by a differently constituted panel of the Refugee Protection Division.

“Eleanor R. Dawson”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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