Date: 20080521

Docket: IMM-4548-07

Citation: 2008 FC 633

Toronto, Ontario, May 21, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

CECILE DEL CARMEN RODRIGUEZ ESTRELLA
(A.K.A. CECILIA DEL CAR RODRIGUEZ ESTRELLA)

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated October 5, 2007 wherein the Applicant is found not to be a "Convention refugee" or a "person in need of protection".

I. Facts

[2] Citizen of Mexico, the Applicant claims refugee protection on the basis of an abusive former common-law partner who has threatened to kill her. In support of this, the Applicant provides a set

of often contradictory allegations regarding specific incidents of abuse in her Personal Information Form (PIF) and in her oral testimony before the Board. This includes an incident where she was attacked at work on October 28, 2005 by her former common-law partner and made a denunciation to the police.

[3] At the conclusion of the hearing, the Board requested that an attempt be made by the Applicant to obtain the denunciation made on October 28, 2005. The Applicant did not provide the Board the denunciation and neither explained the reasons it was not provided.

II. Decision of the Board

[4] The Board rejects the Applicant's claim because: (1) her testimony is neither credible nor trustworthy, due to inconsistencies and omissions with respect to the salient aspects of her claim; and (2) an Internal Flight Alternative (IFA) is available in Mexico City (the "Federal District").

[5] First, the Board notes a number of inconsistencies in the Applicant's testimony about the alleged assaults. The Board examines these inconsistencies and contradictions found in the Applicant's allegations of abuse, and finds that on the balance of probabilities that most, if not all of the alleged incidents of abuse did not occur. However, the Board does not come to a clear conclusion on how these inconsistent findings affect the Applicant's claim to be a Convention refugee or a person in need of protection.

[6] Instead, the Board finds as a determinative issue the fact that the Applicant has an IFA in the Federal District. In reaching this conclusion, the Board reviews the documentary evidence for information regarding domestic violence in the Federal District. The Board notes that:

- the legislative framework for addressing violence against women differs from state to state in Mexico;
- the Federal District classifies domestic violence and spousal rape as a crime;
- there are national regulations requiring health centers to record domestic violence complaints and establishing standards to ensure medical staff recognize and report violence to competent authorities;
- there are penal sanctions for abuse extending to common-law relationships;
- there are a number of government resources available for individuals in the Federal District, and that the Domestic Violence Assistance Center offers comprehensive psychological, legal, medical and social assistance (such as referrals to shelters and assistance in filing claims with the public prosecutors office);
- there are specific requirements for how domestic violence complaints are handled.

[7] Finally the Board concludes that while there are still serious problems with violence towards women in Mexico, the documentary evidence indicates that the Federal District authorities are making a serious effort to fight it and that it would be reasonable for the claimant to approach these authorities if she feels at risk. The Board also concludes that it would not be unduly harsh for the claimant to move to Mexico City as the Applicant has worked as a sales representative for a number

of different companies, and has previously relocated herself within Mexico and has been able to find employment.

III. Issue

1. Did the Board err in interpreting and applying the IFA test?

IV. Standard of Review

[8] The standard of review for an IFA issue has traditionally been one of patent unreasonableness (see, for example, *Ali v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 193; *Chorny v. Canada (Minister of Citizenship and Immigration)* (2003), 238 F.T.R. 289, 2003 FC 999). This is the standard that the respondent has urged the Court to use before the release by the Supreme Court of Canada's of its decision in *Dunsmuir* v. *New Brunswick*, 2008 SCC 9.

[9] The question at issue is factual in nature and falls within the expertise of the Board; and as a result deference is owed as decided in *Dunsmuir*, above, at paragraph 47:

> …a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

The same is true for the Board finding on the availability of an IFA.

V. Analysis

[10] The Applicant's allegations are riddled with inconsistencies relevant to her claim as a person in need of protection. There are significant inconsistencies within her oral testimony before the Board and also between that testimony and her PIF regarding the alleged incidents of abuse. The Board recognizes these inconsistencies, clearly outlines them, and gives valid reasons for rejecting the applicant's explanations for them.

[11] However, the Board does not actually come to a proper conclusion as to how its credibility findings affect the Applicant's claim. Instead, the Board finds the availability of an IFA to be the determinative issue. Therefore, despite both parties making submission on the Board's statements regarding the Applicant's credibility, this issue does not really need to be well addressed since it is unclear how the credibility of the Applicant relates to the Board's ultimate decision on the availability of an IFA.

[12] It is well-established that the existence of a valid IFA is determinative of a refugee claim. Therefore the Court needs not consider the other issues raised by the Applicant (*Shimokawa v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 445 at paragraph. 17; *Sran v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 145 at paragraph. 11).

[13] In determining that the Applicant has an available IFA, the Board reviews the documentary evidence on State Protection in Mexico as noted above, and acknowledges that the evidence is mixed. It then considers the evidence with regard to the test set out in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, [1993] F.C.J. No. 1172 (F.C.A.) and *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.). This test for determining whether a viable IFA exists is two-pronged: first, the Board must be satisfied on a balance of probabilities that there is no serious possibility that the claimants will be persecuted in the proposed IFA; second, the conditions in the proposed IFA must be such that it is not unreasonable for the claimants to seek refuge there.

[14] The Applicant's only criticism of the Board's judgment on the IFA is that it did not examine the evidence as to whether or not the serious efforts to fight violence were paying off.

[15] The Board is presumed to have considered all evidence, and is not required to refer to all the evidence unless the contrary is shown (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.)). In this case, the Applicant has failed to point to contradictory evidence that was before the Board regarding the Federal District.

[16] It is clear that the Board reviewed the evidence that was before it that related to the legislative and institutional framework that exists in the Federal District, as it is clear also that it reviewed the available information regarding implementation's results from of that framework.

While the information regarding the “effectiveness” of the serious effort to deal with domestic violence in the Federal District is limited, it does not contradict the Board’s findings.

[17] Further, it is important to recognize that the information about the Federal District must be distinguished from the generalized information about Mexico. The information before the Board clearly shows that the legislative framework differs from state to state. The documentary evidence before the Board refers often to the Federal District separately from other states with regard to domestic violence.

[18] Ultimately, the Board came to a reasonable conclusion on the evidence before it, even if it was not the only reasonable conclusion possible.

[19] Upon review, it appears clearly that the Board did review the available information on Mexico before it came to a clear and reasonable conclusion with regard to the first prong of the test for an IFA.

[20] As far as the second prong of the IFA test, the Court fails to see anything unreasonable about the Board’s determination that the Applicant had been previously able to relocate and find work within Mexico, and therefore, should be able to do so in the Federal District. The Applicant has not specifically pointed to any relevant factor concerning her situation that the Board failed to consider; and the Court has found in the Tribunal record and in the transcript no indication of other pertinent factors that were raised by the Applicant and that the Board failed to consider.

[21] For all these reasons the Court has no other alternative but to find that the impugned decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, and that for her part the Applicant has failed with her burden to demonstrate the decision's unreasonableness.

[22] The Court agrees with the parties that there is no question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS THIS COURT dismisses the application.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	*ESTRELLA* v. *MCI*
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