

Date: 20081008

Docket: IMM-52-08

Citation: 2008 FC 1138

Ottawa, Ontario, October 8, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

FRANCISCA DURAN LIMA AND GUADALUPE RIOS DURAN

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Duran Lima and her daughter, Ms. Rios Duran, are citizens of Mexico, who resided in Mexico City in the Federal District, and who claimed refugee protection on the basis of abuse Ms. Duran Lima suffered at the hands of her common-law partner. Their claim was dismissed by the Refugee Protection Division of the Immigration and Refugee Board (RPD).

[2] In its reasons, the RPD made comments to the effect that Ms. Duran Lima made her one report to the police for the sole purpose of supporting her refugee claim, and that one aspect of her

claim was embellished. However, I am satisfied that the RPD's decision to reject the claim was based upon a single ground: the applicants had failed to rebut the presumption of state protection.

[3] With respect to the RPD's comments about credibility, this Court has cautioned the RPD that any negative credibility finding must be expressed in clear and unmistakable terms. No purpose is served by making gratuitous comments about embellishment, or by casting aspersions about motive, if the RPD is not prepared to make clear, rational credibility findings that are supported by the evidence.

[4] Turning to the RPD's finding of state protection, the applicants submit that the finding is unreasonable because the RPD ignored documentary evidence that contradicted its conclusion, specifically the expert opinion of Mr. Francisco Rico-Martinez.

[5] For the following reasons I have concluded that the RPD did not err as alleged, and that its decision was reasonable.

[6] The RPD wrote that it had considered the documents provided on the applicants' behalf and it expressly referred in a footnote to the report of Mr. Rico-Martinez. The report was not, therefore, overlooked.

[7] The RPD later went on to state that it preferred the documentary evidence cited in its reasons to the information submitted by the applicants (which included Mr. Rico-Martinez' report) because the "documentary evidence cited herein is drawn from a variety of reliable and independent

sources, none of whom can have any vested interest in whether or not the claimants are determined to be Convention refugees."

[8] Mr. Rico-Martinez describes himself to be a "co-director of FCJ Refugee Centre (formerly known as FCJ Hamilton House Refugee Project: an institution that strives to meet the diverse needs of uprooted people, particularly refugee claimants and non-status people)." He states that he has "a long history of advocacy and volunteer activity on behalf of victims of human rights violations, particularly refugees." It is for the RPD to assess the weight to be given to evidence before it. I am not persuaded that it was unreasonable for the RPD to prefer evidence that conflicted with Mr. Rico-Martinez' evidence for the reasons given by the RPD.

[9] The fact that the RPD specifically referred to the applicants' evidence, albeit briefly and in general terms, makes this case distinguishable from *Castillo v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 43 (F.C.), an authority relied upon by the applicants.

[10] Nonetheless, the applicants argue that the evidence contained in Mr. Rico-Martinez' report was so relevant to the issue of state protection, and so contradictory of the RPD's finding, that the RPD was obliged to specifically deal with the contents of the report.

[11] It is trite and well-accepted law that the more important the evidence is that is not specifically mentioned and addressed in the RPD's reasons, the stronger the inference becomes that the RPD came to its conclusions without regard to all of the evidence before it. This is particularly so where the evidence contradicts the RPD's conclusion. Illustrative of the application of this

principle is *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (T.D.).

[12] The question then becomes whether Mr. Rico-Martinez' report had such probative value that the RPD could not dispose of it on the basis that it viewed other evidence to originate from more independent or objective sources.

[13] In my view, the RPD was entitled to do so for the following reasons.

[14] First, I can imagine no factor more relevant to the probative value of information about country conditions than the source of the information.

[15] Second, the report was based upon information collected in March 2005. The documentary evidence relied upon by the RPD was primarily an Issue Paper prepared by the Research Directorate of the Immigration and Refugee Board, dated February 2007. Telling is the fact that Mr. Rico-Martinez reported that the National Women's Institute informed him that Mexico City had only one shelter for women. In November 2006, that same entity reported to the Research Directorate that three shelters existed in the Federal District, two operated by non-governmental organizations and one operated by the government. It would elevate form over substance to require the RPD to state that it prefers more recent information.

[16] Findings of state protection are reviewable on the standard of reasonableness. Ms. Duran Lima filed only one report with the police in the course of what she testified was approximately 20

years of severe domestic abuse. This report was filed after she had decided to come to Canada and Ms. Duran Lima never followed up on the report. At, or shortly after, the time she filed the police report, she was assisted by CAVI, the Domestic Violence Assistance Center, a government run center that operates from the office of the Attorney General of the Federal District. The documentary evidence before the RPD was to the effect that CAVI offers psychological, legal, medical and social assistance to victims of domestic violence. It also assists women in filing complaints with the public prosecutor.

[17] There was documentary evidence before the RPD, which it accepted, that legislative protection was in place in Mexico City and that initiatives (including CAVI) were in place to promote the effectiveness of those protection measures. The RPD made a justified, transparent and intelligible finding that the applicants had not rebutted the presumption of state protection with clear and convincing evidence. The decision was, therefore, reasonable.

[18] The application for judicial review will, therefore, be dismissed.

[19] Counsel posed no question for certification and no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-52-08

STYLE OF CAUSE: FRANCISCA DURAN LIMA AND
GUADALUPE RIOS DURAN, Applicants

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 1, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: OCTOBER 8, 2008

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