

Date: 20081031

Docket: IMM-1301-08

Citation: 2008 FC 1214

Montréal, Quebec, October 31, 2008

PRESENT: The Honourable Mr. Justice Maurice E. Lagacé

BETWEEN:

LETICIA LIZET DEL RIO RAMIREZ

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant seeks judicial review, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of the decision dated December 24, 2007, by the Refugee Protection Division of the Immigration and Refugee Board (the panel), which determined that she is neither a “refugee” nor a “person in need of protection” as defined by sections 96 and 97 of the Act, and, consequently, her refugee claim was dismissed.

II. **Facts**

[2] The applicant is a Mexican citizen and was allegedly persecuted by her ex-spouse, an officer employed by the Public Prosecutor.

[3] According to the applicant's Personal Information Form, she and her ex-spouse began living together in June 2005; his assaults began in December of that year and continued with a number of successive violent episodes.

[4] In February 2006, the applicant reported her ex-spouse to an officer in the Public Prosecutor's office, but she did not follow up on this report. Although she was threatened with death on March 18, 2006, in the presence of three witnesses, the applicant waited until the end of May 2006 to file a report with the police against her ex-spouse, but she did not follow up on this complaint either. Finally, she did not seek assistance from organizations in her country that protect abused and battered women.

[5] After temporarily taking refuge with members of her family, the applicant finally left Mexico on July 11, 2006, to come to Canada and claim refugee status.

III. **Impugned decision**

[6] The panel found it difficult to reconcile the applicant's behaviour with her statement that she feared for her life and assigned no credibility to her story.

[7] The panel also noted that, since she failed to take reasonable steps to avail herself of the protection offered by the state of Mexico, the applicant did not discharge her burden of rebutting the presumption that her country is able to protect its citizens.

[8] Last, given the applicant's level and type of education, the panel found that it was reasonable to believe that the applicant would not have much difficulty finding employment in, and relocating to Monterrey, Veracruz or elsewhere in Mexico, without endangering her life.

IV. **Issue**

[9] Did the panel make an unreasonable error in its negative assessment of the applicant's credibility by finding that she was neither a refugee nor a person in need of protection and by determining that she would not be subject to a risk of cruel and unusual treatment if she had to return to Mexico to seek refuge?

V. **Submissions of the parties**

[10] The applicant's main criticism of the panel is that it erred by finding her not credible and by completely disregarding *Guideline 4 – Women Refugee Claimants Fearing Gender-Related Persecution* of the Immigration and Refugee Board of Canada (Guideline), as well as evidence corroborating her testimony.

[11] The respondent defends the panel's findings and submits that they are justified and are based on its analysis of the evidence and its expertise. Consequently, the respondent sees no valid reason that could justify this Court's intervention.

VI. **Analysis**

Standard of review

[12] Courts must show deference to the decisions of specialized administrative tribunals, which have expertise in matters within their jurisdiction (see *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*)).

[13] The *reasonableness* standard applies to this case; accordingly, in order to justify its intervention, the Court must inquire whether the impugned decision is reasonable, having regard to

the justification for the decision and whether it falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law (Dunsmuir, above, paragraph 47).

[14] Within this standard of review, can the Court find that the panel erred by deciding that the applicant was neither a refugee nor a person in need of protection as defined in the Act and that, on the contrary, she could reasonably find refuge elsewhere in her own country without being subject to a risk of cruel and unusual punishment?

Lack of credibility

[15] In attempting to persuade the Court that the panel erred by drawing negative credibility inferences from the evidence, the applicant is in fact seeking to justify those parts of the evidence that the panel disregarded because it found them unreliable, unsatisfactory, implausible, incomplete or uncorroborated. Let us not forget that the applicant had every opportunity to fully present her case and to convince the panel, but unfortunately she did not succeed.

[16] Based on the fact that the panel did not accept or comment in its reasons on certain parts of the evidence that the applicant considered more important than the parts that the panel accepted in making its credibility findings, the applicant claims that the panel did not consider all the evidence that was before it, and, therefore, characterizes its decision as unreasonable.

[17] However, this argument ignores the presumption that the panel considered all the evidence before it (*Florea v. Canada (Minister of Employment and Immigration)*, (F.C.A.), [1993] F.C.J. No. 598 (QL)). The applicant is also forgetting that when a panel concludes by explaining why a claimant is not credible, it is not required to consider all the evidence supporting allegations to the contrary, allegations that it did not accept because it found them to be not credible, unreliable, uncorroborated or unnecessary to its findings (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 471, at paragraph 26).

[18] It is not for the Court at this stage to start over, reassess the evidence and substitute its opinion for the panel's, particularly because the panel benefits from its expertise and especially from the unique advantage of having heard the applicant's story and claims. The panel is certainly more qualified than this Court to assess the applicant's credibility.

[19] On the contrary, the Court must verify only whether the panel's decision was justified and reasonable in the sense stated in *Dunsmuir*, above. Credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review. They cannot be overturned unless they are perverse, capricious or made without regard to the evidence (*Siad v. Canada (Secretary of State)* (C.A.), [1997] 1 F.C. 608, 67 A.C.W.S. (3d) 978, at paragraph 24; *Dunsmuir*, above).

[20] After hearing the applicant's story, the panel determined that her behaviour was not credible and explained why. The panel did not believe her explanations about the reports she made but could

not corroborate. It also considered a number of elements in the applicant's story unlikely, which affected her credibility. It also noted that there were no documents corroborating some of her allegations.

[21] This Court has stated on a number of occasions that "a tribunal can conclude that there is lack of credibility by basing itself on improbabilities in the refugee status claimant's account, on common sense and on reason" (*Garcia v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 206, at paragraph 9). In addition, the lack of documentation corroborating the applicant's allegations may negatively affect his or her credibility (*Singh v. Canada (Minister of Citizenship and Immigration)* 2007 FC 62, 159 A.C.W.S. (3d) 568).

[22] Moreover, the applicant points out that, under the Guideline, the decision maker must bear in mind that a battered woman's behaviour may seem inconsistent but is not for a person who is being pursued, such as the applicant, who is living in fear. The applicant claims the panel failed to consider the Guideline when assessing her behaviour, but she did not demonstrate how the panel failed to follow it.

[23] The fact that the panel made a negative finding on the applicant's credibility does not mean that it failed to consider the Guideline. The panel stated at the beginning of its decision that it had taken the Guideline into account, and there is no basis for doubting that or for finding that it failed to follow and consider the Guideline at the hearing and in its analysis of the case. What matters is that the reasons for decision show that the panel was sensitive towards the applicant and that the

evidence was sufficient to support its conclusion (*Kaur v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1066, at paragraphs 12 and 15, 163 A.C.W.S. (3d) 444).

[24] In this case, the applicant has not demonstrated how the panel failed to show sensitivity towards her, and the evidence is sufficient to support its conclusion.

[25] Consequently, the panel's finding on the applicant's credibility is reasonable and does not justify the intervention of this Court.

State protection

[26] The panel also found that state protection was available to the applicant in Mexico and noted that she did not provide clear and convincing evidence that her country was unable to protect her.

[27] The applicant did not follow up on the report she filed belatedly against her ex-spouse nor did she seek assistance from organizations that protect battered women; she simply sought refuge with family and told her in-laws what her ex-spouse had done. How can she now conclude that her country's protection was ineffective when she did not really test it seriously?

[28] The onus was on the applicant to first seek protection from the Mexican state before asking another country for protection. She says she did not do so because she did not believe that the protection provided in Mexico for women in her situation was effective. Doubting the effectiveness

of state protection when she did not really test it does not rebut the presumption of state protection in her country of origin.

[29] It is therefore not surprising that the panel was not persuaded that the protection of the Mexican state was inadequate, given the applicant's situation, behaviour and credibility as well as the little effort she made to avail herself of the existing protection.

[30] For all these reasons, the Court does not see how the panel's decision on this issue is unreasonable.

Internal flight alternative

[31] Last, the panel found that the applicant could move and find refuge elsewhere in Mexico, either in Monterrey, a city of over three million inhabitants, or in Veracruz, in the south. Furthermore, given the applicant's level of education in a field that is very much in demand, the panel believed that she would not have much difficulty finding employment in, and relocating to, one of those two cities or elsewhere in Mexico.

[32] It is settled law that the burden of proof regarding an internal flight alternative rests on the claimant (*Del Real v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 140 at paragraph 18). Thus, the applicant had to establish either that it would be unreasonable for her to

seek refuge in another part of the country or that there were, in fact, conditions preventing her from relocating elsewhere in Mexico, and she failed to do so.

[33] In fact, the panel stated in its reasons that the cities of Monterrey and Veracruz were put forward as options to the applicant but that she had not considered seeking refuge there because no one in her family lived in those areas. However, the lack of a family connection in places offering an [TRANSLATION] “internal flight alternative” (IFA) does not mean that the suggested IFA would impose more unreasonable conditions on the applicant than seeking refuge in Canada. Moving away from her family to take refuge and settle in another part of the country to find work there and recommence her life far from her family and friends would certainly be somewhat of a hardship for the applicant, but not an undue or unreasonable hardship, and certainly not comparable to the hardship of expatriation in a distant country.

[34] Before this Court, the applicant did not indicate how the panel’s finding on the availability of an internal flight alternative was erroneous. In short, the absence of family and friends in the IFA would not impose unreasonable conditions on the applicant. Consequently, the panel’s determination on the suggested IFA falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” and does not justify the intervention of this Court.

Persuasive decisions

[35] The applicant's final argument concerns the panel's use of persuasive decisions. In her memorandum, she submits that the panel unlawfully used these decisions because they were not filed as evidence in the record and, therefore, the principle of disclosing evidence was not adhered to. This argument is not valid since persuasive decisions are not part of the evidence but are, at most, jurisprudential markers that members may consult and follow, but that are not binding on them (*Rios v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1437, 153 A.C.W.S. (3d) 1214).

[36] Here, the panel did not simply adopt the reasoning of the decisions it referred to; it relied more on its personalized analysis of the evidence adduced before deciding to adopt the reasoning in these decisions. Accordingly, to ensure some consistency in members' decisions and to the extent that the facts of the case warrant, the panel could legitimately refer to decisions cited as jurisprudential guides, just as this Court can.

[37] For all these reasons, the applicant was unable to establish that the decision under review is unreasonable. Moreover, the analysis of the record, the decision and the parties' arguments leads the Court to conclude that the impugned decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law, and this is fatal to the application for review of the decision.

[38] Since no serious question of general importance was proposed, none will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISSES the application for judicial review.

“Maurice E. Lagacé”

Deputy Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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