Date: 20081222

Docket: IMM-334-08

Citation: 2008 FC 1383

Ottawa, Ontario, December 22, 2008

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Andres CARINO RIOS
Yasmin SUAREZ CHAVEZ
Andres Zahid CARINO SUAREZ
Yameli Mayte CARINO SUAREZ

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, of a decision dated March 15, 2008, by the Immigration and Refugee Board (the IRB).

[2] Andres Carino Rios (the applicant), his wife Yasmin Suarez Chavez (the principal applicant) and their children Andres Zahid Carino Suarez and Yameli Mayte Carino Suarez are Mexican citizens. The refugee claims of the applicant and the two children are based on the principal applicant's claim.

[3] The panel found that the testimony of the principal applicant and her husband lacked clarity and spontaneity and contained contradictions and improbabilities. The panel therefore did not find it believable.

[4] Moreover, the panel found that the principal applicant had an internal flight alternative elsewhere in Mexico.

[5] Since the issue here is fundamentally an assessment of facts and credibility, it is appropriate to reproduce the following excerpt from the Federal Court of Appeal decision in *Aguebor v. Minister of Employment and Immigration* (1993), 160 N.R. 315:

> [4] There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review.

[6] In this case, the panel found a number of aspects of the applicants' testimony improbable, in particular, (1) that the government did not seem to know who were the real "leaders" of the Popular Assembly of the People of Oaxaca (APPO); (2) that the principal applicant could be described as a "leader" after only four months in the organization; (3) that her uncle could liberate her so quickly;

(4) that she could [TRANSLATION] “forget” to mention in her Personal Information Form that the authorities raided their house and (5) that a private company refused to load the applicant’s truck with fruit. After reviewing the evidence, and without completely endorsing the panel’s analysis, these references do not appear unreasonable to me.

[7] Moreover, the applicants submit that the panel erred by not paying enough attention to the evidence since the notes taken at the first of two interviews with the principal applicant were mislaid.

[8] The principal applicant and her family participated in two hearings before the IRB: the first took place on November 6, 2007, and the second in January 2008. At paragraph 11 of her memorandum, the principal applicant wrote that the member began the hearing on January 15 [TRANSLATION] “by saying that she was confused because she had lost all her notes.” The principal applicant also wrote as follows:

> [TRANSLATION]
> 12. In reading the panel’s decision, the applicants noticed that the decision basically only deals with the improbabilities in the applicant’s testimony regarding the reprisals that he suffered as a truck driver. No comments were made about the November 6, 2007 testimony of Ms. Suarez Chavez or about the evidence that was filed. Since the member had lost her notes, she could not refer to them;

[9] Counsel for the applicants at their hearings describes the incident as follows in her affidavit:

> [TRANSLATION]
> 8. At the beginning of the hearing, the member did not remember that the hearing was a continuation;
> 9. She stated that she did not have the notes she took at the last hearing in her file;
> 10. She asked for some time to reread the file;

> 11. She then questioned my client and her husband for about an hour;
> 12. The decision referred mainly to the testimony from the second hearing;

[10] Although the applicants have framed the issue in this case as one of procedural fairness, I find that their submissions challenge the panel's findings of fact (*Barm v. Minister of Citizenship and Immigration*, 2008 FC 893, at paragraph 10). In other words, it appears to me that this is a problem of interpretation of the evidence, including the principal applicant's testimony at the first hearing.

[11] However, I do not find that the panel's decision makes no reference to the principal applicant's testimony. For example, it is clear, on reading the decision and the transcript of the second hearing, that the member had not been satisfied at the first hearing that the applicant played more than a minimal role in the APPO.

[12] More troubling, in my view, is the allegation that the panel did not pay attention to certain relevant aspects of the documentary evidence. However, I cannot conclude that the panel disregarded the written evidence that he does not mention in his decision. In any event, I agree with the respondent's main contention that the IRB's finding as to an internal flight alternative (IFA) in the Mexican capital [TRANSLATION] "is determinative". In *Sukhpal Singh v. Minister of Citizenship and Immigration*, 2006 FC 709, Mr. Justice Noël wrote the following:

> . . . I share my colleagues' opinion to the effect that an application for judicial review cannot be allowed when the refugee claimant has an IFA, even if the RPD [Refugee Protection Division] has indeed made errors of fact.

[13] The test to determine whether there is an internal flight alternative is clearly stated in *Kumar v. Minister of Citizenship and Immigration*, 2004 FC 601:

> [20] In order for the Board to find that a viable and safe IFA exists for the applicant, the following two-pronged test, as established and applied in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.) and *Thirunavukkarasu, supra,* must be applied:
>
> > (1) the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the proposed IFA; and
> > (2) conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[14] In this case, the part of the panel's analysis dealing with the IFA issue is found at page 4 of his decision:

> The panel also analyzed the possibility of an internal flight alternative for the claimants. When questioned about the possibility of finding refuge elsewhere in Mexico, the principal claimant pointed out that she could be found through the number on her voter's registration card.
>
> However, she went to live with her mother in the state of Mexico from November 26 to January 27, the date of her arrival in Canada, and she was not arrested.

[15] Although succinct, this analysis is not irrational. It must also be considered in the context of the finding that the principal applicant and her husband were not credible. Even more important, the panel's determination that there was an internal flight alternative is not disputed by the applicants in their written memorandum. The existence of an IFA cannot therefore be questioned.

[16] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision dated March 15, 2008, by the Immigration and Refugee Board is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-334-08
STYLE OF CAUSE:	Andres CARINO RIOS, Yasmin SUAREZ CHAVEZ, Andres Zahid CARINO SUAREZ, Yameli Mayte CARINO SUAREZ v. MINISTER OF CITIZENSHIP AND IMMIGRATION
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