

Date: 20090116

Docket: IMM-337-08

Citation: 2009 FC 39

Montréal, Quebec, the 16th day of January 2009

Present: The Honourable Maurice E. Lagacé

BETWEEN:

PAZ ARAUJO, JUAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION OF CANADA**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant is seeking judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) of the decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD) dated March 27, 2008, in which it determined that he was not a “refugee” or a “person in need of protection” within the meaning of sections 96 and 97 of the Act and accordingly rejected his claim for refugee protection.

[2] Although the applicant was informed of the date of the hearing, he failed to cooperate with counsel retained to represent him and chose not to appear in court to establish that his challenge to the decision of the RPD was valid.

[3] The respondent indicated that he was prepared to proceed, and submitted a document to show that rather than attend, the applicant had decided simply to leave Canada. In the circumstances, the respondent was emphatic that the Court should decide on the basis of the record and dismiss the applicant's application.

[4] This decision is therefore made after examining the record and the written submissions by the parties.

II. Facts

[5] The applicant, a citizen of Mexico, claimed refugee protection in Canada on the basis of his allegation that he feared for his life as a result of threats he had received from a customer who refused to pay for certain pieces of machinery purchased from the applicant.

[6] The RPD decided that the claimant did not discharge his burden of presenting clear and convincing evidence to rebut the presumption that the government of Mexico, a democratic country, is capable of protecting its citizens and providing the applicant with adequate protection, having regard to his personal situation (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at pages 724 and 725).

III. Issue

[7] The issue to be determined is whether the RPD committed an unreasonable error in negatively assessing the credibility to be assigned to the claimant and in determining that he is not a “refugee” and a “person in need of protection”.

IV. Analysis

Standard of Judicial Review

[8] The courts must show deference to the decisions of specialized administrative tribunals like the RPD that have expertise in the matters within their jurisdiction (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[9] The reasonableness standard applies to this case, and so in order for intervention by this Court to be warranted, the Court must consider whether the impugned decision is reasonable, having regard to *justification* and *whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law* (*Dunsmuir, supra*, at para. 47).

[10] The question to be determined is whether, under that standard of review and based on the facts in evidence, the Court can conclude that the RPD committed an unreasonable error in determining that the applicant is not a “refugee” and a “person in need of protection” and finding that he had failed to rebut the presumption of state protection.

Absence of Credibility

[11] The RPD had the advantage of hearing the applicant and was therefore better able to assess his credibility when it weighed the evidence offered by him in support of his allegations. After considering those contradictions, the RPD did not find the essence of the claimant's allegations to be credible.

[12] As a specialized tribunal, the RPD, and not this Court, has the task of assessing the testimony and documentary evidence offered by the applicant and of reaching conclusions both as to the weight to be assigned to that evidence and as to the applicant's credibility.

[13] It is not the role of this Court to do the RPD's work again; we must simply determine whether its decision is reasonable, having regard to justification and whether it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Unless the applicant establishes how and why the RPD committed an unreasonable error, no intervention by this Court is warranted.

[14] The applicant does not dispute the RPD's findings of contradictions and omissions and also has not shown how and why its findings of fact regarding his credibility were arbitrary, unreasonable or made without regard to the evidence in the record.

[15] It was open to the RPD to find that the applicant was not credible on the basis of implausibilities in his account, common sense and reason (*Garcia v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 206).

[16] The Court must confine itself to determining whether the RPD's decision is justified and reasonable within the meaning of *Dunsmuir, supra*. Decisions regarding a party's credibility lie within "the heartland of the discretion of triers of fact", and so such decisions are entitled to considerable deference on 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 para. 24; *Dunsmuir, supra*), and that is not the case here.

[17] The Court must show considerable deference in considering the RPD's findings regarding the applicant's credibility, and this places a heavy onus on him if he is to persuade this Court to overturn the decision he is challenging.

[18] In short, the applicant has not established that the impugned decision is based on findings of fact made perversely or capriciously or that the RPD made its decision without regard to the evidence before it. It was open to the RPD to reject the applicant's claim on the sole basis that his conduct was inconsistent with his allegations, and accordingly to find that he was not credible. As a result, the RPD's finding as to the applicant's credibility is reasonable and intervention by this Court is not warranted.

State Protection

[19] The RPD concluded, in the alternative, that the applicant had failed to rebut the presumption that state protection was available to him in Mexico. Given that the RPD had not found his account credible and had therefore concluded that he could not be granted status as a refugee or a person in need of protection, it was then superfluous and unnecessary for it to make any finding as to the presumption of protection from Mexico, which the applicant had in any event not rebutted. Even though the RPD made a finding on that point, this does not mean that it erred.

[20] Since there has not been a complete breakdown of the state apparatus of Mexico, it should be presumed that that state is capable of protecting its citizens, including the applicant. In addition, that protection need not be perfect, and so the applicant had to offer clear and convincing proof of his need for protection and the inability or refusal of Mexico to protect him (see *Ward, supra*). Not only did he fail to discharge that burden, but he also failed to satisfy the RPD as to the need for protection alleged.

[21] Notwithstanding the problems reported in respect of the Mexican government, the applicant had a duty to first seek the assistance and protection available in his country before seeking the protection of Canada. How can it be concluded, today, that the protection offered by the applicant's country is ineffective, when he never made serious efforts to test it? It is therefore not unreasonable to conclude that the applicant failed to discharge his burden of proof in that regard.

[22] The Court does not see how the conclusion reached by the RPD on the question of the protection available in Mexico might be unreasonable, particularly because the RPD did not have to make a finding on that point, in view of its earlier conclusion regarding the credibility to be assigned to the applicant's account.

V. Conclusion

[23] The Court finds that the decision challenged in this application is justified, having regard to the facts and the law; in short, it was a reasonable decision and no intervention by this Court is warranted.

[24] No serious question of general importance having been proposed, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISSES the application for judicial review.

“Maurice E. Lagacé”

Deputy Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-337-08

STYLE OF CAUSE: PAZ ARAUJO, JUAN v. MCI

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** LAGACÉ D.J.

DATED: January 16, 2009

APPEARANCES:

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