Date: 20090130

Docket: IMM-2982-08

Citation: 2009 FC 106

Ottawa, Ontario, January 30, 2009

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

RICARDA ROSARIO HERNANDEZ
CLAUDIA GABRIELA VELASCO HERNANDEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is a judicial review of a decision determining that two Mexican citizens were neither refugees nor persons in need of protection because they had an internal flight alternative (IFA) in Mexico City or in Guadalajara, Mexico.

II. BACKGROUND

[2] Ms. Hernandez and Ms. Velasco Hernandez are mother and daughter, and were residents of Xalapa, Mexico. The mother is in her mid-fifties and the daughter is in her mid-twenties. They ran a business selling gold and silver.

[3] The Applicants base their refugee claim on fear of persecution by a man named "Victor" who had kidnapped the daughter for ransom and was threatening to do so again. The Applicants also fear the mother's estranged partner.

[4] When the daughter was kidnapped in 2003, the mother reported the kidnapping to the police. The kidnappers, having learned of the contact with the police, warned the mother not to approach the police again. Eventually, upon payment of a ransom, the daughter was released.

[5] One year after the kidnapping, the police contacted the mother who lied as to the daughter's location because the daughter did not want to be involved with the police.

[6] In October 2007, Victor began to make new threats of kidnapping. These newer threats were the cause of the Applicants' flight from Mexico.

[7] In addition to the fear of kidnapping by Victor, the Applicants feared harm from the mother's former partner. The Applicants cited one incident, after the mother had left the abusive

relationship, where Ms. Velasco Hernandez saw the estranged partner's friend and believed that that person had been sent to watch her.

[8] The Refugee Protection Division Member (Member), in conducting the hearing of this matter, declared the Applicants to be vulnerable persons in accordance with the Chairperson's *Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the Immigration and Refugee Board of Canada* (*Guideline on Vulnerable Persons*). Accordingly, he permitted the Applicants' counsel to begin the questioning. The Member also noted that the evidence was to be considered in light of the Chairperson's *Women Refugee Claimants Fearing Gender-Related Persecution* guideline (*Gender Guidelines*). The Applicants' story of the threats to them was considered credible.

[9] Having found the Applicants to be credible, the Member went on to consider the issues of IFA and state protection. The Member, having considered the populations, the distances from familiar territory, and the natures of both Mexico City and Guadalajara, concluded that the Applicants were likely to be safe in either of those cities. The Member then went on to consider that even if there happened to be problems in the proposed IFAs, there was adequate state protection available to them in either location.

While the Member recognized that the evidence with respect to an IFA in Mexico City and Guadalajara was not universally in favour of such a conclusion, he found the favourable, objective, documentary evidence outweighed the Applicants' testimony as to their fears of relocating to either city and other evidence.

III. ANALYSIS

A. *Standard of Review*

[10] The standard of review in respect of an IFA and state protection is reasonableness (*Salazar-Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 684)).

[11] Although the *Gender Guidelines* and *Guideline on Vulnerable Persons* have been raised, this is not a case involving the standard of review of those Guidelines, if such an issue could arise in respect of them in any event.

[12] The Guidelines are directed towards the conduct of a fair hearing and a departure from the Guidelines which does not result in a breach of natural justice or a breach of fairness would not necessarily give rise to independent grounds for judicial review. If there was a breach of natural justice or fairness, it would be subject to the correctness of standard of review. As the Applicants have raised natural justice in regard to the hearing, those issues must be addressed on the standard of correctness.

[13] Where the Guidelines are used as part of the assessment of credibility, they become subsumed in the standard of review of reasonableness as applied to credibility findings.

B. *Natural Justice*

[14] The Applicants take issue with a number of aspects of the conduct of their hearing. The first aspect of complaint is that the Member was not sensitive to issues surrounding domestic violence and battered wife syndrome and that the hearing was not conducted in accordance with the relevant Guidelines. The second aspect of the Applicants' complaint regards the conduct of the Member during the hearing.

[15] Regarding the first point, the Member declared the Applicants to be "vulnerable persons", and acted in accordance with the Guidelines by permitting the Applicants' counsel to lead evidence and by attempting to reduce stress on the daughter by not requiring her to outline the details of her kidnapping. Finally, the Member accepted their evidence on these points as credible.

[16] It is difficult to understand what more the Applicants seek in this regard. The Guidelines do not shield an applicant from having their evidence tested nor does it entitle them to have their evidence accepted without inquiry. There is nothing in the approach of the Member to these areas of sensitivity which calls the fairness of the hearing into question. The fact that the Member, the interpreter, and the RPO were males is not in and of itself grounds for complaint.

[17] As to the second point, the Applicants complain that the hearing was interrupted by someone looking for a person not in the hearing room and by a telephone call which came to the Member's telephone located in the hearing room. The Applicants also submit that the fact that, before their hearing began, they had to move to allow a previously scheduled matter to proceed

interfered with their right to a fair hearing. Lastly, the Applicants complain that the Member, the RPO, and the interpreter joked at a few of the incidents that occurred in the hearing.

[18] These facts must be put in context. The interruptions were no fault of the Member and had no real effect on the fairness of the hearing or of the decision. The Member took pains to explain to the Applicants that the laughter, which had to do with the incidents, had nothing to do with the Applicants or with their testimony.

[19] I can find nothing objectionable in the manner in which the Member conducted the hearing. Even the Applicants' complaint that the RPO nodded off to sleep (a fact which is in some doubt) is irrelevant to the conduct of the Member and cannot form a basis for substantiation of a denial of natural justice.

[20] To allege that these incidents and the responses to them resulted in a denial of natural justice is to trivialize the right to a fair hearing. No reasonable person could conclude that there was any unfairness. While the Applicants may be particularly sensitive to these incidents and may attribute an unwarranted degree of significance to them, objectively there is no basis for their concern.

C. *Internal Flight Alternative/State Protection*

[21] The Applicants argue that the Member failed to consider the two Guidelines in suggesting IFAs existed in Mexico City and in Guadalajara. In addition, the Applicants contend that the

Member ignored relevant documents and took account of irrelevant information in reaching this conclusion.

[22] The record of conditions in Mexico is quite voluminous and it was not reasonable or possible for the Member to discuss each and every fact or document contained in the package.

[23] What is particularly relevant is that the Member noted problems and difficulties in both cities but in the end, weighing all of the circumstances, accepted the preponderance of evidence that Mexico City, in particular, and Guadalajara were reasonable IFAs.

[24] The Member's conclusion that neither Victor nor the estranged former partner would travel to either city to find the Applicants or, if they did so, were not likely to locate the Applicants, is reasonable given all the facts before the Member. The Member took account of the size and nature of the two cities, as well as their diverse and cosmopolitan nature, which addresses in part the likelihood of the Applicants being pursued or found in either location.

[25] The Member also took account of the abilities of the claimants to cope in such large cities and gave due recognition to their entrepreneurial abilities to earn a living.

[26] As noted earlier, the Member took account of some inconsistencies among various sources about country conditions in Mexico and found, on balance, that both Mexico City and Guadalajara

were potential IFAs. The Member conducted the very type of analysis and reached the very type of reasonable conclusions which he was required to.

[27] The Applicants suggest that the Member found that as Mexico City and Guadalajara were tourist destinations, they were somehow more secure cities. That description does not do justice to the consideration given by the Member. The thrust of the Member's comment is that both cities were international destinations for tourists which created a diverse atmosphere where many different lifestyles exist. The Member noted that the cities were relatively more western in their profiles than other rural areas of Mexico, presumably including Xalapa.

[28] The Member's conclusion with respect to state protection is reasonable, particularly in respect of Mexico City. It is true that the conclusion that foreign influences have assisted in fostering the need for a safe and secure city is not immediately obvious from the documentary records, and the Member does not explain the source from which he drew that conclusion. However, these last comments are tangential to the important analysis of state protection, the existence of organizations (both government and non) available to protect and assist the Applicants, and other factors which support both an IFA and state protection finding.

[29] The Applicants have not met their burden of proof to show that there is no IFA.

[30] Therefore, I find that the decision, in all of its important constituent parts and read as a whole, is reasonable.

IV. CONCLUSION

[31] This application for judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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