Date: 20090216

Docket: IMM-2520-08

Citation: 2009 FC 163

Ottawa, Ontario, February 16, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

EDGAR LLAMAS GONZALEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision dated May 2, 2008, by the Refugee Protection Division of the Immigration and Refugee Board (the panel) that Edgar Llamas Gonzalez (the applicant) is not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

Issues

[2] Did the panel err in finding that the applicant was not credible?

[3] Did the panel err in finding that the applicant had an internal flight alternative?

[4] For the reasons that follow, the application for judicial review will be dismissed.

Facts

[5] The applicant is a young man in his twenties from Mexico. He states that he witnessed the kidnapping of his two friends while he was with them in a restaurant on July 15, 2007.

[6] He says that he fears returning to his country because he received intimidating and threatening calls after his friends were released on July 30, 2007, upon paying a ransom.

[7] He states that he did not have money to pay a ransom, which was why he decided to come to Canada, since he saw on the Internet that Canada provided assistance in such situations.

Impugned decision

[8] After analyzing the facts, the panel found that the applicant lacked credibility and that there was no credible basis for his story. In the alternative, he had an internal flight alternative in four cities in Mexico.

Analysis

Standard of review

[9] In matters of credibility and assessment of evidence, it is well established under subsection 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, that the Court will intervene only where the decision was based on an erroneous finding of fact that was made in a perverse or capricious manner or where the decision was made without regard for the evidence.

[10] The panel is a specialized tribunal, and its findings on credibility are questions of fact. The Court should therefore intervene only if a patently unreasonable error was made (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.), 42 A.C.W.S. (3d) 886).

[11] Assessing credibility and the evidence is within the jurisdiction of the administrative tribunal that has to assess a claimant's allegation of subjective fear (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (F.C.T.D.), 83 A.C.W.S. (3d) 264, at paragraph 14). Prior to *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the standard of review applicable in such circumstances was patent unreasonableness. Since that decision, the reasonableness standard has applied.

[12] The standard of review applicable to questions of state protection is reasonableness (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, 137 A.C.W.S. (3d)

392, at paragraphs 9 to 11, and *Gorria v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 284, 310 F.T.R. 150, at paragraph 14), as well as the one newly articulated in *Dunsmuir*.

1. Did the panel err in finding that the applicant was not credible?

[13] The panel's conclusion on this point is not unreasonable given that the applicant never went to the police. There is a major discrepancy between the port-of-entry notes and the applicant's Personal Information Form with regard to the applicant's reasons for not going to the police (*Grinevich v. Canada (Minister of Citizenship and Immigration)* (1997), 70 A.C.W.S. (3d) 1059 (F.C.T.D.), [1997] F.C.J. No. 444 (QL); *Basseghi v. Canada (Minister of Citizenship and Immigration)* (1994), 52 A.C.W.S. (3d) 165 (F.C.T.D.), [1994] F.C.J. No. 1867 (QL); *Sanchez v. Canada (Minister of Citizenship and Immigration)* (2000), 98 A.C.W.S. (3d) 1265 (F.C.T.D.), [2000] F.C.J. No. 536 (QL)).

[14] The panel is in the best position to assess claimants' explanations of apparent contradictions and implausibilities. It is not this Court's role to substitute its judgment for the panel's findings of fact on the credibility of claimants (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, 146 A.C.W.S. (3d) 329, at paragraph 36; *Mavi v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1 (QL)).

2. Did the panel err in finding that the applicant had an internal flight alternative?

[15] The applicant was questioned at the port of entry about the possibility of going to live elsewhere in Mexico, and he answered: [TRANSLATION] "Yes, I thought about it, but I didn't do it.

But I know I'll feel more protected here, and I know that those people might look for me if I went to another city" (page 49, panel record). When examined at the hearing, the applicant answered that he could live safely in one of the places suggested as an IFA and that he might be able to find work (pages 110 and 111, panel record).

[16] In *Kanagaratnam v. Canada (Minister of Employment and Immigration)* (1996), 194 N.R. 46 (F.C.A.), 60 A.C.W.S. (3d) 1216, at paragraph 4, the Federal Court of Appeal noted the following:

> . . . In assessing whether a viable IFA exists, the Board, of course, must have regard to all the appropriate circumstances. This was done in this case. Since an IFA existed, therefore, the claimant by definition could not have a well-founded fear of persecution in her country of nationality. Thus, while the Board may certainly do so if it chooses, there was no need as a matter of law for the Board to decide whether there was persecution in the area of origin as a prerequisite to the consideration of an IFA.

[17] In the instant case, the panel's decision was based on the applicant's testimony as well as the documentary evidence on file. The panel considered the applicant's personal situation and the reasonable possibility that he could move to other cities in Mexico. The applicant has not discharged his burden of proving that the panel erred in establishing an internal flight alternative. The Court considers this decision reasonable because it is consistent with the case law.

[18] This application does not raise any serious question of general importance.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed. No question is certified.

"Michel Beaudry"
Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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