Federal Court  Cour fédérale

Date: 20090414

Docket: IMM-4080-08

Citation: 2009 FC 370

Ottawa, Ontario, April 14, 2009

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

RICARDO TREVINO ZAVALA
YOLANDA DELABRA SERRATO
LILIANA ALEJAND TREVINO DELABRA
and MELISSA JAZMIN TREVINO DELABRA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are challenging the legality of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated August 22, 2008, that the applicants are not "Convention refugees" or "persons in need of protection" under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), as amended. In this proceeding, the Board rejected their claims for refugee protection because of the principal applicant's lack of credibility and the existence of an internal flight alternative for the applicants.

[2] The principal applicant, his spouse and their two children are all Mexican citizens. An inhabitant of the city of Monterrey in the state of Nuevo Leon, the principal applicant alleges that he worked for eight years as a driver and messenger for a government institution that manages a national workers' housing fund (*Instituto del Fondo Nacional de la Vivienda para los Trabajadores* (Infonavit)). The refugee claim is mainly based on an incident of which the applicant was allegedly a victim in the course of his work. On August 8, 2007, while unloading boxes for a delivery, the applicant states having identified that the boxes contained illicit substances. After having concluded that his immediate superior (named "Manuel") was involved in drug trafficking, death threats were apparently made against the applicant by his superior if he talked to anyone about what he had discovered. On August 10, 2007, the applicant was purportedly beaten by unknown persons. Having found refuge in the city of Tampico, on September 2, 2007, the applicant left Mexico for Canada to claim refugee status. He was joined by his other family members on November 19, 2007.

[3] Several reasons are given in the decision for rejecting the refugee claim, all relating to the principal applicant's lack of credibility. The Board found the applicant's testimony "particularly hesitant". His version of the facts at the hearing was confused or did not correspond with the essential elements of the narrative provided in his Personal Information Form (PIF). Specifically, there were discrepancies in relation to the dates on which the applicant was beaten and moved with his family to his sister's home in Tampico. More importantly, the Board did not believe that the applicant worked for Infonavit, a position that he said he held for eight years. For example, the applicant had difficulty describing the mission of the organization and was unable to even remember the name of his immediate superior with whom he worked for one year. In addition, the applicant could not provide any evidence of his employment at Infonavit. Invited by the Board to

corroborate his account and to complete the evidence submitted concerning his employment relationship, using his employer's own website, which provides information on employees' employment history, the applicant did not provide any additional evidence. All of these considerations led the Board to find that the principal applicant was not credible:

> [16] Considering the weak testimony given by the principal claimant, the mistakes in the chronology made at the hearing and the fact that he was unable to establish that he worked for Infonavit, the panel finds that the principal claimant's allegations are generally lacking in credibility.

[4] Alternatively, the Board also found that there was an internal flight alternative for the applicants. Accordingly, after the incident on August 10, 2007, the Board noted that the applicants did not mention any new incident in which their assailants tried to persecute them. The Board concluded that the danger that the applicants were in no longer existed and that there was an internal flight alternative in the city of Tampico (or another city in Mexico).

[5] It is well established in the case law that considerable deference must be accorded to the Board's decisions on issues of credibility and assessment of the evidence (*Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 38; *Hattou v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 230 at para. 12, [2008] F.C.J. No. 275 (QL); *Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358 at paras. 13-14, [2008] F.C.J. No. 463 (QL)). According to the case law, the same considerations apply for the internal flight alternative, which is essentially a question of fact. Consequently, the unreasonableness standard must, in this proceeding, guide our analysis of the impugned decision (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (*Dunsmuir*)).

[6] That being said, it is apparent from paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.C.S. 1985, c. F-7, according to which this Court will intervene only if a tribunal based its decision on an erroneous finding of fact, made in a perverse or capricious manner, or without regard for the material before it, that Parliament clearly intended administrative fact finding to command a high degree of deference. Without having been invited by counsel to rule upon this point, it seems clear that the decision delivered by the Supreme Court of Canada in *Dunsmuir* did not change the legal significance of paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.C.S. 1985, c. F-7: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 46.

[7] Of course, when considering the impugned decision as a whole, I analyzed the justification that can be found in the written reasons, which allowed me to evaluate the transparency and the intelligibility of the decision-making process. This basically involves determining whether the result arrived at by the Board falls within the range of possible and acceptable solutions in light of the facts and the law, which is of course in accordance with the reasonableness standard (*Dunsmuir*, para. 47; *Khosa*, para. 59).

[8] In this proceeding, intervention is unwarranted. In fact, the impugned decision appears reasonable as a whole. It is clear that the reproaches made by the applicants are unjustified.

[9] Thus, the Board specifically took into account the fact that the principal applicant was nervous at the hearing. However, nervousness alone cannot explain the hesitation, inconsistencies or unsatisfactory explanations of the applicant. The Board was clearly entitled to draw negative inferences concerning the quality of the applicant's testimony (*Wen v. Canada (Minister of*

Employment and Immigration), [1994] F.C.J. No. 907 at para. 3 (QL); *Jarada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 409 at para. 18, [2005] F.C.J. No. 506 (QL)).

[10] Furthermore, discrepancies noted by the Board between the applicant's account and the narrative of his PIF must not be considered in isolation but rather within the general scope of the applicant's account, which puts great emphasis on the fact that his problems started in 2007 when he worked as a messenger at Infonavit.

[11] Nor is it unreasonable for the Board to conclude that the failure on the applicant's part to overcome the gaps in the evidence submitted with respect to his employment relationship with Infonavit, which constitutes a determinative element of his account, also diminished the credibility of the applicant (*Singh v. Canada (Minister of Citizenship and Immigration*), 2007 FC 62, at paras. 27-30, [2007] F.C.J. No. 97 (QL); *Ortiz Juarez v. Canada (Minister of Citizenship and Immigration*), 2006 FC 288, at paras. 7-9, [2006] F.C.J. No. 365 (QL); *Encinas v. Canada (Minister of Citizenship and Immigration*), 2006 FC 61, [2006] F.C.J. No. 85 (QL); *Kengkarasa v. Canada (Minister of Citizenship and Immigration*), 2007 FC 714, [2007] F.C.J. No. 970 (QL)).

[12] In short, the finding of a lack of credibility in the principal applicant's account relies on the evidence in the record and does not appear unreasonable in this case.

[13] The lack of credibility in the principal applicant's account was sufficient in my opinion to reject the applicants' refugee claim and to dispose today of this application for judicial review. In any event, the Board equally found that there was an internal flight alternative for the applicants. According to the case law, the Board must be satisfied that a refugee claimant seriously risks being

persecuted in the city or cities given as internal flight alternatives, and that it is unreasonable for him or her to move in light of the circumstances. In this proceeding, the Board identified the city of Tampico, where the applicants had sought refuge without having been subject to subsequent threats, as a safe area that is reasonably accessible and where the applicants could settle.

[14] Regarding the internal flight alternative, I cannot accept the applicants' claim that the Board's finding is unreasonable. The applicants were confronted during the hearing with this possibility and had the opportunity to present their case. Before me today, the applicants' counsel referred to a generalized situation of violence in Mexico stemming from drug trafficking, and the fact that Infonavit's website (which indicates the name of the employers for which a person works or worked in Mexico) would allow drug traffickers to find the principal applicant easily in Mexico.

[15] In this proceeding, the vague allegation that the principal applicant could be found anywhere in Mexico through computerized databanks seems without merit and is not corroborated by the evidence in the record, which clearly shows that the principal applicant's family lived in Tampico without any problem for several months and that the principal applicant himself lived there for a few weeks before his departure for Canada. The assumption that it is only a matter of time before the principal applicant is found in Mexico seems speculative under the circumstances.

[16] The alleged risk could reasonably be rejected by the Board, which also noted that "[t]he claimant never disclosed to the police or to anyone else what he allegedly saw (a few twigs of green plant material in a box, which in itself is not very incriminating) or what "Manuel", his immediate superior, allegedly told him", all the more so since more than a year has passed since the incidents alleged by the applicants.

[17] To conclude, the unreasonableness of the decision in question has not been established. In my humble opinion, the findings of fact of the Board are all within the range of possible options and it is not up to the undersigned justice to substitute, after the fact, his opinion for that of the Board, which is better placed than the Court to assess the credibility of a refugee claimant as well as the existence of persecution or a risk referred to in the Act.

[18] This application for judicial review must therefore be dismissed. Counsel did not propose any question for certification, and I agree that no question arises on this record.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Luc Martineau"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4080-08
STYLE OF CAUSE:	**RICARDO TREVINO ZAVALA YOLANDA DELABRA SERRATO LILIANA ALEJAND TREVINO DELABRA and MELISSA JAZMIN TREVINO DELABRA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Montréal, Quebec
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REASONS FOR JUDGMENT AND JUDGMENT:	MARTINEAU J.
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