

Date: 20090423

Docket: IMM-4087-08

Citation: 2009 FC 398

Ottawa, Ontario, April 23, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**ROCIO ALVAREZ CONTRERAS
LUIS FERNANDO GUADALAJARA ALVAREZ
CARLOS HUMBERTO GUADALAJARA ALVAREZ**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C., 2001, c. 27 (Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated August 25, 2008, that the applicants are not Convention refugees or persons in need of protection.

Issue

[2] The following question arises: did the panel err in finding that the applicant did not have a reasonable fear of persecution?

[3] For the following reasons, the application for judicial review will be dismissed.

Factual background

[4] The principal applicant, Rocio Alvarez Contreras, 38 years of age, as well as her sons Luis Fernando Guadalajara Alvarez, 16 years of age, and Carlos Humberto Guadalajara Alvarez, 13 years of age, are all citizens of Mexico and they are claiming refugee status in Canada in accordance with section 96 and paragraph 97(1)(b) of the Act. Ms. Contreras is the designated representative of her minor children and the children's story is based on that of their mother.

[5] The principal applicant alleges being the target of the *Ejército Zapatista de Liberación Nacional* (EZLN) (the Zapatista National Liberation Army).

Impugned decision

[6] The panel found that the principal applicant did not have a genuine fear of persecution. Furthermore, she could avail herself of an internal flight alternative if she returned to her country.

[7] The principal applicant testified that she left the EZLN in May 2003 and alleges that her former colleagues called her with death threats starting in October 2003 which motivated her to leave the country in June 2006. According to the panel, this shows that the threats were not serious.

[8] When she was questioned on the possibility of settling in Guadalajara and leading a normal life in a safe place, the applicant answered that the children must have contact with their father and that these actions could allow the EZLN to find them (see tribunal record at page 187).

[9] The panel did not agree with this argument and considered that the applicant chose to leave her country with her children and she cannot allege that the risk stemming from contact between the children and their father challenges the existence of an internal flight alternative (IFA).

[10] The panel was of the opinion that even if the applicants had a well-founded fear of persecution, they have an internal flight alternative. The panel did not believe that if the applicants settled in another city, members of the EZLN, an organization the principal applicant left in 2003, would invest the time and money to find them.

[11] This finding by the panel was also based on documentary evidence that indicates that Mexico is a state of more than 100 million inhabitants, made up of 31 states, as well as the Federal District which has more than 8 million inhabitants alone. Several large cities in Mexico surpass one million inhabitants.

Analysis

[12] According to the applicants, the panel had a capricious grasp of the benefit of domestic protection. They submit that the Court must intervene since the panel relied on a false premise to establish that the principal applicant could avail herself of an IFA.

[13] The respondent argues that the applicants' record does not present any serious argument that could warrant the intervention of this Court. The applicants do not challenge the panel's finding that their subjective fear is not genuine because they waited more than three years after the beginning of their alleged persecution before leaving Mexico. However, it is recognized that the lack of subjective fear must result in the denial of a refugee claim because it is a fundamental component of the concept of persecution (*Hazara v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1256, [2002] F.C.J. No. 1728 (QL) at paragraph 12; *Ahoua v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1239, [2007] F.C.J. No. 1620 (QL) at paragraph 16).

[14] The courts have consistently held that the genuineness of an applicant's fear can be undermined by reason of his or her conduct with regard to the persecution that he or she alleges having suffered (*Sainnéus v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 249, [2007] F.C.J. No. 321 (QL); *Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, [2006] F.C.J. No. 228 (QL) at paragraph 33).

[15] The respondent submits that, given the applicants' failure to challenge this finding, the application should be dismissed (*Molnar v. Canada (Minister of Citizenship and Immigration)*,

2002 FCT 343, [2002] F.C.J. No. 451 (QL) at paragraph 8; *Iracanye v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 562, [2002] F.C.J. No. 739 (QL) at paragraph 22).

[16] The applicant has the burden of proving that he or she satisfies the definition of “Convention refugee” under section 96 of the Act. In *Hafeez v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1489, [2004] F.C.J. No. 1802 (QL), at paragraph 10, I made reference to *Ward* to write this:

. . . In order to succeed, the applicant needs to prove, on a balance of probabilities, that he has a reasonable subjective fear of persecution and that this subjective fear is objectively well-founded (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). A subjective fear of persecution is solely based on the assessment of the applicant's credibility while the objective fear is usually established by documentary evidence regarding the country conditions

[17] The Court does not consider it unreasonable that the panel arrived at the conclusion of a lack of subjective fear given that the applicants waited three years after the threats began to leave the country.

[18] Moreover, in their memorandum, the applicants made no challenge whatsoever to the panel's finding of a lack of fear whether it be objective or subjective. In *Hazara*, above, at paragraph 12, the Court ruled as follows:

This Court's jurisprudence has held that the applicant's failure to establish a subjective fear of persecution is a fatal flaw that warrants dismissing the claim (*Tabet-Zatla v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1778; *Anandasivam v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1519).

[19] It is not sufficient to simply assert that the panel committed an error of fact or law; it must be demonstrated by making reference to evidence (*Chowdhury v. Canada (Minister of Citizenship and Immigration)* (1995), 59 A.C.W.S. (3d) 949, 32 Imm. L.R. (2d) 250 (F.C.T.D.) at paragraph 8).

[20] Since the subjective element of the applicants' claim has not been established, the Court considers that it is not necessary to discuss the IFA.

[21] No question for certification was proposed and this application does not give rise to any.

JUDGMENT

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

“Michel Beaudry”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4087-08

STYLE OF CAUSE: **BINWA ROCIO ALVAREZ CONTRERAS
LUIS FERNANDO GUADALAJARA ALVAREZ
CARLOS HUMBERTO GUADALAJARA ALVAREZ
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: April 8, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** BEAUDRY J.

DATED: April 23, 2009

APPEARANCES:

Oscar Fernando Rodas FOR THE APPLICANTS

Alain Langlois FOR THE RESPONDENT

SOLICITORS OF RECORD:

Oscar Fernando Rodas FOR THE APPLICANTS
Montréal, Quebec

John Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec