

Date: 20090317

Docket: IMM-3381-08

Citation: 2009 FC 278

Toronto, Ontario, March 17, 2009

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

CLAUDIA EDITH SALDIVAR SOTO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] In the present Application Ms. Soto claims protection from persecution and risk in Mexico from Raphael Castillo, a powerful violent predator, who is associated with the police in Mexico. By accepting the credibility of Ms. Soto, the Refugee Protection Division member (RPD) accepted her version of events cryptically summarized by me as follows:

March 21, 1999: Ms. Soto met Raphael Castillo.

February 2000: Raphael insults and degrades the Applicant when she tells him she is pregnant. He tells her to get an abortion. She felt threatened and went to the General Attorney's Office in Ecatepec municipality, and she is told that it wasn't a crime, that she didn't have proof, and they couldn't help her.

February 26, 2000: She doesn't get an abortion so he takes her in a car to an isolated house out of the state, beats her, and says he will make her lose the baby; he leaves her there to die. She was taken to a private clinic.

February 27, 2000: She went to the police where she tried to file a formal complaint but the police told her that Raphael had a contact there so it was better to let things cool down and try to fix her life. She lives at her parents' house in Ecatepec, State of Mexico, which is 20 minutes by car from Mexico City.

During the pregnancy she moves to her aunt's house in Benito Juarez, which is in Mexico City.

October 2001: She gives birth to her daughter and moves back to her parents' house in Ecatepec after giving birth.

April 6, 2006: Raphael is waiting in a police car outside Ms. Soto's work and asks about the baby. He hits her in the face, threatens her, and tells her she has to live with him. He hits her again and tries to force her inside the police car. He threatens to take her daughter away. She starts getting death threats over the phone from Raphael.

April 2006: She goes to the Public Ministry, Attorney General's Office, in Benito Juarez, in the Ecatepec Municipality but was told that she was crazy because the police in Mexico are there to protect, not harm people.

April 19, 2006 : The Applicant files a complaint with the National Human Rights Commission of Mexico.

May 10, 2006: She moves to Leon, Guanajuato to live with her father's relatives. Raphael tracks her down. She gets a threatening phone call from Raphael saying that he knows where she is and he will find her no matter where she is.

June, 2006: Ms. Soto decides to come to Canada. She leaves her daughter at her aunt's house.

[2] The RPD's rejection of Ms. Soto's application for protection is based on a positive finding that Mexico City is an internal flight alternative (IFA) for her. The RPD is correct in the findings that are required to reach this conclusion:

The determinative issue in this case is whether an IFA exists in Mexico City. IFA arises when a claimant may have a well-founded fear of persecution in the home area of his or her country, but can safely relocate to another part of the country. The test to be applied in determining whether there is an IFA is two-pronged: (i) there is no serious possibility of the claimant being persecuted or no likelihood of the claimant being subjected personally to a danger of torture or to a risk of life or risk of cruel and unusual treatment or punishment in the proposed IFA area, and (ii) conditions in the IFA area must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there. The second prong of the IFA test may be stated as follows: Would it be unduly harsh to expect the claimant to move to another less hostile part of the country before seeking refugee protection abroad? [Footnotes omitted]

(Decision, p. 3)

[3] The finding that Mexico City is an IFA assumes that Ms. Soto was persecuted and was at risk from Raphael, but that state protection is available to her in Mexico City if she returns to Mexico. The finding is made contrary to an objection by Counsel for Ms. Soto who argued that she could not be safe from her persecutor as follows:

So, she believed that with the connections which Raphael has, he could be able to locate the claimant anywhere in Mexico, given the fact that the second time when Raphael tracked her down, she moved to Guanajuato, but he was still able to track her down there. And, the claimant believed that he may have been able to get that information probably through friends at work or family members and she believes that she can be tracked anywhere in Mexico.

(Tribunal Record, p. 284)

[4] It is also important to note that before the RPD were psychological reports respecting the poor mental health of both Ms. Soto and her daughter due directly to the violence of Raphael. The diagnosis of the daughter's fear of "the evil person" by a psychologist in Mexico is as follows:

The minor shows herself very tense, when questioning her about the evil person, her concerns interfere with her activities, she denies to draw the requested drawings, it is easy to realize the lack of attention, the minor is in a persistent sadness, constant whining, desperateness, lack of interest in her favourite activities; or disableness to enjoy the previous favourite activities, persisting boring and lack of energy, social isolation, poor communication, low self-esteem and guiltiness for not having left with her mother, extreme sensibility, increase regarding the interact difficulty, rage and hostility, difficulty in her relationships, frequent physical sickness complaints, such as head or stomach ache, poor concentration, notorious changes in her feeding and sleeping patrons, most of the time spend it alone and lacks of interest in everything.

Diagnosis: Behaviour Child Disorder, for Severe Anxiety.

(Tribunal Record, p. 189)

[5] The Applicant was also evaluated by a psychologist in Canada resulting in a diagnosis of Post Traumatic Stress Disorder (PTSD):

During the evaluation, Ms. Saldivar expressed that she feels safe in Canada; however, she does continue to suffer from emotional and physiological effects of the trauma she endured in Mexico. For instance, she is fearful to leave her house and experiences extreme bouts of sadness because of what happened to her and her daughter. What is more, she deeply misses her family and the peaceful life she led before meeting Mr. Castillo. Ruminations about the uncertainty of her current situation and precariousness of her daughter's safety, are causing her initial insomnia and consequently, poor sleeping patterns. Furthermore, although she doesn't experience nightmares, she does occasionally suffer from flashbacks or dreams about the beatings, which leave her very upset, nervous, and with sweaty hands. She has also noticed that she has lost weight since the ordeal, because her clothes fit looser.

As mentioned before, Ms. Saldivar avoids going out alone or talking about her trauma. She also exhibits hypervigilance and hyperarousal; feelings of insecurity and the tendency to look over her shoulder anytime she senses somebody behind her. To make matters more difficult, she has revealed that intrusive thoughts about her past ordeal and her daughter's safety have impinged on her cognitive abilities because she finds it difficult to concentrate and becomes very forgetful, particularly in regards to conversations and tasks she has to complete. Fortunately, Ms. Saldivar explained during the evaluation that she finds comfort in talking to her daughter over the phone and having friends around, but not for the purpose of discussing her problems or feelings.

Concluding Remarks

It is my professional opinion that Ms. Saldivar is demonstrating symptoms of Post Traumatic Stress Disorder (PTSD) as a result of the traumatic events she experienced in Mexico. At the same time, she is suffering from a severe depressive episode. Since coming to Canada, however, her symptoms have subsided to some degree and she has managed to find relative stability and tranquility. Furthermore, a continuation of therapy and medication, in a safe environment, will help her recover and restore energy to meet her goals.

Accordingly, I believe that its not in the best interest of Ms. Saldivar's psychological state to be sent back to Mexico. If she were forced to return to a country she associates with harassment and probable death, she would most likely suffer decomposition. Furthermore, Ms. Saldivar fears that if she was returned to Mexico, her ex-partner would easily find and kill her because of his resourcefulness and extensive contacts. She also believes she "would never be able to have another relationship" because Mr. Castillo has threatened to do the "most harm" to her if she did. In her opinion, this would confide her to a life of loneliness and fear, always anticipating harassment and the possibility of losing her only child.

(Tribunal Record, p. 183-184)

[6] The RPD's IFA finding is as follows:

Given the above analysis, the panel determines that, based on a balance of probabilities, there is not a serious possibility that the claimant would be harmed should she return to Mexico and lives in Mexico City. This satisfies the first prong of the test of an IFA in accordance with *Rasaratnam*.

In accordance with *Thirunavukkarasu*, the panel must also consider the second prong of an IFA; whether it would be unduly harsh for the claimant to move to Mexico City. The claimant has twelve years of education, with the last three years attending a facility in Mexico City. Although she lived in Ecatepec, Mexico State, she testified that it was only fifteen to twenty minutes away from Mexico City. In fact, she had worked in Mexico City as provided in her Personal Information Form (PIF) and she believed that she would be able to find employment in Mexico City. Given her personal circumstances, the panel determines that it would not be unduly harsh for the claimant to move to Mexico City. The panel's decision is in keeping with recent decisions from the Federal Court.

Since an IFA exists in Mexico City, the panel finds that there is not a serious possibility that the claimant will face persecution, should she return to Mexico. [Footnotes omitted]

(Decision, p. 6)

[7] In my opinion, in reaching the conclusion that Mexico City is an IFA for Ms. Soto, the RPD erred in two respects.

[8] In reaching the IFA finding the RPD did not acknowledge the level of risk that Raphael presents to Ms. Soto. That is, before an IFA can be said to exist, the level of risk must be determined and considered in order to conclude that protection exists. In the present case, it is hard to imagine how such a powerful predator could not find and harm Ms. Soto who would be living merely 20 minutes by car from the *locus* of the horrific abuse she suffered at his hand.

[9] In addition, the RPD did not acknowledge the truth of Ms. Soto's mental state, and her daughter's mental state, in reaching the conclusion that it would be reasonable for Ms. Soto to live in Mexico City with or without her daughter. Indeed, the evidence runs contrary to this possibility.

[10] As a result I find that the RPD's decision is made in reviewable error.

ORDER

Accordingly, I set aside the RPD's decision and refer the matter back for reconsideration before a differently constituted panel.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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