Date: 20090320

Docket: IMM-3790-08

Citation: 2009 FC 289

Ottawa, Ontario, this 20th day of March 2009

Present: The Honourable Orville Frenette

BETWEEN:

Gloria Isabel ZURITA VALLEJOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), dated August 1, 2008, wherein the Board determined that the applicant was not a "Convention refugee" nor a "person in need of protection" pursuant to sections 96 and 97 of the Act.

[2] The applicant, who represents herself, was served on December 17, 2008 with Justice Michel Shore's Order, granting her leave for a judicial review in this case. The hearing was fixed for Thursday, March 12, 2009 at 9:30 a.m. at the Federal Court in Montréal, province of Quebec. This document was served at the last known address of the applicant, on Notre-Dame Street in Montréal. The applicant did not show up at the hearing. Counsel for the respondent presented a motion to dismiss the application and also proceeded upon the merits of the application.

[3] Having read the evidence in the file and the written memorandum of both parties, I conclude that the motion for the dismissal of the application must be granted, based upon the absence of the applicant and the lack of merit of her application.

Facts

[4] The applicant, Ms. Gloria Isabel Zurita Vallejos, a 22-year-old a citizen of Chile, claims to have a well-founded fear of persecution at the hands of her former boyfriend, a 43-year-old major in the Chilean military.

[5] She alleges that, in March 2005, she met Renato Figueroa at an army presentation he was giving at the university she was attending. Their relationship progressed from then and in September 2005 the couple started living together in an apartment in Valparaiso, despite her parents' disapproval.

[6] Ms. Vallejos contends that Mr. Figueroa mistreated her physically, psychologically and sexually and therefore asserts to have a reasonable fear of persecution.

[7] She also claims that, in March 2006, Mr. Figueroa forced her to abort and the abortion took place at their apartment. After this horrific event, the applicant left Valparaiso to live with a cousin in Talcahuano, where she stayed until her departure for Canada on August 28, 2006; she asked for asylum one month after.

[8] Ms. Vallejos fears her former boyfriend who, she claims, could now kill her to silence her forever of the secret she knows: he is married and was unfaithful to his wife.

[9] She came to Canada declaring to the Custom Officer that she came to visit her sister; however she admitted having the intention of claiming refugee status.

Impugned decision

[10] The Board found that the applicant had a viable internal flight alternative ("IFA") in Talcahuano, Chile. It considered the fact that the applicant would have spent over six months in Talcahuano without ever being found by her former boyfriend.

[11] Despite the fact that Mr. Figueroa would have gone to the applicant's mother's house in Valparaiso in July 2006 and July 2007 to enquire about Ms. Vallejos, threatening to beat her mother if she did not reveal her daughter's whereabouts, Mr. Figueroa is no longer looking for Ms. Vallejos. Given that Ms. Vallejos will not publicize in any way their past relationship, that she was unable to establish with credible evidence that Mr. Figueroa would try to locate her should she return to Talcahuano, and that no obstacles or difficulties were identified by the applicant with regard to establishing herself in Talcahuano, the Board rejected her application.

Issues

[12] Did the Board err in concluding that the applicant had a viable IFA and that she had not sought state protection?

Standard of review

[13] The weighing of facts or questions of mixed fact and law are subject to the standard of reasonableness. On questions of law, the standard is one of correctness (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190). Decisions of administrative tribunals are to be treated with deference on factual findings (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12).

Respondent's preliminary objection

[14] The respondent objects to the applicant's affidavit, dated September 25, 2008, *i.e.* subsequent to the impugned decision of August 1, 2008 for the following reasons: (1) the affidavit does not comply with paragraph 10(2)(*d*) of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, and (2) the affidavit is to be given no weight as it contains opinions or arguments on the correctness of the Board's decision rather than on facts as required by subsection 81(1) of the *Federal Courts Rules*, SOR/98-106.

[15] An analysis of the applicant's affidavit shows that it mainly contains the applicant's opinion or negative commentaries on the decision rendered. Because of this, subsection 81(1) of the *Federal Courts Rules*, requiring affidavits be confined to facts (with an exception on beliefs), has been violated.

[16] Case-law states that courts can, when affidavits contain hearsay or opinions, either strike all or parts of it or give it no weight (*Burns Lake Native Development Corp. v. Commissioner of Competition*, 2005 FCA 256; *Bastide v. Canada Post Corp.*, [2006] 2 F.C.R. 637, at paragraphs 26 and 27).

[17] In the present case, the applicant is not represented by counsel. In equity I will not strike out the affidavit but will give it no weight.

Analysis

Internal flight alternative

[18] The applicant asserts that her former boyfriend went twice to her parents' house in Valparaiso and threatened to beat her mother if she did not tell him where the applicant was hiding. Moreover, she claims that her life is in danger should she be returned to Chile as she believes Mr. Figueroa will kill her to silence her forever.

[19] The jurisprudence clearly establishes that the refugee claimant has the burden to prove and demonstrate that it would be unreasonable for him or her to seek refuge in a different part of the country (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.); *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.)).

[20] The Court has also realized that the existence of a valid internal flight alternative is sufficient to dispose of the refugee claim (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.)).

[21] Recognizing that the applicant did reside in Talcahuano for nearly six months without any incident, it was reasonable for the Board to conclude that she had a viable internal flight alternative.

State protection

[22] After analyzing the applicant's story and the objective documentary evidence on Chile, the Board concluded that the applicant had not rebutted the presumption of state protection.

[23] In accordance with the Supreme Court of Canada's decision in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at paragraphs 49 and 50, the applicant has the onus to adduce clear and convincing evidence of the inability of the Chilean state to protect its citizens. This evidence must demonstrate that a claimant has first exhausted all possible avenues available in his or her country before seeking international protection.

[24] The evidence shows that in the applicant's declaration to the immigration officer, when she asked for asylum, she declared she had asked for police protection but was not taken seriously. Before the tribunal she admitted the above declaration was untrue and she had not asked for police protection but later contradicted this statement.

[25] It is evident that the applicant has not reversed the presumption of state protection. Thus it was reasonable for the Board to conclude that the applicant did not exhaust all or any recourses available in her country to obtain protection. The applicant chose to come to Canada and to claim refugee protection while such claim is a solution of last resort. As stated by Justice Yves de Montigny in *Lopez v. Minister of Citizenship and Immigration*, 2007 FC 198:

> [22] In short, we are not dealing here with a situation in which it was unreasonable to expect the applicants to take action to alert the Peruvian authorities. Although I sympathize with the applicants' problems and the difficult experience which they had to go through, we should never lose sight of the fact that a refugee protection claim in a state which is a signatory to the Convention must always be a solution of last resort. Assaults and threats by a few police officers did not exempt the applicants from having to file complaints with the proper authorities in the particular circumstances of this case. Although the RPD could have provided better reasons for its decision and may have shown itself too demanding as to what must be established to prove that the state is unable to protect its nationals, I am of the opinion that, in these circumstances, the errors were not fatal to its decision and do not warrant the matter being referred back for reassessment.

Conclusion

[26] Based on the foregoing, I believe that the findings made by the Board were reasonable and opened to it on the evidence. Consequently, this judicial review will be dismissed.

JUDGMENT

THE COURT ORDERS that:

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dated August 1, 2008 is dismissed.

No question will be certified.

"Orville Frenette"
Deputy Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE:	Gloria Isabel ZURITA VALLEJOS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

No one appeared	FOR THE APPLICANT
M^{e} Yaël Levy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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