

Federal Court



Cour fédérale

Date: 20100119

Docket: IMM-1222-09

Citation: 2010 FC 50

Ottawa, Ontario, January 19, 2010

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

**ESTEBAN SANCHEZ FOCIL
ARIANNA YURIE SANCHEZ NARITA
KAZUE NARITA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This concerns an application brought pursuant to section 72 of the *Immigration and Refugee Protection Act* (the “Act”) by Esteban Sanchez Focil, his wife Kazue Narita and their minor child Arianna Yurie Sanchez Narita (all three applicants being collectively referred to as the “Applicants”) seeking the judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the “Panel”) rejecting the Applicants’ refugee protection claims under section 96 and subsection 97(1) of the Act.

[2] The Applicants arrived in Canada on December 14, 2006 and claimed refugee protection on that date. The Applicant, Mr. Sanchez Focil, is a citizen of Mexico, his wife Mrs. Narita is a citizen of Japan and their daughter is a citizen of both Mexico and Japan. The Applicant, Mr. Sanchez Focil, claimed refugee status and protection based on his allegation that a left-wing group operating in Mexico had threatened him. His wife, the Applicant Mrs. Kazue Narita, claims fear of persecution in Japan because of her past connection with a marginal Christian sect operating in Japan, and, their daughter alleges discrimination in Japan because of her mixed origins.

Background

[3] The Applicants have provided a detailed and exhaustive narrative explaining their personal situation which takes some 35 pages of single lined typed text in their personal information forms. The following is a partial summary of this narrative.

[4] The Applicant, Mr. Sanchez Focil, has worked in the film industry in Mexico and as an English as a second language teacher. His work has included involvement in many American cinematographic and television productions filmed in Mexico. He claims to be strongly identified in Mexico with American film and television production companies.

[5] The Applicants lived in León in the state of Guanajuato, Mexico from January 2001 to November 2006. For a little more than two months (from October to December of 2005) the Applicant, Mr. Sanchez Focil, travelled to the state of Oaxaca in Mexico to work on the Paramount Pictures and Nickelodeon Studios film "Nacho Libre". His job consisted in ensuring that Mexican

cast members could communicate with the American film crew and in teaching the Mexican “extra” various basic words in English. During this work assignment, the political situation in the state of Oaxaca deteriorated and the province was in the grips of major civil strife surrounding a teachers’ strike.

[6] Mr. Sanchez Focil asserts that during his brief stay in Oaxaca, he had political discussions with some of his Mexican students who were part of the film production. He claims he stated to his students that he liked working for American production companies and he defended their presence in Mexico. This was apparently ill-received by some of the students who viewed the American companies as exploiters and who criticized him for being paid what was perceived as a large salary for his services.

[7] After Mr. Sanchez Focil left Oaxaca State and returned to the city of León sometime in December of 2005, the political situation in Oaxaca continued to deteriorate. This state became more and more embroiled in severe civil strife requiring forceful intervention by the Mexican federal authorities. This civil strife was expanded to other areas of Mexico by associations developed between various left-wing groups in Mexico in support of the quasi-insurrection in Oaxaca. This resulted in threats of violence and actual violent acts in Oaxaca and in other areas of Mexico, notably bombings in Mexico City.

[8] The Applicant, Mr. Sanchez Focil, states that he has often been mistaken as an American or the son of a Mexican politician since he speaks very good English with an American accent, is

married to a Japanese citizen, and basically carries out his life in a Westernized fashion, using English as the language of communication with his wife. He believes that he and his wife have been targeted by left-wing groups for these reasons.

[9] On November 11, 2006, almost one year after having worked in Oaxaca, the Applicant Mr. Sanchez Focil claims to have received an anonymous call from a man with an Oaxaca accent who allegedly told him the teachers would get the money the Applicant had received from American studios by any means necessary, and then hung up. This was allegedly followed by a series of anonymous phone calls during the nights between November 11 and 16, 2006 where no one would answer at the other end of the line.

[10] Early in the morning of November 16, another call from another man with an Oaxaca accent was allegedly received by Mr. Sanchez Focil. This second caller again stated that the money he received from the American studios would have to be returned or he would not finish the year. This was perceived as a death threat by Mr. Focil. Following this call, Mr. Focil went that same day to the police in León for assistance. He was however unable to secure preventive protection from the police or a wiretap operation on his phone. In light of the circumstances, both Mr. Sanchez Focil and Mrs. Narita decided to move with their daughter and their son to the town of El Cercado in the state of Nuevo León to stay with friends of the family.

[11] The stay in El Cercado was brief and the Applicants returned to the city of León on December 1, 2006 to secure a passport for their son, but out of fear, they stayed at a hotel rather than

return to their residence. Mr. Focil's mother and father returned to the Applicant's residence to gather belongings and, while they were there, the mother would have answered a telephone call with an anonymous caller seeking to secure the whereabouts of her son and making threats. The mother immediately reported this incident to the local police in León.

[12] Later that day, Mr. Sanchez Focil and Mrs. Narita claim they were pursued by car in the city of León and threatened by the occupant of that vehicle who tried to hit their own vehicle. After this incident, they decided to leave Mexico permanently. They first stayed with family friends in San Juan de Rio in the state of Queretaro until they could secure their passage to Canada on December 14, 2006. Their son remained in Mexico with Mr. Sanchez Focil's parents since no passport had been secured for him.

[13] The Applicants submitted a long letter from Mr. Sanchez Focil's parents supporting their claims, as well as copies of various police reports. Both Mr. Sanchez Focil and Mrs. Narita testified before the Panel.

[14] As for the Applicant Mrs. Narita, she claims that it would be difficult for her to live in Japan and she essentially seeks refugee status and protection on the basis of her husband's application. She is nevertheless also claiming refugee status in regard to Japan on the basis of her former membership in a fringe Christian sect known as "The Family" and also known as "The Children of God" or "The Family of Love". This former association is said to make her a pariah in Japanese society to the point of persecution. Mrs. Narita's association with this group started as a child where

she was raised in Japan by her grandparents who were members of this group. In light of the particularities of Japanese society, Mrs. Narita asserts that it would be impossible to conceal her past connection to this group, and she would be for all intents and purposes unemployable in Japan.

[15] Mrs. Narita completed her education in Japan within the school system managed by “The Family” in order to please her grandparents who were her *de facto* parents. She did not wish to continue belonging to this sect and she left Japan for Mexico in September of 1997 at age 19. She claims to have been forced to leave Japan since, outside the boundaries of the fringe sect “The Family”, there is no permanent place for her in the tightly knit Japanese society. The sect she was raised in is said to be shunned by Japanese society, having been the object of many negative press reports.

[16] Moreover, she claims her grandparents are prominent members of this religious group, and she also claims her grandmother is a main spokesperson for the group. Mrs. Narita testified that at least one other member of “The Family” committed suicide after leaving the sect as a result of not being able to adjust to Japanese society. Mrs. Narita noted that there is often incredulity in Canada when she asserts her refugee claims concerning Japan, and she attributes this to the general lack of knowledge and understanding of Japanese society compared to other Western nations.

Individualism as practiced in other Western countries is alien to Japanese society were she claims it is commonly held that the individual is responsible not only for his or her own deeds, but also those of the individual’s family. She believes that in light of her association with the sect, she would have

no future in Japan, that she could not be employable there and that she would be ostracized from the general Japanese society should she return.

[17] Mrs. Narita also claims that her daughter would face racial discrimination in Japan since she is of mixed ethnicity and has a foreign looking appearance to Japanese. In a recent trip to Japan to attend to her dying mother, Mrs. Narita brought her young daughter with her and she claims to have encountered, during her brief stay, discrimination in securing for her daughter's medical services and day care services. Mrs. Narita supports these claims with numerous reports and articles concerning alleged discriminatory treatment afforded in Japan to the Ainu, the Baraku, the Koreans and foreigners generally. She also submitted a medical report concerning her daughter dated July 14, 2008 concluding that the child had difficulties adapting to change and new environments and has high anxiety levels directly related to the anxiety levels of her parents.

The Panel's Decision

[18] In its decision, the Panel rejected all the claims of the Applicants.

[19] The Panel rejected the claims of the Applicant, Mr. Sanchez Focil, essentially on the basis that his story was not credible. In a nutshell, the Panel did not find credible that one year after Mr. Sanchez Focil carried out a short work assignment in Oaxaca, some of his former students and their left-wing associates would have pursued him in the far away city of León. As noted by the Panel at paragraph 27 of the decision: “[n]one of this makes any sense, and the panel concludes that there is no evidence that those students were involved in anything.”

[20] Moreover, the Panel also found, based on the police reports which were produced, that the Mexican police authorities had taken very seriously the alleged telephone threats concerning Mr. Sanchez Focil. A negative inference was drawn against Mr. Sanchez Focil for having refused to install a caller identification device on his telephone as recommended by the police. As noted by the Panel at paragraph 30 of the decision: “[i]f the calls truly did occur, the panel is of the opinion that the claimant made no effort to identify who was threatening him”.

[21] Having found the claim not credible, the Panel did not deem it useful to deal with the alleged vehicle chase prior to the departure of the Applicants for Canada.

[22] The Panel concluded as follows at paragraph 33 of the decision concerning the claims raised by Mr. Sanchez Focil:

Ultimately, the claimant has framed a story around the chaotic situation in Oaxaca in 2006. He had worked in Oaxaca for only two months in 2005, and then went home to León, which is a long distance from Oaxaca. Because of certain remarks he made to his so-called students in the fall of 2005, they allegedly informed on him to an opposition movement, after obtaining his personal information while occupying a bank. The movement, Teachers’, APPO or something else, allegedly pursued him a long way from Oaxaca to demand his pay, which it regarded as being too high in comparison to what was paid to people who did not speak English. That story is implausible, and the claimant has provided absolutely nothing to prove it.

[23] Concerning Mrs. Narita’s claims, these are rejected in an analysis which reads as follows:

[36] The panel is of the opinion that the female claimant has provided no evidence to support her claim that she might be persecuted if she were to live in Japan because of her former

membership in a sect. As well she provided no documents regarding the sect. The panel also notes that the claimant went back to Japan on September 1st, 2005, to look after her mother. She returned to Mexico in June 2006. The claimant has reported no significant facts to show that she herself was subjected to anything that might corroborate her statements.

[24] The claims related to the daughter are also rejected for the following reasons:

[37] The problems that her daughter Arianna allegedly had with other children or a doctor, or getting admitted to a childcare centre, are insufficient to support a claim for refugee protection. The psychiatric report dated July 14, 2008, concludes that Arianna's anxiety seems to be directly related to the level of anxiety felt by her parents. That does not establish a connection with the situation she experienced in Japan.

Analysis

[25] The standard for reviewing decisions of the Refugee Protection Division of the Immigration and Refugee Board based on issues of witness credibility and the assessment of evidence is that of reasonableness: *Aguebor v. Canada (Minister of Employment and Immigration) (F.C.A.)*, (1993) 160 N.R. 315, [1993] F.C.J. No. 732 at para. 4; *Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427, [2008] F.C.J. No. 515 at para. 15; *Sierra v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1048, [2009] F.C.J. 1289 at para. 20. I will accordingly apply that standard in proceeding with this judicial review. Consequently, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision making process” and “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para. 47).

[26] There was clearly a troubling political situation and a social uprising in Oaxaca during the period between the short work assignment of Mr. Sanchez Focil in that state in the fall of 2005 and the arrival of the Applicants in Canada in December of 2006.

[27] One issue of importance to this judicial review is whether the Panel made an unreasonable assessment of the evidence in finding that Mr. Sanchez Focil's claims of being pursued by a left-wing Oaxaca group in the context of that uprising were simply not credible and were unsupported by the evidence.

[28] The Panel found that it was not credible that left-wing organizations or individuals in Oaxaca would be seeking to harass Mr. Sanchez Focil in a far away city more than one year after his brief work assignment in Oaxaca. This finding falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. It was not unreasonable for the Panel to have concluded that the Applicant's narrative was not credible in these circumstances. The Applicant states that over one year after a brief work assignment in Oaxaca, and based on a brief conversation with students involved in an American movie production there, a left-wing organization would suddenly decide to pursue him in a far away city for the purposes of threatening his life. The conclusion of the Panel here is an acceptable outcome. This Court may have arrived at a different conclusion, but this is not its mandate, which is limited to ensuring that the Panel's decision falls within the range of acceptable outcomes and complies with legislation and principles of fairness and of natural justice.

[29] Moreover, it is almost inconceivable that an internal flight alternative within Mexico would not have been available to the Applicants even if their narrative is to be believed. The position advanced by the Applicants is that their left-wing persecutors would pursue them over vast distances throughout Mexico, yet no evidence was submitted to substantiate such a claim.

[30] In recent years, the Supreme Court of Canada has clearly stated that in reviewing a decision from an administrative tribunal, a superior court should avoid substituting its own assessment of the evidence to that of the tribunal. This is particularly the case where the administrative tribunal, such as here, has had the opportunity of hearing the testimony *viva voce* and is thus in a much better position to evaluate the credibility of witnesses. The function of this Court is to ensure that the Panel carried out its responsibilities within the legal framework set out by its constitutive legislation and with due regard to the rules of fairness and of fundamental justice. Where this legal framework has been followed and the rules of fundamental justice adhered to, a reviewing court should not interfere unless the decision is clearly unreasonable. The conclusions of the Panel here are not unreasonable.

[31] Concerning the claims of Mrs. Narita, it is obvious that Japan is an advanced democracy committed to upholding human rights. However, in every society, even the best of societies, particular and unusual personal circumstances may be such as to require at the very least a serious and deep inquiry in order to determine if such special and unusual circumstances justify the extension of protection to the concerned individual: *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

[32] In this case, and as the Panel found, no independent third party evidence of special and particular circumstances was advanced by Mrs. Narita, who supported her entire case solely on her own testimony before the Panel and on her long narrative in her personal information form. She did not bring forward any independent proof of her past involvement with the sect or of her filiations with her grandparents, nor any news clippings or other independent confirmation of the negative media profile of the group in Japan or concerning the most pertinent aspects of her testimony and narrative. At best, she referenced in her narrative an unofficial Internet site concerning the sect and its activities. However, no independent third party evidence confirming that Mrs. Narita was part of the sect was provided to the Panel, nor was the Panel provided with any objective evidence of persecution of these sect members or former members of this sect in Japan.

[33] Moreover, Mrs. Narita spent many months in Japan between September of 2005 and June of 2006, and, as the Panel noted, no evidence of persecution was submitted by her concerning the period of her stay there. Obviously, Mrs. Narita would prefer not to live in Japan since she sees no real future for her there. That may well be her personal preference; however this does not make her a Convention refugee or a person in need of protection. Refugee protection is not an alternative immigration vehicle. It serves specific purposes geared to Canada's human rights commitments and international obligations.

[34] In these circumstances, the decision of the Panel regarding Mrs. Narita "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, *supra*, at para. 47).

[35] Concerning the claims made for the daughter of Mr. Sanchez Focil and of Mrs. Narita, the Panel concluded that it was not possible to grant refugee status or protection on the simple basis of alleged difficulties resulting from insensitive comments by a doctor or difficulties with a day care center encountered within the context of a seven month trip to Japan. This conclusion of the Panel is reasonable.

[36] This case raises no important question justifying certification pursuant to paragraph 74(d) of the *Immigration and Refugee Protection Act*, and consequently no such question shall be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Robert Mainville"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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