Federal Court		Cour fédérale

Date: 20100209

Docket: IMM-3155-09

Citation: 2010 FC 129

Toronto, Ontario, February 9, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

ROXANA POALA TELLEZ PICON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated June 4, 2009, where it found that the Applicant was not a refugee or a person in need of protection.

Factual Background

[2] The Applicant, Roxana Paola Tellez Picon, is a 21 year old woman from Colombia. Before her departure, she lived in Baranquilla with her mother and two siblings. She claims that, in April 2006, she began a relationship with a man named Fabian Garcia. This relationship lasted for about a year until the Applicant ended it. She alleges that she ended the relationship because she did not see Garcia on a regular basis and they often argued.

[3] The Applicant claims that Garcia was verbally abusive when she ended the relationship in April 2007. At the same time, he said that he was a member of the Revolutionary Armed Forces of Colombia (FARC) and that he would kill her if she didn't come live with him. The Applicant says that her mother decided that she should leave for the United States following the incident. She also testified that she does not know if Garcia ever tried to contact her through her mother after her departure.

[4] She left Colombia for the United States on June 13, 2007. After spending four months there, the Applicant came to Canada and made a claim for refugee protection.

[5] The Applicant has raised the following questions:

a. Did the Board make unreasonable credibility findings?

b. Was the Board's finding that the Applicant does not have a well-founded fear of persecution unreasonable?

Standard of Review

[6] This decision will be reviewed on the standard of reasonableness. The issues before me have been framed largely in terms of the appreciation and weighing of the evidence by the Board. As such, these are questions of mixed fact and law that are held to reasonableness as are questions of law in this context (*Osman v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 921, [2008] F.C.J. No. 1134 (QL), paragraph 28; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[7] Accordingly, the Court will examine the decision with the deference due and is "concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at paragraph 47).

Did the Board make unreasonable credibility findings?

[8] In judicial review, the Court must have regard for the decision as a whole. The decision must be analyzed in the context of the evidence in deciding whether or not it is reasonable (*Miranda v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 81 (F.C.A.)). In the case at bar, I am satisfied that the Board understood the applicable law and applied the correct tests in evaluating the evidence.

[9] Turning now to the issue of the inferences drawn from the lack of documentary evidence. The Applicant is correct in stating that *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (F.C.A.) stands for the proposition that the Applicant's testimony

will be presumed true unless there is a reason to doubt it. In this case, the Board doubted the truthfulness of the Applicant's claim as she could not explain the nature of her fear in a satisfactory manner. She could not explain whether or not she feared because Garcia would seek retribution against her as she refused to move in with him or because he wanted her to join the FARC. Nor could she explain why she thought Garcia would seek her out if she returns to Colombia. The Board simply did not believe that the relationship had ever existed. The Board clearly stated that it did not believe the Applicant's story. The Board did not act arbitrarily.

[10] It is clear in the decision that the central issue was the existence of Garcia and the relationship between him and the Applicant. Accordingly, it seems reasonable that the Board would expect some type of corroboration of the relationship considering the Applicant's evasive testimony on it. This is the sole ground on which the Applicant makes her claim. Although the Applicant's explanation also appears tenable, one must recognize that a reasonable decision can have more than one possible outcome and the Court should not substitute its own assessment.

[11] The Applicant relies on the decision in *Ahortor v. Canada (Minister of Employment and Immigration)* (1993), 65 F.T.R. 137 (F.C.T.D.) and states that her credibility could not be impugned by the lack of documentary evidence. The present case distinguishes itself as the Applicant was not found to be credible on the sole basis of the lack of documentary evidence. Here the applicant's claim was deemed not credible as there were inconsistencies in her testimony. Furthermore, the elements for which the Board would have liked to have seen some form of documentary evidence were central to the claim and were not insignificant like in the cases relied on by the Applicant.

Also, it is clear that the Board did not find the Applicant's explanation as to why she could not provide any type of evidence of the relationship to be a reasonable one.

[12] In *Osman* and *Taha v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1675, [2004] F.C.J. No. 2039 (QL), it was found that one could distinguish *Maldonado* and *Ahortor* in cases where the applicant could not reasonably explain an omission to provide material documentary evidence to corroborate his testimony. I believe that the case at bar is one where such a distinction can be drawn. The onus fell to the Applicant to prove her claim and she did not provide any documentary evidence in support of it. Thus, I find that it was reasonable, in these circumstances, for the Board to draw an adverse inference from the Applicant's failure to provide documentary evidence.

[13] Also, I am satisfied that the Board did not ignore the evidence as suggested by the Applicant, nor did it misunderstand her claim. The Board gives a detailed decision in which it clearly stated the reasons why it made certain adverse inferences and these were based on the evidence.

Was the Board's finding that the Applicant does not have a well-founded fear of persecution unreasonable?

[14] The Applicant contends that the Board erred by finding that her fear was not well-founded because Garcia was no longer interested in her and because she did not make an asylum claim in the Unites States.

[15] On the first ground, the Board noted that there had been no further contact between Garcia and the Applicant since the break-up and that if he truly was a FARC member, he would presumably have no problem in tracing her mother who had moved to a new neighbourhood. It bears noting that it is the Applicant herself who said that the FARC had more information than the government and is able to find people (Tribunal Record, page 167) but she now attacks this as being unfounded. It is true that the Applicant testified that she went to live with her grandmother following the alleged break-up. She also testified that her grandmother lived 45 minutes away and that Garcia did not know where the grandmother resided (Tribunal Record, page 171). Although the Board did not refer to this evidence, I do not find it to be so compelling to merit the intervention of this Court.

[16] The Board based its conclusion that neither Garcia, nor the FARC were after the Applicant on the basis that she had never received a threat from the FARC and that Garcia had never tried to contact her through her mother. The definition of risk is forward looking and it seems reasonable to conclude that a lack of contact would indicate that there is no future risk. I do not believe that the Board misunderstood or misconstrued the evidence.

[17] As for the second ground, it is open to the Board to make an adverse inference from the Applicant's delay in making a refugee claim (*Juzbasevs v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 262, [2001] F.C.J. No. 541, at paragraph 15 (QL)). The Applicant spent about four months in the United States without making a claim for protection. She testified that she thought about making an asylum claim but was told by a relative that her case would not qualify for

protection in the United States (Tribunal Record, page 167). It is unclear in the record when the Applicant received this information and how quickly she acted on it. The Board did not find this to be a reasonable explanation and found that it is inconsistent with the behaviour of someone with a fear of persecution. The finding was open to the Board.

[18] I find the Board's decision overall to be a reasonable one and am satisfied that it falls within a range of acceptable outcomes in view of the facts and the law.

[19] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3155-09
STYLE OF CAUSE:	ROXANA POALA TELLEZ PICON v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	February 9, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	BEAUDRY J.
DATED:	February 9, 2010

APPEARANCES:

D. Clifford Luyt	FOR THE APPLICANT
Alex Kam	FOR THE RESPONDENT

SOLICITORS OF RECORD:

D. Clifford Luyt Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT