Federal Court  Cour fédérale

Date: 20101208

Docket: IMM-1253-10

Citation: 2010 FC 1250

Ottawa, Ontario, December 8, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

JOSE LUIS NAVARRO LINARES

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 2 February 2010 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of Mexico. He lived in the village of San Juanico in the state of Michoacán and, at the material time, served as treasurer of a village committee responsible for determining family eligibility for a federal aid program. The person responsible for aid distribution was Elias Caraves ("Elias"). In 2002, the Applicant and two other committee members began to suspect that Elias was keeping some of the food and money for his own use, and they formed a "watchdog" group to monitor the situation. In May 2004, they reported their suspicions to municipal officials, who dismissed their concerns and reported the visit back to Elias.

[3] Soon thereafter, Elias visited the Applicant at his home and warned him not to interfere in the way Elias carried out his responsibilities.

[4] Later that same month or in the following month, the watchdog group approached state officials with their concerns. These officials accused the group of making false accusations and also reported the visit back to Elias. Within a week, Elias again sought out the Applicant, and this time the Applicant's family was present. Elias threatened to kill the Applicant if he continued to denounce him and to mete out consequences to the family as well. The Applicant made no further complaints against Elias. He never reported the threats to police because he feared for himself and his family and because he believed that the authorities would not help him.

[5] In 2004, unknown parties broke into the Applicant's family home. The Applicant stated at one point that this incident occurred in early 2004 but later contradicted himself by stating that it occurred in mid-2004. The Applicant believes that Elias instigated this crime. He reported the break-in to the police. Following this incident, the Applicant and his family decided to leave Mexico.

[6] The Applicant stated at his hearing before the RPD that the other members of the watchdog group had had arguments with Elias, but he did not know whether they had been threatened by him. Both of these members died of natural causes following the Applicant's departure from Mexico.

[7] The Applicant and his family left Mexico in October 2004 and settled illegally in the United States until 2008, when the recession made it difficult for him to find work. On 11 May 2008, the Applicant entered Canada and made a refugee claim the same day.

[8] The Applicant appeared before the RPD on 31 August 2009. He claims that he fears returning to Mexico because Elias has direct or indirect connections throughout the country, which he would use to locate the Applicant wherever he settled. The RPD rejected the Applicant's refugee claim on the basis that he is neither a Convention refugee nor a person in need of protection because an Internal Flight Alternative (IFA) is available to him in Mexico. This is the Decision under review.

DECISION UNDER REVIEW

[9] The RPD observed that the Applicant's corroborating evidence consisted of a notarized declaration from two individuals who knew the Applicant in Mexico. The declaration does not identify Elias as the agent of persecution; it does not provide details about the conflict or his alleged threats; and it is based on the Applicant's own reporting to these people.

[10] The RPD found that, contrary to the Applicant's assertions, he does have a viable IFA "in an area away from San Juanico, Michoacán [and] … areas around Elias' farm." This determination was based on four findings.

[11] First, the assertion that Elias has sufficient authority and connections beyond the municipal level to locate the Applicant anywhere in the country is mere speculation. The Applicant has no objective evidence to support it.

[12] Second, neither the Applicant nor the other members of the watchdog group were ever harmed or put in danger despite the opportunity for Elias to do so. It seems clear, therefore, that "Elias would have little or no interest" in pursuing the Applicant were he to return to another part of Mexico.

[13] Third, Elias' threats were conditional; the Applicant would be killed if he continued to interfere. The Applicant's capitulation to Elias' threats and the cessation of his denunciations "seriously diminishes" any motive that Elias might have to carry out a five-year-old threat.

[14] Fourth, Elias is now 75 or 80 years old. It is unlikely that he would antagonize the Applicant, even if he were to learn of the Applicant's return to Mexico.

[15] The RPD found that the IFA was reasonable. The Applicant is a reasonably young college graduate with extensive experience in agriculture, landscaping, painting and construction. Between 1998 and 2008, he had no significant difficulty finding employment, a situation that is unlikely to change should he return to Mexico.

[16] Based on its finding of an available IFA, the RPD declined to address the Applicant's credibility, his well-founded fear of persecution or the risks he would face if he were to return to Mexico.

ISSUES

[17] The Applicant has raised the following issue:

Did the RPD err in finding that an Internal Flight Alternative was available to the Applicant? More particularly, was the RPD's reasoning based on erroneous findings of fact

made in a perverse and capricious manner, and did the RPD properly analyze the availability and reasonableness of an IFA?

STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	**Personne à protéger**
97. (1) A person in need of protection is a person in	**97.** (1) A qualité de personne à protéger la personne qui se

Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection	**Personne à protéger**
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[19] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[20] In considering whether the RPD erred in finding a viable IFA, the parties submit that the appropriate standard of review is reasonableness. See *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at paragraphs 46 and 72.

[21] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph

47. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

Fact Findings Made in a Perverse and Capricious Manner

[22] The Applicant argues that the RPD's conclusion that he has a viable IFA was based on erroneous findings of fact that were arrived at without the required analysis.

[23] First, the RPD found in paragraph 23 of the Decision that the Applicant was not harmed or endangered while in Mexico. This contradicts the Applicant's oral evidence that Elias twice threatened him and, he suspects, instigated the break-in at the Applicant's home. Although the Applicant was not physically beaten, he clearly was harmed. The Applicant argues that this erroneous finding of fact "goes directly to the heart" of his claim that he has a well-founded fear of persecution. For this reason, the RPD had a duty to analyze the evidence by, for example, reviewing his testimony, weighing it against the objective evidence and making a credibility finding. The RPD failed to carry out any of these steps and so failed in its duty.

[24] Second, the RPD found that Elias no longer has a motivation to pursue the Applicant elsewhere in Mexico. This is simply a pronouncement, arrived at without the necessary assessment of the evidence.

[25] Third, the RPD rejected as "speculative" the Applicant's evidence that Elias has the resources necessary to locate him anywhere in Mexico. This is a credibility finding disguised as an IFA analysis. The Applicant stated that Elias has access to federal funds and that both municipal and state officials informed him of the watchdog groups' complaints against him, clearly indicating that Elias' reach extends beyond the village. In rejecting this evidence, the RPD was obliged to explain why it was not credible.

[26] Although the RPD states at paragraph 28 that it has refrained from addressing credibility, the well-founded fear of persecution and the risk to life, in fact it did address those issues but in such a way as to exclude the required analysis.

RPD Erred in Failing to Specify an IFA Location

[27] The RPD stated that the Applicant has a viable IFA "in an area away from San Juanico, Michoacán [and] … areas around Elias' farm." This is insufficient. In *Valdez Mendoza v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 387 (*Valdez Mendoza*) at paragraphs 17 and 18, Justice Eleanor Dawson observed that it is not enough for a board to identify an approximate area of danger and then to conclude that the Applicant is safe anywhere other than that area. Rather, the

board must specify a geographical area that would constitute a safe haven for the Applicant and provide some analysis of the prevailing conditions in that location. In the instant case, the RPD's IFA findings fail in both respects. Given that a viable IFA was the only finding purportedly canvassed by the RPD, the failure to conduct a proper analysis with respect to that finding renders the Decision unreasonable.

The Respondent

Fact Findings Are Reasonable

[28] The Respondent argues that the Applicant failed to provide sufficient evidence to demonstrate that Elias had harmed the other two members of the watchdog group; that he was responsible for the break-in at the Applicant's house; and that he remained motivated to pursue the Applicant anywhere in Mexico. Moreover, the Applicant's evidence regarding the date of the break-in was inconsistent. The RPD assessed the evidence, based its Decision on that assessment and acted reasonably in so doing.

[29] It is within the discretion of the RPD to weigh the evidence presented. See *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.). In order to review a Decision on the basis of alleged error of fact, the Court must find that the finding was truly erroneous, that it was made capriciously and without regard to the evidence and that it formed the basis of the Decision. See *Rohm and Hass Canada Ltd. v. Canada (Anti-Dumping Tribunal)* (1978), 22 N.R. 175 (F.C.A.). The Applicant failed to satisfy this test.

[30] The Applicant may disagree with the findings and with the weight assigned to the evidence, but that does not make the Decision unreasonable. See *Singh v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1146 at paragraph 11. On the contrary, it was based on a cumulative assessment of the evidence, which was referred to in the Decision. For this reason, the findings of fact should not be disturbed.

Viable IFA Is Available

[31] The Respondent argues that an IFA is an inherent part of the definition of a Convention refugee and that, where an IFA is available, an applicant will not be granted Convention refugee status. See *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.) (*Rasaratnam*) at paragraphs 4, 6, 8; *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.) (*Thirunavukkarasu*) at paragraph 12.

[32] An applicant bears the onus of demonstrating that there is a serious possibility of persecution in the IFA area. See *Rasaratnam*, above, at paragraphs 4, 8; *Thirunavukkarasu*, above, at paragraph 6. In the instant case, the RPD considered the Applicant's evidence and was unconvinced that Elias has the resources to pursue him and that he still cares to pursue him anywhere in Mexico.

[33] The Respondent also challenges the Applicant's argument that the RPD failed to identify a specific geographical location in its IFA analysis. It asserts that the RPD found that the Applicant

could safely locate to Mexico City and that, given his education and successful work history, he would be able to live there in safety.

The Applicant's Reply

[34] The Applicant challenges the Respondent's assertion that the RPD properly applied the test in determining that the Applicant faced no serious possibility of persecution in Mexico. Indeed, the Applicant argues that the RPD applied no test. Rather, it made findings of fact and credibility related to the well-foundedness of the Applicant's fear of persecution without conducting any analysis whatsoever.

[35] The inaccuracy of the RPD's statement that it would limit itself to assessing the availability of an IFA is evident in the credibility findings and in the findings of fact, both of which go to the heart of the Applicant's claim and both of which were pronounced without appropriate procedure and analysis.

[36] The Applicant also argues that the mere mention of Mexico City as a viable IFA is insufficient to satisfy the test for assessing the reasonableness of an IFA as set out in *Valdez Mendoza*, above. The RPD was bound, at minimum, to discuss the prevailing conditions in Mexico City, and it did not. This failure to conduct a proper IFA analysis is fatal to the RPD's Decision.

ANALYSIS

[37] In his submissions, the Applicant spends a great deal of time arguing points that are not at issue in this application. The Decision was based upon one ground alone: the availability of an IFA in Mexico. On that point the Applicant raises serious objections to the RPD's finding of a viable IFA. At paragraph 28 of the Decision the RPD says:

> As a result of my findings regarding the availability of an Internal Flight Alternative, I need not address other issues in the claimant's case, such as the credibility of his evidence, the well-foundedness of his fear of persecution, or the risk to his life that he faces if he were to return to Mexico.

[38] First of all, the Applicant says that the RPD failed to specify a geographic location where it would be safe for the Applicant to return. A reading of the Decision as a whole reveals that the RPD does not simply say that the Applicant could "return to Mexico in an area away from San Juanico."

[39] In the Decision the RPD says that "the claimant has a viable Internal Flight Alternative in at least one or more of the areas canvassed in evidence, and almost certainly a number of other areas in Mexico away from Michoachan as well."

[40] As paragraph 18 of the Decision also makes clear, the Applicant was questioned about IFAs in Monterrey and the Yucatán, as well as about Mexico City. So a general location was specified – "away from Michoachan" – as well as several specific locations, including Mexico City.

[41] The Applicant also says that the RPD failed to provide any analysis as to why a specified location would be a reasonable and realistic safe haven. A reading of the Decision reveals that this is not the case.

[42] The RPD found that the proposed IFAs were safe, that Elias would not be interested in, or able to locate, him in these places and that they were reasonable because:

> The claimant is reasonably young and has a college education. According to his PIF, he also has extensive work experience in agriculture, landscaping, painting and construction, and was able to remain gainfully employed continuously or almost continuously both in Mexico and the United States between 1986 and 2008. He should not face significant problems relocating within Mexico.

[43] Unlike the situation in *Valdez Mendoza*, above, the RPD in this case did more than state that the Applicant had an IFA "elsewhere in Mexico."

[44] I find the only arguable issue raised by the Applicant is whether, in its IFA analysis, the RPD paid sufficient attention to evidence before it concerning the financial hardships and the security issues of the Applicant's family relocating to the places referred to by the RPD. There was evidence of general violence in Mexico as well as in Monterrey, Yucatán and Mexico City, the three places specifically referred to by the RPD.

[45] The Federal Court of Appeal in *Thirunavukkarasu*, above, at paragraph 12, makes it clear that, once the Member and the Board warn a claimant that an IFA is going to be raised then the onus

is on the claimant to demonstrate that it would be unreasonable to require the claimant to move there.

[46] In this case, counsel for the Applicant raised the issue of "financial means." In my view, the RPD addresses this issue reasonably in paragraph 27 of the Decision when it refers to the Applicant's age, education and work background. There is nothing to suggest that, given the Applicant's demonstrated ability to find work in Mexico, a move is not financially feasible.

[47] Counsel also referred to security issues and submissions at page 298 of the Tribunal Record, but the Applicant's fear here is of Elias being able to track him down, which is dealt with reasonably in the Decision. The RPD weighs the evidence and finds that it does not indicate that Elias would have a continuing interest in the Applicant were he to return to another part of Mexico such as Mexico City.

[48] It is also clear from the Decision as a whole that the RPD does not make erroneous findings of fact or base its Decision upon credibility issues, as alleged by the Applicant. Finding that the Applicant was not harmed clearly means physically harmed; it is not a finding that he was not threatened. And a finding that the Applicant's reasons against the IFA locations raised were speculative is not a credibility finding. The RPD did not doubt the Applicant's belief about why he could not go to, say, Mexico City. The RPD found that, given all of the evidence, the Applicant's belief that he could still be harmed in those locations was speculative.

[49] Just because the RPD has a different opinion from the Applicant as to what the evidence reveals does not mean that the RPD makes a credibility finding. The RPD does not disregard objective evidence. It weighs the applicant's submissions against the other factors revealed in the evidence and comes to a conclusion, as it did in this case, that the Applicant will not be at risk if he goes to Mexico City or one of the other locations mentioned. The Court is not here to re-weigh evidence. See *Ramirez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1404; *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paragraphs 34-38.

[50] The Decision is transparent and intelligible and it falls within the range of possible, acceptable outcomes which are defensible with respect to the facts and law. See *Dunsmuir*, above, at paragraph 47.

[51] It is, of course, possible that a different tribunal would disagree with the Decision and weigh the evidence so as to reach a different conclusion, but this does not make the Decision unreasonable.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-1253-10
STYLE OF CAUSE:	JOSE LUIS NAVARRO LINARES Applicant - and - MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	November 4, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	December 8, 2010

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