Federal Court  Cour fédérale

Date: 20101203

Docket: IMM-1648-10

Citation: 2010 FC 1224

Ottawa, Ontario, December 3, 2010

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

CLARA PATRICIA VILLEGAS VELEZ

Applicant

and

THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated February 25, 2010, concluding that the applicant is not a Convention refugee or person in need of protection pursuant to sections 96 or 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the Act) because the applicant was not credible. In the alternative, the Board found that the applicant had a viable internal flight alternative (IFA) in Bogotá and that the applicant did not rebut the presumption of state protection.

FACTS

Background

[2] The applicant is a 30-year-old citizen of Colombia. She arrived in Canada on March 23, 2008, and claimed refugee protection. Her claim was originally joined to that of her husband, but the Board granted her application to disjoin the claim when that relationship dissolved.

[3] The applicant stated that her parents and other family members were associated with a human rights group named “Dignidad 2000.” In addition, the applicant’s parents owned a farm north of the city of Cali. In 1998, the applicant stated that her father began to receive threats from the leftist guerrilla group, the Revolutionary Armed Forces of Colombia (FARC). As a result, her father sold his land.

[4] In 1998, the applicant completed her high school in Cali, Colombia. As a result of the threats, and to study English in a six-month course, the applicant was sent to Canada by her family. Her parents fled Cali to the United States in 1999 after selling their land.

[5] At the end of the applicant’s six-month English course in December 1999, the applicant returned to Cali to attend university after a brief visit to the United States to visit her parents. The applicant lived with her grandmother in Cali, but her parents repeatedly implored the applicant to join them in the United States, for fear of persecution in Colombia.

[6] In 2000, two of the applicant's half brother's cousins were killed. The applicant feared for her own safety and fled Colombia to the United States, where she joined her parents. She obtained a student visa, which expired in 2001 and was not renewed. In 2002, her half brother joined the applicant and her parents in the United States.

[7] Between 2002 and 2006 a number of other friends and distant relations of the applicant were killed. The applicant believes that the killings were linked to threats made by two notorious Colombian insurgent groups – the FARC, and the far-right paramilitary United Self-Defense Forces of Colombia (AUC) – against members of "Dignidad 2000."

[8] In 2004, the applicant returned to Colombia on three occasions, for brief periods of time, to visit her ailing grandmother.

[9] While in the United States, the applicant was married to, and then divorced from, a U.S. citizen. She married her current husband, a Colombian citizen, on March 15, 2008. As stated above, while her claim was initially joined with her husband's, it has been disjoined (following incidents of domestic abuse and the breakdown of their marriage).

[10] At no time before initiating the claim for asylum that forms the basis of this application did the applicant or her family seek asylum in the United States, where the applicant lived without status for six years.

Decision under review

[11] On February 25, 2010, the Board dismissed then applicant's refugee claim because it found that the applicant was not credible. The Board found that the applicant did not have a subjective fear of serious harm in Colombia, and the applicant never belonged to, nor was associated with, "Dignidad 2000." In addition, the Board found that the applicant had a viable IFA in Bogotá.

[12] With regard to the applicant's subjective fear of serious harm in Colombia, the Board found that the applicant's actions were not consistent with such a subjective fear. In particular, the Board provided three reasons for its finding that the applicant did not have a subjective fear of serious harm in Colombia:

1. The applicant returned to Cali in 1999, the place from which her family had fled, despite her parents urging that she not return;

2. The applicant did not claim asylum either in 1999 or in 2000 after returning to the United States, or on any of the three occasions in 2004 when she returned to the United States from Colombia, or when her first marriage to a U.S. citizen in the United States failed; and

3. The applicant spent six years in the United States without status and without inquiring into obtaining legal status.

[13] With regard to the applicant's association with "Dignidad 2000," the Board found that the applicant failed to prove her association on a balance of probabilities. First, Board found that if the family had truly fled as a result of their association with "Dignidad 2000," the applicant would have mentioned the organization when she initially made her refugee claim. Instead, the Board found that the applicant expressly stated that she had never belonged to any organization. The Board rejected the applicant's explanations as to why she had failed to mention an association with "Dignidad 2000" when she initially made her refugee claim in Canada – namely, that she was not a member but merely a supporter, and that she was under the influence of her abusive husband at the time.

Second, the Board noted that the only supporting evidence offered by the applicant of the existence of “Dignidad 2000” as an organization, the alleged murders of its members, and the applicant’s association with such a group was a faxed letter submitted on the day of the hearing, which contained no cover sheet or information on how or from where it was sent. The Board attached little weight to that documentary evidence.

[14] Finally, the Board found that Bogotá would be a viable IFA for the applicant. The Board noted that the applicant herself had never been contacted by the FARC or the AUC either while she lived in Cali or on any of her return visits. The Board further noted that the applicant had testified that other than her fear of harm, there was no reason that she could not live in Bogotá. The Board considered the objective evidence of state protection available in Colombia, and in Bogotá in particular. It concluded that there is adequate state protection to citizens in Colombia. The Board considered the applicant’s individual situation. It noted that the applicant had provided no evidence of any attempts that she or her family made to seek protection from state authorities. There was also no evidence of any reason why the state would be unable to offer that protection. The Board recognized that land-owning families may have faced particular dangers, but noted that the applicant’s family had sold their lands. The Board therefore concluded that even if the applicant were too afraid to return to Cali, Bogotá provides a viable IFA.

LEGISLATION

[15] Section 96 of the Act, grants protection to Convention refugees:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée

religion, nationality, membership in a particular social group or political opinion,	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.

[16] Section 97 of the Act grants protection to persons whose removal from Canada would subject them personally to a risk to their life, or of cruel and unusual punishment, or to a danger of torture:

97. (1) A person in need of protection is a person in 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	97. (1) A qualité de personne à protéger la personne qui se 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

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, (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, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	cas suivant : (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (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) 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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

ISSUES

[17] The applicant's submissions raise three issues:

1. Did the Board err by failing to consider important elements of the applicant's evidence in assessing her evidence of fear of serious harm, and, hence, credibility?;

2. Did the Board err by engaging in a selective review of the documentary evidence before it with regard to adequate state protection in Colombia?; and

3. Did the Board err in its assessment of the evidence concerning the viability of Bogotá as an IFA?

[18] As a result of the Court's conclusions below regarding the first issue the Court does not need to consider the second or third issues.

STANDARD OF REVIEW

[19] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question": see also *Khosa v. Canada (MCI)*, 2009 SCC 12, per Justice Binnie at para. 53.

[20] Questions of credibility, state protection and IFA concern determinations of fact and mixed fact and law. It is clear that as a result of *Dunsmuir* and *Khosa* that such issues are to be reviewed on a standard of reasonableness. Recent case law has affirmed that the standard of review for determinations of state protection is reasonableness: see, for example, my decisions in *Corzas Monjaras v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 771 at para. 15; and *Rodriguez Perez v. Canada (Minister of Citizenship and Immigration)* 2009 FC 1029 at para. 25.

[21] Similarly, the Board's determinations regarding whether the applicant has a valid IFA are to be reviewed on a standard of reasonableness: *Mejia v. Canada (MCI)*, 2009 FC 354, at para. 29; *Syvyryn v. Canada (MCI)*, 2009 FC 1027, 84 Imm. L.R. (3d) 316, at para. 3; and my decision in *Alvarez Cortes v. Canada (Citizenship and Immigration)*, 2010 FC 770 at para. 15.

[22] The Board's determinations of credibility are also to be reviewed on a standard of reasonableness: *Wu v. Canada (Citizenship and Immigration)*, 2009 FC 929, at para. 17; *Aguirre v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 571 at para. 14.

[23] In reviewing the Board's decision using a standard of reasonableness, the Court will consider “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*, supra, at paragraph 47; *Khosa*, supra, at para. 59.

ANALYSIS

Issue No. 1: Did the Board reasonably assess the applicant’s evidence in making its determination of credibility?

[24] In my Judgment in *Baykus v. Canada*, 2010 FC 851, I reviewed the general principles of law regarding assessments of credibility at para. 17:

> ¶17. . . . Sworn testimony is presumed true unless there is a reason to doubt its truthfulness: *Maldonado v. Canada (Minister of Employment & Immigration)* (1979), [1980] 2 F.C. 302 (Fed. C.A.), per Justice Heald at para. 5. The RPD is entitled to draw adverse findings of credibility from the applicant's testimony by assessing vagueness, hesitation, inconsistencies, contradictions and demeanor, for which deference is entitled when judicially reviewed: *Zheng v. Canada (Minister of Citizenship & Immigration)*, 2007 FC 673, 158 A.C.W.S. (3d) 799 (F.C.), per Justice Shore at para. 17. The Court is not in as good a position as the RPD to assess the credibility of the evidence: *Aguebor v. Canada (Minister of Employment & Immigration)* (1993), 160 N.R. 315 (Fed. C.A.). When a credibility finding is based on a number of points, the reviewing Court's analysis does not involve determining whether each point in the RPD's reasoning meets the reasonableness test: *Jarada c. Canada (Ministre de la Citoyenneté & de l'Immigration)*, 2005 FC 409 (F.C.), per Justice de Montigny at para. 22.

[25] In this case, the Board’s key determination was its finding of credibility:

> ¶4. I found the claimant was not a credible witness and on this basis reject her claim. . . .

[26] As described above, the Board provided several reasons for finding the applicant not credible:

1. the applicant did not act in a manner consistent with a fear of serious harm in Colombia, since:

    a. the applicant repeatedly returned to Colombia:

        - At para. 11 the Board states, in relation to the applicant's return to Colombia after completing her studies in Canada in 1999, "I am satisfied on a balance of probabilities the family would have insisted their 19 year old daughter stay in the U.S. and go to school there. . . ."

        - At paras. 14-15 the Board considers the applicant's return visits to Colombia in 2004:

> ¶14. In addition in 2004 the claimant made three trips back to Colombia to Cali where she believes FARC was interested in she and her family in the past. She explained she visited her grandmother who was very ill and did not go out much. In addition the visits were of short durations.
>
> ¶15. Even so she entered Colombia through the Cali airport. Today she believes she would be found due to the intelligence network of FARC. If that is the case, then returning to Colombia on three occasions through the very airport where FARC might be looking for her, I find is inconsistent with her fears and understanding as to the capability of FARC.

    b. the applicant did not claim asylum in the United States in 1999, or in 2000, or on any of the three occasions that she returned from Colombia in 2004, or when her marriage to a U.S. citizen failed, nor did she inquire into options to attain legal status there throughout her time in that country;

2. the applicant failed to mention her association with “Dignidad 2000” to the immigration officer when she made her claim, and she did not mention it on her initial Personal Information Form; and
3. the only documentary evidence of the existence of “Dignidad 2000” and the applicant’s association with it was a faxed letter of unknown origin submitted on the day of the hearing.

[27] The applicant submits that the Board ignored the applicant’s explanations for these findings. I disagree. The Board’s reasons demonstrate that the Board considered the applicant’s evidence and explanations, but was not persuaded on the balance of probabilities.

[28] At para. 11, the Board considered the applicant’s explanation for her return in 1999 – namely, that she returned contrary to parents’ wishes – but concluded that “[i]t is implausible that if her parents fled Cali due to a fear of FARC that the claimant would return to the same area only one year later.” At para. 14 the Board considered the applicant’s explanations for why she returned on three occasions in 2004 despite her fear – namely, that she needed to visit her ailing grandmother but that the visits were of short duration and she did not go out much when she was there – but concluded at para. 15 that this explanation was “inconsistent with her fears and understanding as to the capability of FARC.”

[29] With regard to the applicant’s explanation for why she failed to mention “Dignidad 2000” in her initial application, the Board stated at para. 22:

> ¶22. Her explanation was at this time she was under the influence of her abusive husband and she was never a member of Dignidad 2000 only a supporter. I do not accept these explanations.

The Board provided reasons for why it did not accept the applicant's explanations. These included that the background information form that the applicant filled in is clear that all organizations with which an individual is associated are to be included, that she did not mention Dignidad 2000 to the immigration officer or anywhere in her original Personal Information Form, and that the documentary evidence that she had to support the existence of the organization and of her association with it was weak.

[30] As stated above, the Board is entitled to draw adverse findings of credibility from the applicant's testimony by assessing vagueness, hesitation, inconsistencies, contradictions and demeanour. In this case, the Board considered but was not persuaded by the applicant's evidence. The Board's findings regarding the applicant's credibility were reasonably open to it based upon the evidence before it.

CONCLUSION

[31] The Board stated that the determinative issue in regard to the applicant's claim was credibility. The Court concludes that the Board's credibility finding was supported by justified, transparent and intelligible reasons, sufficient to determine the claim.

[32] The Board's reasons demonstrate that the Board considered all of the evidence and made findings that were reasonably open to it. There is no basis upon which this Court may intervene. Accordingly, this application will be dismissed.

CERTIFIED QUESTION

[33] Both parties advised the Court that this case does not raise a serious question of general importance which ought to be certified for an appeal. The Court agrees.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

The application for judicial review is dismissed.

"Michael A. Kelen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1648-10
STYLE OF CAUSE:	*Clara Patricia Villegas Velez v. The Minister of Citizenship and Immigration*
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 22, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	Kelen J.
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