Federal Court  Cour fédérale

Date: 20101224

Docket: IMM-1858-10

Citation: 2010 FC 1334

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 24, 2010

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

ELEAZAR RODRIGUEZ CORONADO and BRENDA YUNUENT RODRIGUEZ CORONADO

Applicant

and

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 (the "Act"), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the "panel") dated March 2, 2010, wherein it was determined that the applicant is not a Convention refugee or a person in need of protection under the Act.

Facts

[2] The applicant, Eleazar Rodriguez Coronado, is a Mexican citizen who lived in Atlalanhuacan, Morelos, and who fears persecution for having reported her father's inappropriate conduct towards her daughter Brenda.

[3] The applicant apparently spent her childhood in a difficult family environment owing to her father's alcoholism and violence.

[4] In 1996, the applicant, who was unmarried, became pregnant with her daughter Brenda. Shortly before Brenda's birth, the applicant's fiancé, Eusebio Martinez, left them, and the applicant continued to live with her parents.

[5] In November 2006, the applicant confronted her father, accusing him of having fondled her daughter Brenda. She reported the situation to the authorities. As a result, her father was detained, but only for having physically assaulted his spouse.

[6] In 2007, her father took steps to resolve his alcohol problem, but to no avail.

[7] In 2008, the applicant, who was no longer living with her parents, entrusted Brenda to their care on several occasions. Her father had a relapse, began drinking again and assaulted Brenda.

[8] On June 22, 2008, Brenda was attacked by two masked men in the house where she was living with her mother. Her mother filed a complaint with the police. Some days later, Brenda identified one of the masked assailants as being a friend of her grandfather.

[9] The police investigated but could not track down the individual in the village.

[10] In the days following, the applicant was threatened. If she did not withdraw her complaint, she and her daughter would suffer the consequences.

[11] The person making the threats followed the applicant, who fell and took 20 days of leave because of headaches caused by that fall. She then decided to flee to Canada with her daughter Brenda.

Impugned decision

[12] First, the panel found that the principal applicant's fear of her father's behaviour when drunk was genuine but that the alleged fear of the individuals who had supposedly assaulted her and her daughter after the complaint was filed with the authorities was unfounded.

[13] Second, the panel concluded that there was an internal flight alternative (IFA) in Mexico. It therefore refused the applicant's claim for refugee protection.

Issues

[14] This application for judicial review raises the following questions:

1. Did the panel err in finding the applicant not to be credible regarding her and her daughter's alleged assault by third parties?
2. Did the panel err by concluding that the applicant had an IFA in moving elsewhere in Mexico?

Analysis

A. *Standard of review*

[15] Evaluating credibility and weighing evidence fall within the jurisdiction of the administrative tribunal assessing a refugee protection claimant's allegation of a subjective fear (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration*) (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264, at paragraph 14). The applicable standard of review in similar circumstances was patent unreasonableness; it is now reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[16] The existence of an IFA is a question of mixed fact and law and is consequently reviewable on a standard of reasonableness. On this subject, Justice Beaudry, in *Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 487, [2009] F.C.J. No. 617 (QL), at paragraph 9, wrote the following:

> Following *Dunsmuir*, the Court must continue to show deference when determining an IFA and this decision is reviewed according to the new standard of reasonableness. Consequently, the Court will intervene only if the decision does not fall within the range "of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47). The reasonableness of a decision is concerned with the existence of justification, transparency and intelligibility within the decision-making process.

B. *Applicant's credibility*

[17] Issues related to credibility, the assessment of the facts and the weight of the evidence are entirely within the discretion of the Board, as the trier of fact (*Chen v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 767, 148 A.C.W.S. (3d) 118, and *Khangura v. Canada (Minister of Citizenship and Immigration)* (2000), 191 F.T.R. 311, 97 A.C.W.S. (3d) 1228).

[18] The applicant submitted that the panel had erred, since it had accepted her fear of being assaulted by her father but refused to believe her version of events regarding the fear of being attacked by third parties. However, a careful reading of the panel's decision shows that all of the evidence adduced was considered. In this regard, the panel relied on the applicant's statement, made during an interview, confirming that she feared only her father. It was therefore reasonable for the panel to make that finding, which does not as a result exclude all other fears, as the applicant claims, but rather confirms that she requires protection from her father.

[19] After having reviewed the evidence and heard counsel for the parties, the Court is of the view that it was perfectly reasonable for the panel to find the applicant not to be credible, considering, among other factors, the panel's expertise and specialization, which enable it to adequately assess witnesses' credibility and evidence presented (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.)).

C. *Internal flight alternative*

[20] At paragraph 21 of *Gutierrez*, above, Justice Beaudry summarizes as follows the general principles that apply whenever IFA issues are raised:

> Regarding the internal flight alternative, the Court held that a claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling to and staying in a region. In *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.), the Court held that two criteria applied in establishing an IFA: 1) there is no serious risk of the claimant being persecuted in the part of the country where there is a flight alternative; and 2) the situation in the part of the country identified as an IFA must be such that it is not unreasonable for the claimant to seek refuge there, given all of the circumstances.

[21] The case law of this Court is consistent. For the Court to intervene, it requires nothing less than the existence of conditions that would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of parents, relatives or help in such an area is not in itself a danger to the claimant's life and safety (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, [2000] F.C.J. No. 2118 (QL), at paragraph 15).

[22] In *Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1126, [2008] F.C.J. No. 1397 (QL), in which the applicant was abused and threatened by her ex-husband, Deputy Justice Tannenbaum wrote the following at paragraph 34:

> In countering these submissions, the applicant was able to do little more than offer vague allegations of the risks of being located arising from the state's inability to protect her; however, she did not avail herself of this protection before leaving her country to seek protection in Canada. In addition, she did not file any genuine, concrete evidence of existing conditions preventing her from relocating in her country. Under these circumstances, the Board could reasonable find that there was an internal flight alternative in Mexico.

[23] It is reasonable, and even necessary, for refugee protection claimants to exhaust all avenues in their countries before seeking international protection (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, [1991] F.C.J. No. 1256 (QL)). In *Hernandez*, above, at paragraphs 31 to 33, Deputy Justice Tannenbaum aptly describes the claimant's burden of proof: there must be a real risk in every part of the claimant's country.

[24] The applicant essentially criticizes the panel for having based its decision on erroneous findings of fact. At the hearing, counsel for the applicant argued that the panel had erred in determining that the resources to protect her could be found in Puebla. In counsel's opinion, the evidence on file shows that the resources available are concerned with providing victims with psychological comfort only and therefore have nothing to do with the physical protection of someone who feels threatened, as is the case here.

[25] Counsel for the respondent refer to certain documentary evidence on file clearly establishing that such resources exist in Puebla, among other places, and make it possible to obtain judicial orders, which are followed up on by the police. Thus, in counsel's view, the panel did not err in assessing the facts.

[26] They also submit that the panel correctly applied the two-part test for determining, first, that there is an IFA in Puebla, among other places, where there is no risk of the claimant's being persecuted; and, second, that it was not unreasonable for the claimant to relocate there.

[27] The panel held that the applicant had failed to establish that her father would be able to find her if she moved elsewhere in Mexico, or that he even wanted to do so. As for the applicant's argument that it was hard for her to find a job in one of the IFAs in Mexico, the panel did not err in evaluating the situation. In this case, this Court is of the opinion that, given her education and work experience, the applicant could easily obtain adequate protection in Puebla or relocate to another part of her country without undue hardship.

[28] The panel's decision is based on both the applicant's testimony and the documentary evidence in the record. In its assessment, the panel correctly took into account the applicant's situation and opportunity to relocate elsewhere in Mexico. The applicant needed to demonstrate to this Court that the panel had made a reviewable error on a standard of reasonableness. Unfortunately, the applicant has not discharged her burden of proof.

[29] This application raises no serious question of general importance.

JUDGMENT

THE COURT ORDERS AND ADJUGES that the application for judicial review is dismissed and no question is certified.

Judge

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1858-10
STYLE OF CAUSE:	ELEAZAR RODRIGUEZ CORONADO and BRENDA YUNUENT RODRIGUEZ CORONADO v. MINISTER OF CITIZENSHIP AND IMMIGRATION
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