

Federal Court



Cour fédérale

Date: 20110117

Docket: IMM-2628-10

Citation: 2011 FC 48

Ottawa, Ontario, January 17, 2011

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**FLORENTINO SANCHEZ ROVIROSA
MARTHA PATRICIA ROSAS ROVIROSA
TRINIDAD SANCHEZ ROVIROSA
GRETEL ITZEL VELEZ SANCHEZ
(A MINOR)
ELIACIM MARIA APREZA BAHENA
SOFIA SANCHEZ ROVIROSA
EDSON DAVID LOPEZ SANCHEZ (A MINOR)
JONATHAN DE JESUS CASTRO SANCHEZ
(A.K.A. JONATHAN DE JES CASTRO
SANCHEZ (A MINOR)**

Applicants

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Principal Applicant, his wife and members of the extended family (collectively, the Applicants) are citizens of Mexico who claim protection in Canada pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*). Briefly stated, the Applicants fear persecution from Mexican gang members associated with the illegal drug trade in Mexico. In a decision dated April 21, 2010, a panel of the Immigration and Refugee Protection Board, Refugee Protection Division (the Board) determined that the Applicants were neither Convention refugees nor persons in need of protection.

[2] The Board's determinative finding was that the Applicants' fear was not objectively reasonable. After reviewing all of the evidence before it, the Board concluded that: (a) there was adequate state protection in Mexico; (b) the Applicants had failed to take all reasonable steps to avail themselves of that protection; and (c) the Applicants failed to provide clear and convincing evidence of the state's inability to protect them.

[3] The Applicants seeks judicial review of the Board's decision, arguing that the Board's decision on state protection is unreasonable.

II. Issues

[4] The Applicants raise three issues:

1. Did the Board unreasonably conclude that the Applicants had not taken reasonable steps to avail themselves of state protection?

2. Did the Board err by failing to properly weigh the documentary evidence regarding state protection in Mexico?
3. As a subset of the second issue, did the Board err by rejecting the report of Professor Hellman?

III. Analysis

A. *Standard of Review*

[5] Questions as to the adequacy of state protection are questions of mixed fact and law and, thus, are reviewable against the reasonableness standard. On this standard, this Court can only intervene if the Board's decision does not fall "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 (*Dunsmuir*)).

(1) *Issue #1: Failure to seek state protection*

[6] The Applicants challenge the Board's conclusion that the Principal Applicant had not taken all reasonable steps in seeking protection from the state against threats by the drug gang in Mexico City. The Applicants submit that the record shows that they made a total of 11 different attempts to

seek state protection. Further, they submit, some of those efforts were addressed to the very institutions that the Board said would have been available to the Principal Applicant.

[7] The Applicants point to the decision of *Lopez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1176, [2010] FCJ No 1589 (QL) (*Lopez*) where a claimant had made some unsuccessful attempts to seek police assistance. At paragraph 3 of *Lopez*, Justice Hughes stated that, “I am satisfied that, in the circumstances, the Applicant did what he could to report the incidences of threats and assault to the authorities and to seek refuge elsewhere in Mexico.” This, in the view of the Applicants, supports their position that, with the evidence of 11 attempts to obtain protection, the Board was obligated to conclude that the state was unable to protect these Applicants.

[8] The case of *Lopez* does not assist the Applicants. The decision does not disclose the facts that were before the Board in that case. Further, the determinative finding by Justice Hughes, in *Lopez*, was not whether Mr. Lopez had made sufficient efforts to seek state protection. Rather, the case was decided on the basis that the Board had failed to properly consider the documentary evidence before it.

[9] Every case turns on its own unique facts. On its face, 11 attempts to seek state protection appear to constitute a strong evidentiary record to show the failure of the state to provide protection. However, on the particular facts of this case, it is not outside the range of possible, acceptable outcomes to conclude, as the Board did, that more could reasonably have been done (*Dunsmuir*, para 47). The case at bar is not about one individual making 11 unsuccessful efforts to obtain help. In this case, the testimony on this issue involved five of the members of this extended family. Thus, the fact that one of those Applicants had failed to receive assistance from one police or law

enforcement agency does not necessarily mean that, objectively, it would have been futile for the others to try. Further, while the Board accepted the credibility of the Applicants, it is evident from its reasons, that the Board did not accept the claim that assistance would not have been forthcoming from some of the agencies described. The Board carefully considered the reasons provided by the Principal Applicant for not approaching certain authorities, in light of the documentary evidence that set out, objectively, the role and efficacy of those law enforcement bodies.

(2) *Issue #2: Improper weighing of documentary evidence*

[10] The Applicants submitted much documentary evidence that, in their opinion, demonstrates a consistent failure of Mexico to provide state protection. They acknowledge that the Board did not ignore any of this evidence. However, they submit that the Board weighed the evidence of state failure against documents that only showed efforts of the state to address the problems of drug-related violence and corruption.

[11] It is up to the Board to weigh the evidence before it. The Court will not lightly intervene where, as here, the reasons of the Board demonstrate a careful consideration of all of the evidence before it. I do not agree with the Applicants that the Board, in support of its conclusion, relied on documents that only reflected the efforts of the state of Mexico to provide protection to its citizens. The Board acknowledges that the process of addressing the problems of crime and corruption was slow but also described several measurable and positive results of the state's intervention. For example, the Board referred to the increase in convictions and the number of persons who had been

imprisoned as a result of drug-related crimes. These are significant markers of progress. I am satisfied that the Board did not solely examine the efforts. There is no reviewable error.

(3) *Issue #3: the Hellman Report*

[12] A key argument of the Applicants is that the Board failed to have regard to one particular document provided to it. That document is a Report on Human Rights in Mexico written in 2007 by Professor Judith Adler Hellman (the Hellman Report). The Applicants submitted the Hellman Report with their written submissions filed after the hearing.

[13] The Applicants rely on two recent cases of the Federal Court where the Hellman Report was considered (*Villicana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1205, 86 Imm LR (3d) 191 (*Villicana*); *Lopez*, above). In each case, the reviewing judge concluded that the applications for judicial review would succeed. In each case, the reviewing judge found that the Board's analysis of the Hellman Report was flawed.

[14] It is trite law that the Board is entitled to consider and weigh the evidence before it. However, in doing so, the Board must consider contradictory evidence and explain why it prefers one side over the other. Apparently that was not done in the decisions that were before Justices Russell (*Villacana*, above) and Hughes (*Lopez*, above). This particular point was made by Justice Russell in *Villicana*, above, at paragraph 79, where he states:

The Board did not have to accept this contrary evidence [the Hellman Report]. But it had an obligation to review it and say why it could be discounted in favour of other reports that support its own conclusions. . . . The Board's failure to do so renders the Decision unreasonable.

[15] While I acknowledge that the Hellman Report before me is most likely the same report that was before my colleagues in *Villicana* and *Lopez*, I know little about the record that was before those judges. The mere fact that two other panels of the Board conducted faulty analyses of certain evidence does not mean that every Board panel who refers to the Hellman Report will also err. Nor are these two decisions authority for the proposition that the Hellman Report is conclusive evidence that state protection in Mexico is inadequate. The Hellman Report is but one piece of documentary evidence that must be considered and weighed by the Board. As the reviewing judge in this case, I must examine the underlying record and assess the Board's reasons as a whole, including how the Board dealt with the Hellman Report.

[16] In this case, the Board, in a lengthy and detailed section of the reasons, summarizes the contradictory evidence presented to it by the Applicants. At paragraph 25, the Board describes the key findings of the Hellman Report. The Board continues with the following comments:

I find that if I were to accept as true the central findings of Professor Hellman's report on human rights in Mexico, it would basically mean that the entire state security apparatus in Mexico, including the judicial, criminal, and penal systems, are on the verge of collapsing. It would also mean that corruption, lawlessness and impunity have completely overtaken democratic institutions, including law enforcement agencies, in Mexico at all levels and fundamentally subverted the rule of law in Mexico so that no ordinary citizen in Mexico would ever be able to rely on the police for protection or assistance. I find that Professor Hellman's central findings are contradicted by the preponderance of the documentary evidence.

[17] The Board then turns to a description of the documentary evidence that supports a view that, while corruption exists and changes are slow, "there is no indication that Mexico has lost this battle or that it is on the verge of collapse". The Board refers to specific examples in the documentary evidence that support this conclusion.

[18] In my view, the Board's analysis reflects a careful consideration of all of the evidence before it – including the Hellman Report. The Hellman Report was dealt with appropriately and the reasons clearly explain why the Board preferred the conflicting documentary evidence. In the result, the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, para 47).

IV. Conclusion

[19] For these reasons, the Application for judicial review will be dismissed.

[20] Neither party proposes a question for certification.

JUDGMENT

THIS COURT’S ORDERS AND ADJUDGES that :

1. the application for judicial review is dismissed; and
2. no question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2628-10

STYLE OF CAUSE: FLORENTINO SANCHEZ ROVIROSA
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 13, 2011

REASONS FOR JUDGMENT: SNIDER J.

DATED: JANUARY 17, 2011

APPEARANCES:

Ms. Elyse Korman FOR THE APPLICANTS

Mr. Manuel Mendelzon FOR THE RESPONDENT

SOLICITORS OF RECORD:

OTIS & KORMAN FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario