Federal Court		Cour fédérale

Date: 20110323

Docket: IMM-2417-10

Citation: 2011 FC 360

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 23, 2011

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MIGUEL ANGEL BELMONTE SOTO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (panel), dated April 7, 2010, that the applicant is not a Convention refugee or a person in need of protection.

Factual background

[2] The facts as stated by the panel are as follows: the applicant, Miguel Angel Belmonte Soto, is a citizen of Mexico. He is alleging that he fears José de Jesus Claudio, who purportedly was his employer from November 2005 to December 2006. A few weeks after starting his job, José Claudio's brother, Juan Claudio, apparently told the applicant that he and his brother were involved in trafficking drugs.

[3] On November 30, 2006, Juan Claudio was allegedly apprehended by the police and charged with drug trafficking. On December 3, 2006, José Claudio apparently went looking for the applicant at his restaurant but did not find him.

[4] In early December 2006, the applicant apparently started working in another restaurant. On December 5, he was purportedly intercepted by José Claudio and two other individuals. The two individuals allegedly took him by the arms and beat him, insulting him and telling him to keep his mouth shut. The applicant purportedly suffered scratches and hematomas as a result of this incident.

[5] On December 7, 2006, the applicant allegedly went to the office of the public prosecutor in Léon, where he allegedly tried to file a complaint in writing. However, the uniformed officer purportedly made only a few notes. The applicant apparently did not sign anything and saw the uniformed officer put everything in a filing cabinet. The applicant apparently did not mention that José Claudio was involved in drug trafficking.

[6] A few days later, the applicant was apparently threatened again when José Claudio purportedly came to his home with two individuals. After that, the applicant apparently stayed home. The applicant then purportedly went to stay with his aunt, Soledad Soto Lara, approximately one hour from his home in Léon. The applicant testified that he decided to apply for a passport in February 2007 and that he left the country on March 23, 2007. He claimed refugee protection in Canada in April 2007.

[7] The refugee claim hearing took place on March 29, 2010. On April 7, 2010, the panel rejected the applicant's refugee claim.

Impugned decision

[8] The panel rejected the applicant's refugee claim for three distinct and independent reasons: lack of credibility on the part of the applicant, availability of state protection in Mexico and an internal flight alternative (IFA).

[9] With respect to the applicant's credibility, the panel found that his testimony contained several contradictions and omissions, namely, the fact that he did not mention drug trafficking in paragraph 13 of his PIF, the inconsistencies in the number of death threats he alleges to have received and when they were made, the question of whether José Claudio had hit him or not, and the very existence of José Claudio and his brother, Juan.

[10] The panel described the applicant's testimony as "laboured and contain[ing] several contradictions and omissions" (Certified Tribunal Record, decision of the panel, at paragraph 10).

The panel noted that the applicant submitted only his Personal Information Form (PIF) as an exhibit in support of his testimony and testified that he did not attempt to obtain additional documents that could have corroborated his version of the facts, such as a police report or the complaint he filed. The panel rejected the applicant's explanations that he did not try to obtain corroborative documents because he feared that this would have repercussions on his family.

[11] Regarding state protection, the panel found that the applicant did not succeed in rebutting the presumption of state protection and did not, with the support of clear and convincing evidence, prove the inability of the state of Mexico to ensure his protection. The panel did not assign any credibility to the fact that the applicant tried to seek state protection by filing a complaint with the police or to the fact that he did not try to seek protection from the federal authorities.

[12] The panel reiterated that the adequacy of state protection cannot rest on a refugee protection claimant's subjective fear (*Martinez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1050, [2005] F.C.J. No. 1297). Furthermore, the panel noted from the documentary evidence that Mexico has made a great deal of progress in terms of protecting its citizens against corruption and drug trafficking.

[13] Finally, the issue of an internal flight alternative (IFA) was discussed at the hearing. The cities of the Federal District of Mexico City, Guadalajara, Monterrey, Acapulco and Cancun were mentioned. The panel found that the applicant had failed the two components, subjective and objective, of the IFA test.

[14] The panel rejected the applicant's claim.

Relevant statutory provisions

[15] The following provisions of the *Immigration and Refugee Protection Act* are relevant in this case:

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 Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of	**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

former habitual residence, would subject them personally

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

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de

also a person in need of protection.	personnes auxquelles est reconnu par règlement le besoin de protection.

Issues

[16] The issues that arise in this case are the following:

a. *Did the panel err in finding that the applicant was not credible?*

b. *Did the panel err in finding that the applicant had failed to rebut the presumption of Mexican state protection?*

c. *Did the panel err in finding that there was an internal flight alternative?*

Standard of review

[17] The courts have consistently held that the standard of reasonableness applies to credibility issues (see *Malveda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 447, [2008] F.C.J. No. 527; *Aguirre v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] F.C.J. No. 732; *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449, [2008] F.C.J. No. 571; and *Tovar v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 600, [2009] F.C.J. No. 785).

[18] State protection issues are questions of mixed fact and law that must also be reviewed on the standard of reasonableness (*Sosa v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 275, [2009] F.C.J. No. 343, at paragraph 15).

[19] Finally, this Court found that the standard of review applicable to internal flight alternative (IFA) issues is that of reasonableness (see *Guerilus v. Canada (Minister of Citizenship*

and Immigration), 2010 FC 394, [2010] F.C.J. No. 438, at paragraph 10; and *Krasniqi v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 350, [2010] F.C.J. No. 410, at paragraph 25).

Analysis

a. Did the panel err in finding that the applicant was not credible?

[20] Regarding the lack of credibility, the applicant submits that the panel's decision is arbitrary and unreasonable insofar as the administrative tribunal is falsely claiming that there was a contradiction between the testimony of Mr. Soto at the hearing and the content of paragraph 13 of his answer to question 31 in his PIF.

[21] With respect to the difference between the terms "dangerous dirty business" and "drug trafficking", the applicant maintains that his two explanations, far from contradicting each other, are mutually exclusive facts. The term "drug trafficking" was a clarification made at the hearing in relation to his PIF. In that sense, the applicant submits that the panel's decision was so blatantly arbitrary and illogical that it vitiated its reasoning (Applicant's Record, detailed affidavit of the applicant at paragraphs 17-18 and Certified Tribunal Record, decision of the panel at paragraphs 10-11). According to the applicant, the reasons advanced by the panel for rejecting his testimony are not supported by the evidence.

[22] Furthermore, the applicant claims that, regarding the other aspects discussed by the panel, paragraphs 12 to 16 of the decision are actually a microscopic analysis focussing on minor and peripheral details.

[23] However, the respondent emphasizes that the applicant, when questioned during his testimony, merely replied that he did not know why there were omissions in his PIF and contradictions with respect to it. The respondent submits that the omissions and contradictions raised by the panel were at the very essence of the claim; in that sense the panel's decision is well-founded.

[24] The case law has consistently held that the panel may deem the omission of important facts in a claimant's PIF as undermining the claimant's credibility (*Cienfuegos v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262, [2009] F.C.J. No. 1591; *Bernal v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1007, [2009] F.C.J. No. 1217). In fact, the applicant is asking this Court to re-assess the evidence that was submitted before the panel and to substitute its own interpretation of it in the context of a judicial review, which is not the role of this Court. Instead, this Court must determine whether the panel's decision falls 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] S.C.J. No. 9).

[25] The Court also agrees with the respondent's argument that the panel could have drawn a negative inference with respect to the applicant's credibility based on the fact that he did not give a reasonable explanation for his failure to submit evidence corroborating his allegations (*Sinnathamby v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 473, [2001] F.C.J. No. 742, at paragraph 24). The Court already relied on this principle in *Sosa*, above, at paragraph 19, a case that contains facts similar to those in this case:

> [19] Last, this Court has also repeatedly confirmed that the RPD can draw an adverse inference from the lack of evidence corroborating a

> claimant's testimony where the panel has concerns about his or her credibility. The applicants had to properly document their alleged fear of persecution. In this case, the applicant did not provide any evidence to corroborate her place of residence during the period of alleged risk and did not even specify in her PIF where she lived during that period. It was therefore not unreasonable for the RPD to expect the applicants to provide credible evidence to corroborate the allegations that were at the heart of their claim and were the very foundation of their fear of persecution, given that the onus was on them to credibly establish their allegations in support of that fear, which they failed to do in this case.

[26] During the hearing before this Court, the applicant's counsel emphasized the fact that the applicant mentioned in his background information form that he feared returning to his country of origin because of [TRANSLATION] "José de Jesus Claudio—drug dealer and those police accomplices" (Certified Tribunal Record at page 161). The applicant's counsel also noted that the panel does not address this information in its decision and, consequently, this omission vitiates its reasoning and amounts to an error.

[27] Even though this Court is of the opinion that it would have been preferable for the panel to have addressed this information in its decision, the applicant's arguments did not convince this Court that this omission, given the contradictions and omissions in the evidence as a whole, is fatal in and of itself and renders the decision unreasonable. In fact, this omission is not determinative when the decision is analyzed as a whole.

[28] The applicant also notes that there was a breach of the rules of natural justice. However, the Court is of the opinion that the applicant's argument has no merit and is based on a single passage. After reading the transcript, it is apparent that the panel was listening to the applicant and made

comments in conformity with the rules of natural justice (Certified Tribunal Record at pages 171, 172 and 185).

b. Did the panel err in finding that the applicant had failed to rebut the presumption of Mexican state protection?

[29] The applicant alleges that the panel erred in determining that Mexican state protection was available and that the applicant had not availed himself of it because he had not made any effort to ensure that the office of the public prosecutor was moving forward with his complaint. He alleges that the panel erred in finding that Mexico was actually capable of protecting its citizens. To support his submissions, he cites *Velasco v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 133, [2007] F.C.J. No. 211, at paragraph 21, in which the Court held that, citing *Avila v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, [2006] F.C.J. No. 439, "[t]he Board must consider not only whether the state is actually capable of providing protection but also whether it is willing to act." The applicant added that it is unreasonable to require him to put his life in danger when seeking protection that has little chance of materializing.

[30] The applicant also alleges that the panel did not apply the correct jurisprudential tests for state protection matters because it did not consider the content of the applicable documentation package on Mexico, which would have permitted the applicant to rebut the presumption of state protection.

[31] The respondent emphasizes that the applicant had to clearly and convincingly establish that Mexico was not capable of ensuring his protection (see *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1); *Carrillo v. Canada (Minister of Citizenship and Immigration)*,

2008 FCA 94, [2008] 4 F.C.R. 636). The respondent contends that, in this case, the applicant failed to discharge his onus of proof by not submitting any evidence to corroborate his allegation that he had filed a complaint.

[32] To this end, the evidence demonstrates that the applicant in no way followed up on his complaint, did not ask to speak with a supervisor and did not approach the federal authorities. The applicant simply did not demonstrate that his life would have been in danger if he had requested a copy of his complaint. Moreover, as noted by the panel, if he had approached the Mexican consulate in Canada, he would have been able to obtain it free of charge within four (4) to six (6) weeks. Therefore, the panel was correct in finding that he had made no effort to obtain this document to establish that he had apparently sought protection from the Mexican state, but without success.

[33] Regarding the allegations that the panel failed to address certain documentary evidence demonstrating that Mexico is corrupt to the point that it would be unreasonable to seek protection from the authorities, the Court is of the opinion that they are without merit. As the respondent noted, there is no evidence in support of the applicant's allegations because he did not submit the documents relied upon for his argument.

[34] The Court reminds us that the panel is entitled to prefer one piece of documentary evidence over another and to choose the documentary evidence that, according to it, is most consistent with reality (see *Singh v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 408, [2008] F.C.J. No. 547). Furthermore, it is well established that the general situation in a country cannot, in itself,

establish the merits of a claim (see *Munoz v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 478, [2009] F.C.J. No. 590).

[35] In *Kadenko v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1376, 206 N.R. 272, at paragraph 5, this Court decided that with a democratic state, it is up to the applicant to make sufficient efforts to attempt to seek state protection. The applicant must demonstrate that he or she has exhausted all the courses of action open to him or her with respect to seeking the necessary protection:

> [5] When the state in question is a democratic state, as in the case at bar, the claimant must do more than simply show that he or she went to see some members of the police force and that his or her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her.

[36] In this case, the Court finds that the panel's analysis is reasonable and its decision on this aspect is also well-founded.

c. Did the panel err in finding that there was an internal flight alternative?

[37] In *Thirunavukkarasu v. Canada (Minister of Employment and Immigration) (C.A.)*, [1994] 1 FC 589, 163 N.R. 232, the Court found that, in order to establish whether an internal flight alternative (IFA) exists, two tests must be considered. The first test is to determine whether there is another part of the country where the applicant's life would not be in jeopardy. If so, the second test is to establish whether it would be objectively unreasonable to expect the applicant to move to

another less hostile part of the country before seeking protection abroad, and whether this would cause the applicant undue hardship.

[38] In this case, the panel did not find that the applicant would face a serious possibility of persecution in a large city in Mexico. The panel listed, for instance, the Federal District of Mexico City, Guadalajara, Monterrey, Acapulco and Cancun (Certified Tribunal Record, decision of the panel, at paragraph 30).

[39] The applicant argues that his alleged persecutor would find him anywhere in Mexico. The panel properly noted that the applicant himself admitted that he stayed with family members for more than two (2) months without being harassed by his persecutors. The applicant's argument that his voting card would help his persecutors find him is not supported by the evidence and must also be rejected.

[40] The Court is of the opinion that the cities suggested are reasonable. Moreover, it is reasonable for the panel to have noted that the applicant would not have had difficulty finding work by reason of his education level and occupation.

[41] For all of these reasons, the Court finds that the panel's decision is reasonable and the intervention of the Court is not warranted. The application for judicial review will therefore be dismissed.

[42] This application does not give rise to any question of general importance.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that this application for judicial review be dismissed. No question is certified.

"Richard Boivin"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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