

Federal Court



Cour fédérale

Date: 20110426

Docket: IMM-4478-10

Citation: 2011 FC 491

Ottawa, Ontario, April 26, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

VALENTIN QUINTERO SANCHEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for a judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated July 8, 2010, wherein the Applicant was determined to be neither a convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, RS 2001, c 27 [IRPA]. The Board found that the Applicant failed to provide clear and convincing evidence of the state's inability to protect.

[2] For the reasons that follow, this application is dismissed.

I. Background

A. *Factual Background*

[3] The Applicant, Valentin Quintero Sanchez, is a citizen of Mexico. He was a farmer in Las Choapas, Veracruz. He alleges that he was approached by two local farmers, Constantino and his brother Porfirio, in October 2008. The Applicant also claims that the brothers were known to be members of Los Zetas, a criminal organization. The brothers asked the Applicant to plant marijuana on his father's farm. The Applicant told the men he would think about it. He was approached again approximately one week later. This time Constantino and Porfirio were accompanied by three unknown men. They asked the Applicant for his decision. He told them that he could not grow marijuana on the farm because it was illegal. Constantino allegedly told the Applicant that if he loved his family, he should reconsider. The Applicant was again visited by the brothers one week later, and he again refused their proposition. The Applicant alleges that as a result he was physically assaulted by Constantino, Porfirio and two unknown men on October 27, 2008. The men threatened to kill the Applicant next time.

[4] The Applicant claims that he considered filing a police report, but his friend, police chief Jose Luis Reyes, told him that the police could not protect him from Los Zetas. Consequently, the Applicant fled to the state of Tabasco in November 2008. After his family informed him in

May 2009 that Los Zetas knew where he was, the Applicant decided to flee to Canada. He arrived on June 22, 2009 and immediately claimed refugee status.

B. *Impugned Decision*

[5] The determinative issue for the Board was state protection. The Board found that the Applicant made minimal efforts to seek state protection in Mexico. The Applicant did not file an official report with the police on any of the three occasions he was allegedly harassed by Constantino and Porfirio, including the time he was allegedly physically assaulted.

[6] The Applicant did approach his friend, a police officer in the town of Las Choapas, named Jose Luis. Jose Luis allegedly first told the Applicant that he would need concrete proof that he had been threatened, and in that case, the police would respond immediately. However, following the physical assault, Jose Luis told the Applicant that the police would not be able to protect him. The Board concluded that despite this, the Applicant had not taken all reasonable steps in the circumstances to seek protection. He only unofficially approached a friend who worked for a police force in a different jurisdiction. The Board rejected the Applicant's explanation for failing to contact the police who had jurisdiction over the area where the assault occurred. The Applicant explained that the Minatitlan police station was too far away. The Board found that he could have nonetheless contacted them by telephone.

[7] The Board also determined that the Applicant was merely speculating that Constantino and his accomplices were members of Los Zetas as he was unable to adduce any persuasive evidence to corroborate this allegation.

[8] The Board was not persuaded that the police would not have investigated the Applicant's allegations if they had been reported. The Board found the Applicant's responses regarding the effectiveness of state protection to be, "not credible, largely unsubstantiated and not consistent with the documentary evidence," (reasons para 14).

[9] The Board reviewed the documentary evidence. While acknowledging evidence of Mexico's difficulties addressing the criminality and corruption that exists within the security forces, the preponderance of the evidence indicated that Mexico is making serious efforts and on the whole deficiencies and corruption are being addressed by the state. The Board noted that although most articles submitted by counsel reported on crime and corruption in Mexico, those same articles often contained accounts of Mexico's efforts to combat that crime and corruption.

[10] In conclusion, the Board stated that in the particular circumstances of this case, the Applicant failed to rebut the presumption of state protection with clear and convincing evidence and had not taken all reasonable steps to avail himself of state protection before making a claim for refugee protection. Therefore, the Board was not persuaded that the state of Mexico would not be reasonably forthcoming with state protection, should the Applicant seek it.

II. Issues

[11] This application raises the following issues:

- (a) Did the Board err in their consideration of state protection?
- (b) Did the Board ignore documentary evidence?

III. Standard of Review

[12] It is well-established that decisions of the Board as to credibility are factual in nature and are therefore owed a significant amount of deference. The appropriate standard of review is a standard of reasonableness (*Dong v Canada (Minister of Citizenship and Immigration)*, 2010 FC 55 at para 17; *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 11; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA) at para 4). Similarly, the weight assigned to evidence and the interpretation and assessment of evidence are all reviewable on a standard of reasonableness (*N.O.O. v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045, [2009] FCJ No 1286 at para 38).

[13] The Board's conclusion regarding the availability of state protection and the disregard of evidence in making such an assessment are issues of mixed fact and law and are reviewable on a standard of reasonableness (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12; [2009] 1 SCR 339; *Barajas v Canada (Minister of Citizenship and Immigration)*, 2010 FC 21 (QL) at para 21 and

Sanchez v Canada (Minister of Citizenship and Immigration), 2008 FC 696, 170 ACWS (3d) 168 at para 11).

[14] As set out in *Dunsmuir*, above, reasonableness requires consideration of the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

IV. Argument and Analysis

A. *Did the Board Err in its Analysis of State Protection?*

[15] The Applicant submits that in reaching its ultimate conclusion regarding the availability of state protection, the Board made several unreasonable findings.

(1) Credibility

[16] The Applicant submits that the Board made no negative credibility finding as to the basis of the Applicant's claim. Since there was no adverse credibility finding, the Board must have accepted the Applicant's testimony concerning his experiences in Mexico as credible.

[17] The Respondent points out that the Board did in fact make an adverse credibility finding. Specifically, the Board found that the Applicant's "responses regarding the effectiveness of state

protection were not persuasive, since they were not credible...” The Board concluded that the Applicant’s fear was not objectively reasonable. I must agree with the Respondent. The reasons fully explain why the Applicant’s testimony regarding the effectiveness of Mexican state protection lacked credibility.

(2) Did the Board Err in Finding that the Aggressors’ Membership in Los Zetas was Speculative?

[18] The Applicant submits that the Board erred in holding that the Applicant was merely speculating that Constantino and his accomplices were members of Los Zetas. The Applicant based his opinion on the fact that Constantino had high-calibre weapons, an elegant home, a number of vehicles and many well-to-do visitors. The Applicant submits that the Board ignored the evidence that the Commander of the Municipal Preventive Police Force, Jose Luis, himself identified the Applicant’s aggressors as part of the Los Zetas group. Therefore, this allegation was more than mere speculation.

[19] The Board found that despite this, the Applicant’s testimony that his alleged aggressors belonged to the Los Zetas gang was not substantiated by any evidence that was sufficiently persuasive. The Respondent points out that neither the Applicant’s Personal Information Form (PIF) narrative nor the Applicant’s testimony at the hearing state that the police had conclusively identified Constantino and Porfirio as members of the Los Zetas gang.

[20] As the Applicant described in his PIF, Jose Luis allegedly told the Applicant that the police “could not do anything against the group.” At the hearing, the Applicant repeated the same story,

adding the further detail to the retelling of Jose Luis' words that, "with regard to this group, nothing can be done because these are only a group of the – of the big group called Los Zetas" (CTR 275).

As argued by the Respondent, this statement does not conclusively identify the alleged aggressors as Los Zetas gang members. Especially not, considering the Board did not find that the Applicant's testimony regarding his efforts to seek state protection to be credible.

[21] The Board occupies the role of finder of fact, and absent a misapprehension or a capricious finding this Court will not disturb the Board's conclusion. Furthermore, the reasons reference the Applicant's version of the advice received from Jose Luis. The Board cannot be said to have ignored or been unaware of this evidence.

(3) Was the Board's Finding Regarding the Proper Jurisdiction Reasonable?

[22] The Applicant submits that the Board erred in finding that the Applicant failed to report any of the incidents to the police in the proper jurisdiction and therefore did not make reasonable efforts to avail himself of state protection.

[23] The Applicant unofficially sought the advice of his friend, Jose Luis, a member of the police force in Los Choapas. The Applicant testified that the Los Choapas police station was closer to his father's farm, where the assault occurred. The Board was under the impression that the farm was actually under the jurisdiction of the police in Minatitlan, which the Applicant testified was a five hour drive away, due to unpaved roads.

[24] The Respondent submits that the Applicant gave uncertain and equivocal testimony about whether the police in Los Choapas had jurisdiction over the area where the Applicant's father's farm is located. The Applicant testified that Los Choapas was closer to the farm, so the Board asked if they had jurisdiction over the area where the farm is found. The Applicant replied:

Yes, because sometimes they come to the river, to the riverbank.
They cross the river and go in. I don't know if they actually apply
their jurisdictional rights there but I know that they cross.
(CTR pg 276)

[25] Given the uncertainty of the Applicant's testimony, it was not unreasonable for the Board to conclude that the Applicant could have filed a complaint at the station in Minatitlan, which the Applicant knew was in the same jurisdiction as his father's farm. As argued by the Respondent, within reason, convenience for the Applicant is not material to the assessment of whether the Applicant took all reasonable steps in the circumstances to seek protection. There was no evidence that the police in Minatitlan would not have been forthcoming with protection.

[26] The Respondent cited *Monroy v Canada (Minister of Citizenship and Immigration)*, 2006 FC 834, 155 ACWS (3d) 649. Dealing with a fact-pattern similar to that of the present matter, Justice Pierre Blais held at paras 17-18:

[17] The only thing the applicant did to seek state protection was to contact his friend in the police. In spite of the fact that he had been threatened and assaulted, the Board concluded that he had not undertaken sufficient steps to obtain adequate state protection.

[18] The applicant has not satisfied me that the Board erred in concluding that he had not succeeded in rebutting the presumption of state protection.

[27] I do not find that the Board erred in finding that the Applicant failed to make a complaint in the proper jurisdiction. Moreover, *Monroy*, above, shows that even if the jurisdictional finding was unreasonable, it would not have been fatal to the overall finding as it is reasonable to conclude that only contacting a friend is an insufficient effort to obtain state protection.

(4) Was the Finding that the Applicant Did Not Take All Reasonable Steps Reasonable?

[28] The Applicant submits that he twice sought advice from the police. The Applicant then relied on the advice he received and fled. The Applicant argues that the Board erred in finding that he had not taken all reasonable steps to avail himself of state protection.

[29] The Applicant testified that he received contradictory advice from Jose Luis. However, he never officially filed a complaint or attempted to contact other police authorities. The Board inquired whether the Applicant considered going to the state. The Applicant answered that he considered it, but decided not to because of police corruption. He based this decision on media, news and internet reports of rampant corruption in Mexico.

[30] The Respondent submits that the Board properly considered documentary evidence showing that the Mexican government is making efforts to reduce corruption in the police agency from which the Applicant declined to seek assistance. Given this, the Applicant's explanation for failing to go to the police is neither clear nor convincing evidence that state protection in Mexico would not have been forthcoming.

[31] I accept the Respondent's submissions on this point. From the submissions it seems that the Applicant is not arguing that the Board misapplied the test in analyzing state protection. The Board is not obliged to prove that Mexico can offer the Applicant effective state protection, rather, the Applicant bears the legal burden of rebutting the presumption that adequate state protection exists by adducing clear and convincing evidence which satisfies the Board on a balance of probabilities (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, 69 Imm LR (3d) 309 at para 30). The quality of the evidence required is proportional to the level of democracy of the state (*Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, 295 FTR 35 at para 30). Here the Board found that Mexico is a functioning democracy. This Court has recently held that Mexico is a democracy with the willingness and ability to protect its citizens (*Alvarez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 197, at para 20). The Board found that the Applicant failed to exhaust all reasonable avenues available to him to procure state protection. The Applicant has not shown anything on this application to suggest that that finding was unreasonable.

(5) Did the Board Ignore Evidence Regarding Similarly Situated Individuals?

[32] The Applicant submits that the Board failed to properly consider the Applicant's testimony about similarly-situated individuals who had been threatened by the same aggressors. Some of these individuals were killed, while others claimed that the police did nothing. The Applicant argues that this is clear and convincing evidence of Mexico's inability to protect the Applicant.

[33] The Respondent takes the position that the Applicant's testimony regarding similarly situated individuals who had been threatened by the same aggressors and not protected by the police

was not detailed and was inconsistent and thus it was not unreasonable for the Board to attribute little weight to this evidence.

[34] During the hearing the Applicant did mention the similarly situated individuals, but under questioning he also stated that no one had been able to prove that his two aggressors were responsible for the other alleged crimes because there was never any substantial evidence. Further, when asked if the police investigated these murders, the Applicant answered yes, but that they were late appearing on the scene (CTR pg 281).

[35] I share the view of the Respondent. The Applicant's testimony on this point is not clear and convincing evidence of the state's inability to protect. Rather it shows that the police did respond to allegations of criminal activity and that there was no clear link between his alleged aggressors and the other crimes. The Applicant did not provide sufficient evidence to allow the Board to assess whether these other individuals were in fact similarly situated to the Applicant. There is no reviewable error here.

B. *Did the Board Ignore Evidence?*

[36] The Applicant submits that the Board erred in concluding that adequate state protection is available in Mexico given that the documentary evidence suggests otherwise.

[37] The Respondent submits that the Applicant merely disagrees with the Board's decision to give more weight to the documentary evidence than to his own testimony. This decision was open

to the Board as the first instance decision-maker, even absent a negative credibility decision (*Dolinovsky v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1784 (QL), 93 ACWS (3d) 133).

[38] Again, the Respondent's submissions on this point are much more persuasive than the Applicant's. Despite what the Applicant might contend, the Board engaged in a very thorough review of the documentary evidence. The Board acknowledged contradictory evidence, but explained that the preponderance of the documentary evidence led them to believe that the efforts of the Mexican government are producing adequate and forthcoming state protection absent clear and convincing evidence otherwise. The Applicant failed to adduce any such evidence. I can find no error in the Board's decision and accordingly this application for judicial review is dismissed.

V. Conclusion

[39] No question to be certified was proposed and none arises.

[40] In consideration of the above conclusions, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

SOLICITORS OF RECORD

DOCKET: IMM-4478-10

STYLE OF CAUSE: VALENTIN QUINTERO SANCHEZ

PLACE OF HEARING: TORONTO

DATE OF HEARING: MARCH 3, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: APRIL 26, 2011

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