Federal Court  Cour fédérale

Date: 20110525

Docket: IMM-4227-10

Citation: 2011 FC 588

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 25, 2011

Present: The Honourable Mr. Justice Pinard

BETWEEN:

Arturo SANABRIA OSUNA
Ma Guadalupe VERDUZCO DE SANABRIA
Abril SANABRIA VERDUZCO
Lluvia Ruth VERDUZCO NORZAGARAY

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by a member of the Immigration and Refugee Board's Refugee Protection Division (the panel) filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27, by Arturo Sanabria Osuna, Ma Guadalupe Verduzco de Sanabria, Abril Sanabria Verduzco and Lluvia Ruth Verduzco

Norzagaray (the applicants). The panel concluded that the applicants were not Convention refugees or persons in need of protection and therefore rejected their claims for refugee protection.

[2] The applicants are citizens of Mexico. Arturo Sanabria Osuna is the principal applicant. Ma Guadalupe Verduzco de Sanabria is his spouse, Abril Sanabria Verduzco is their daughter and Lluvia Ruth Verduzco Norzagaray is the sister-in-law of the principal applicant. These three persons are filing their claims on the basis of the principal applicant's narrative.

[3] The applicants lived in Silao. The principal applicant is a chemical engineer and held a management position within a company; his spouse is a doctor.

[4] The principal applicant states that he was kidnapped on February 27, 2008, by three individuals, and that the family had to pay 600,000 pesos for his release. He was freed two days later and left on the side of the road. A truck driver helped him and he was able to call his wife, who took him to the hospital. The applicants called the police on February 29, 2008. His spouse had not done so earlier because the kidnappers had told her that if she did, her husband would be killed. The applicants decided to spend a few days with the sister-in-law, Lluvia, in Leon Guanajuato, some thirty minutes from their home.

[5] On March 6, 2008, the family received an anonymous letter while staying with the sister-in-law. The authors demanded more money and stated that the police was on their side.

The principal applicant made a report to the public prosecutor's office in Leon. The applicants also decided to return to Silao to avoid placing the sister-in-law in danger.

[6] On March 12, 2008, the principal applicant received a death threat by telephone. He informed the public prosecutor's office of this call. He received between 10 and 15 calls of this type in the following weeks. On March 12, 2008, the family returned to the sister-in-law's. On March 24, 2008, they received another anonymous note stating that the persecutors were aware of the complaint and were demanding money, under threat of death. The family went to the public prosecutor's office that very day to report these facts. The officer at the public prosecutor's office told them that there were not enough officers available unless they paid 2,500 pesos a day.

[7] The applicants then went to the office of the Human Rights Commission, which referred them to a lawyer, Mr. Villalobos. The lawyer strongly recommended that they leave the country. The applicants made the decision to do so on March 25, 2008. They left Leon for the city of Querétaro on April 2, 2008, to travel to Mexico DF. They took a flight on April 14, 2008, and claimed refugee protection as soon as they arrived in Canada. The sister-in-law left Mexico on March 28, 2008, to go to Vancouver, where she claimed refugee protection three months later. The principal applicant alleges that he primarily fears the judicial police.

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[8] After having decided that the applicants were not entirely credible and that they could receive state protection in Mexico, the panel found that, in any event, the applicants had an internal flight alternative (IFA) in Mexico DF, Monterrey, Cancun and Acapulco. The panel considered the two steps of the test for determining whether an IFA exists. The panel found that there was no reason to believe that the incidents in issue were related to drug trafficking or that this was a matter of anything more than criminals, perhaps petty local criminals. Since the applicants had never seen their persecutors and could not describe them, the applicants could not pose a threat to their persecutors. The panel did not believe that the persecutors would have the means or determination to search all over the country for the applicants. The likelihood of finding them elsewhere was practically non-existent. It was objectively reasonable and relatively undemanding to expect the applicants to move elsewhere in Mexico; the conditions in the IFAs considered would not endanger their lives or their safety. All four applicants could work or study in the identified cities, which were realistic and affordable options.

* * * * * * * *

[9] With regard to this last conclusion, the applicants submit that the panel did not truly assess the IFA, but simply listed the names of a few Mexican cities at random, without providing a reason or justification for chosing those cities. This is an unfair characterization of the decision. Paragraphs 29 to 36 of the decision concern the IFA and clearly follow the test established in the case law for determining whether the identified IFAs are relevant and reasonable for the applicants.

[10] The applicants add that the existence of an IFA is insufficient for a refugee protection claim to be rejected because a refugee protection claim is not necessarily a last-resort solution. They quote the following UNHCR guidelines (*Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*):

> International law does not require threatened individuals to exhaust all options within their own country first before seeking asylum; that is, it does not consider asylum to be the last resort.

[11] The applicants argue that since they do not know exactly who their persecutors are or which organization they belong to, it is impossible to find an IFA that is suitable for them. They point out that their persecutors found them in Leon and Querétaro. They submit that the panel has no reason *not* to believe that the persecutors belong to an organized crime group in league with the police. They contend that the panel did not consider the documentary evidence concerning the rampant drug traffickers in Mexico.

[12] I do not accept these arguments.

[13] As the respondent quite rightly submits, it appears that the panel relied on the facts particular to the applicants' situation and on the documentary evidence in concluding that the applicants did not have a well-founded fear of persecution or of a risk to their life in the identified IFAs.

[14] The fear of persecution in one of the potential IFAs must be objectively well-founded (*Hussain v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 913, at paragraph 8). In the case at bar, there is no such objective basis. There is no evidence linking the persecutors to the "mafia" or drug traffickers, as appears from the following excerpt from the hearing transcript (record of the panel, at page 376):

> [TRANSLATION]
> Q.: Okay. But it might be certain corrupt police officers with petty criminals. That's possible. Among other things. But, from your testimony so far and your evidence, you have no knowledge of whether they're connected to organized crime, from what I can understand. That's a presumption on your part. Correct?
>
> R.: Correct.

[15] Last, the applicants are incorrect in alleging that an IFA is not determinative for a refugee protection claim. In *Lopez v. Canada (M.C.I.)*, [2010] F.C.J. No. 1352 (QL), this Court wrote the following:

> [13] With respect, I believe that, in this case, the existence of an IFA was a determinative finding in the Board's decision and that the failure to dispute this finding is sufficient to dismiss this application for judicial review.
>
> [14] In *Olivares Vargas v. Canada (Citizenship and Immigration)*, 2008 FC 1347, as in this case, the applicant had not disputed the Board's finding concerning an IFA. Our Court recognized that the Board's finding about an IFA was sufficient on its own to reject the claim for refugee protection because an internal flight alternative is inherent to the very concept of refugee and person in need of protection.

[16] The applicants also submit that their deportation would place their lives and their physical integrity at risk, thus violating sections 7 and 12 of the *Canadian Charter of Rights and*

Freedoms and Canada's international obligations under Article 3 of the United Nations' 1984 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The applicants submit that Canada must allow their refugee protection claims or contravene its constitutional and international obligations. The respondent contends that this argument is premature, and I agree. If the refugee protection claim is rejected, the applicants will be entitled to a Pre-removal Risk Assessment before being deported (see, for example, *Barrera v. Canada (M.E.I.)*, [1993] 2 F.C. 3 (C.A.), *Arica v. Minister of Employment and Immigration* (1995), 182 N.R. 392 (F.C.A.), *Kaberuka v. Canada (M.E.I.)*, [1995] 3 F.C. 252 (C.A.), *Sandhu v. Canada (M.C.I.)* (2000), 258 N.R. 100 (F.C.A.), *Plecko v. Canada (M.C.I.)* (1996), 114 F.T.R. 7, *Ithibu v. Canada (M.C.I.)* (2001), 13 Imm. L.R. (3d) 251 (F.C.T.D.), *Ijagbemi v. Canada (M.C.I.)* (2001), 16 Imm. L.R. (3d) 299 (F.C.T.D.), *Manefo v. Canada (M.C.I.)*, [2001] F.C.J. No. 819 (T.D.) (QL), *Mihayo v. Canada (M.C.I.)*, [2002] F.C.J. No. 15 (T.D.) (QL), *Hilaire v. Canada (M.C.I.)*, [2002] F.C.J. No. 19 (T.D.), *Akindele v. Canada (M.C.I.)*, [2002] F.C.J. No. 68 (T.D.), and *Kofitse v. Canada (M.C.I.)*, [2002] F.C.J. No. 1168 (T.D.) (QL)).

[17] Last, the applicants argue that there is a significant problem of administrative and institutional bias at the Immigration and Refugee Board (IRB) with regard to Mexican claimants. This contention is partly based on the IRB's persuasive decision on state protection in Mexico, in which it was found that state protection against corrupt police officers is available. This contention is also based on the statements allegedly made by the Minister of Citizenship and Immigration, Mr. Kenney, concerning Mexican claimants and the need to reform the system because of their abuses.

[18] It should first be emphasized, as counsel for the applicants acknowledged before me, that no objection was raised before the panel regarding the panel's appearance of bias.

[19] In its decision, the panel stated having reviewed the reasons of the persuasive decision by the Refugee Protection Division in file TA6-07453, dated November 26, 2007, and having adopted that reasoning with regard to the availability of state protection. I note that the panel made that statement after having conducted a detailed analysis of the factual evidence before it. This approach is correct (see, for example, *Hidalgo v. Minister of Citizenship and Immigration*, 2009 FC 707 and *Hernandez v. Minister of Citizenship and Immigration*, 2009 FC 480).

[20] Regarding the statements the applicants attribute to Minister Kenney in attempting to prove that they could raise a reasonable apprehension of bias, I note that the applicants did not even adduce the text.

[21] In my view, the very general allegation that the IRB is less than impartial towards Mexican claimants is not supported by any evidence in the file and, like the respondent, I find that this allegation lacks seriousness and cannot be accepted.

[22] For all of these reasons, the application for judicial review is dismissed.

[23] Counsel for the applicants, Mr. Istvanffy, proposed the following question for certification:

> [TRANSLATION]
> Must the analysis of state protection in Mexico which is conducted on judicial review of an I.R.B. decision take into account the international case law on the functioning of the

> Mexican judicial system? Should not the file be analyzed in accordance with this constitutional standard under section 24 of the *Canadian Charter of Rights and Freedoms* when the demonstration of a Charter violation is sought to be made?

[24] For the reasons stated by counsel for the respondent in his letter dated May 3, 2001, the proposed question does not warrant certification. In the circumstances, I am of the opinion that the question does not meet the tests established in the case law, particularly in *Liyanagamage v. Canada (M.C.I.)* (1994), 176 N.R. 4 (F.C.A.) and *Huynh v. Canada*, [1995] 1 F.C. 633 (T.D.), affirmed in [1996] 2 F.C. 976 (C.A.).

JUDGMENT

The application for judicial review of the decision by a member of the Immigration and Refugee Board's Refugee Protection Division, dated June 23, 2010, is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Sarah Burns

FEDERAL COURT

FEDERAL COURT SOLICITORS OF RECORD

DOCKET:	IMM-4227-10
STYLE OF CAUSE:	Arturo SANABRIA OSUNA, Ma Guadalupe VERDUZCO DE SANABRIA, Abril SANABRIA VERDUZCO, Lluvia Ruth VERDUZCO NORZAGARAY v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	April 19, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	May 25, 2011

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