Federal Court  Cour fédérale

Date: 20110524

Docket: IMM-5321-10

Citation: 2011 FC 592

Ottawa, Ontario, May 24, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

LOPEZ GONZALEZ JAQUELINE (A.K.A. JACQUELINE LOPEZ GONZALEZ)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), whereby the applicant's application for refugee protection was refused. This decision of the Board was rendered on August 16, 2010. The determinative issue was the availability of state protection.

Facts

[2] The applicant was 21 years old at the time of her hearing before the Board and is a citizen of Mexico.

[3] At the age of 17 the applicant moved in with her boyfriend and subsequently became pregnant. This created tension between the applicant and her mother-in-law, who believed that the couple was too young and that the applicant was only after her son's money.

[4] The applicant gave birth on July 28, 2006, but the baby was not well and died on October 21, 2006. Her boyfriend, Jose Antonio, was upset with his son's death and began to harass the applicant and accused her of having killed their son and threatened to kill her. The applicant reported this behaviour to the police twice; on November 25, 2006 and December 1, 2006. Both times the police issued a summons but Mr. Antonio went into hiding.

[5] The abusive and threatening behaviour continued, with approximately 50 incidents occurring subsequent to her son's death. The applicant did not make any further complaints to the police. As a result of the situation, the applicant attempted to kill herself in January 2008, and required hospitalization.

[6] The applicant arrived in Canada on May 3, 2008 and claimed refugee protection on July 30, 2009.

Decision Under Review

[7] The Board found that the applicant's claim was based on her membership in a particular social group, that group being women facing gender-related violence. However, the Board found that, on the basis of the entirety of evidence before it, adequate state protection was available to the applicant if she were to return to Mexico today.

[8] The Board accepted that the applicant was in an unfortunate situation and that she reported the threats from the police on two occasions. The Board rejected the applicant's explanation that she did not report the continued incidents to police because they did nothing in response to her first two complaints. When the applicant made complaints, the Board found that the police reacted appropriately by issuing a summons. The applicant's failure to seek further help after 2006 was inconsistent with a subjective fear and the foreclosed the opportunity of the state to offer her protection.

[9] After a review of the recourse available to women similarly situated in Mexico, the Board concluded that the applicant had failed to take reasonable steps to seek protection in Mexico and had not rebutted the presumption of state protection with clear and convincing evidence.

Analysis

[10] The core of the applicant's argument is two fold; first that the Board erred in considering that the applicant could have gone to other organizations for assistance. Counsel argues that these institutions are not "avenues of protection" and their existence does not stand as a surrogate for the police; *Zepeda v Canada (Minister of Citizenship and Immigration)* [2009] 1 FCR 237, 2008 FC

491. The applicant also contends that the failure of the police to do anything beyond issuing summonses does not meet the standard of adequate state protection; *Perez Mendoza v Canada (Citizenship and Immigration)*, 2010 FC 119.

[11] In a democratic country, such as Mexico, there is a presumption that a state can protect its own citizens. As such, the onus is on the applicant to rebut this presumption and prove through clear and convincing evidence the state's inability to protect: *Canada (Attorney General) v Ward* [1993] 2 SCR 689 at para 50; *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171, at para 43-44; *Zepeda* at para 17; *Flores Carillo v Canada (Minister of Citizenship and Immigration)* [2008] 4 F.C.R. 636, 2008 FCA 94, at paras 32-33. There is a great deal of case law on the availability of state protection in Mexico, particularly for women experiencing domestic violence.

[12] The case law shows that an applicant must include proof that they have exhausted all recourse available, except in exceptional circumstances where it would be unreasonable for them to do so, such as when the persecutor is an agent of the state, because of police corruption: *Rodriguez Capitaine v Canada (Citizenship and Immigration)*, 2008 FC 98 or where it would otherwise be futile. Regardless of the weight of this case law with respect to state protection in Mexico, the Board nevertheless has a responsibility to assess the evidence before it, including evidence that may show that the state is unable to protect its citizens or that it was reasonable for a claimant to refuse to seek out state protection.

[13] In this case, the Board, in reaching its conclusion with respect to state protection considered all relevant criteria essential to make an informed determination, including the nature of the crime,

threat or abuse, the identity of the perpetrator, the efforts that the victim took to seek protection from police, the response of the police together with a broader contextual analysis of country documentation addressing the prevalence of the problem, the capacity of the police to respond as well as the existence of governmental and non-governmental agencies that might facilitate access to state protection or shelter to victims of domestic violence. The Board considered all of these matters.

[14] It is in this latter consideration that the applicant urges the reasoning of this Court in *Zepeda* where the Court held:

> I am of the view that these alternate institutions do not constitute avenues of protection *per se*; unless there is evidence to the contrary, the police force is the only institution mandated with the protection of a nation's citizens and in possession of enforcement powers commensurate with this mandate. For example, the documentary evidence explicitly states that the National Human Rights Commission has no legal power of enforcement ("Mexico: Situation of Witness to Crime and Corruption, Women Victims of Violence and Victims of Discrimination Based on Sexual Orientation" [Immigration and Refugee Board of Canada. Country of Origin Research: Issue Paper]).

[15] In this case the Board's finding that state protection was adequate did not depend on the existence of these agencies. It found that in issuing two summonses for the arrest of the applicant's partner the police responded adequately. Although referenced by the Board as part of it analysis of the nature and extent of Mexico's capacity to support victims of domestic violence and as indicia of Mexico's policy in respect of this problem, the role of these agencies, either as facilitators or providers of state protection, did not constitute the rational for the decision on state protection. The existence or non-existence of these agencies formed part of the contextual assessment of the ability of the state to protect its citizens. What was critical to the finding of state protection was the fact

that the police responded to the assault when it was reported. In this case, while the summonses were not effective because of the disappearance of the accused, it does not follow that the response was inadequate. The test of police protection is, of course, adequacy; *Carillo* at para 32. The test is not that of successful arrest, detention and conviction.

[16] That said, the Board did mischaracterize the question as being "whether it was objectively unreasonable for the claimant to have sought state protection": This was not the issue at hand because there was evidence that the applicant had sought protection from the police on two separate occasions. This semantic error, however, is not determinative because the Board recognized the applicant's interaction with the police elsewhere in the decision on three separate occasions in the course of its reasons.

[17] The cases relied on by the applicant are not analogous to the case at bar. *Mendoza* involved a case where the applicant was assaulted by unknown men when he participated in an investigation into corruption. While *Zepeda* concerned conjugal violence, the dominant consideration was that the applicant's former spouse was a police officer. Although it is similar to the case at hand because the applicant reported the problem to the police before fleeing, it is of little persuasive value in this context.

[18] No state, regardless of its commitment to democratic values and the rule of law can guarantee the safety of its citizens at all times. A failure of state protection cannot be founded, therefore, on a failure to bring a perpetrator to justice. This is not to say that individuals must put their lives at risk to prove a failure of state protection; that would defeat the very purpose of the

principle. In this case however, the Board reached a conclusion that the police response was adequate. This conclusion was reasonably open to it based on the evidence before it.

[19] Counsel proposed that a question be certified. The question would ask for legal definition of the parameters of what constitutes adequate state protection. In my view, the proposed question does not meet the threshold necessary for certification. The answer to the question is largely fact dependent. Nor is there conflicting case law which requires reconciliation. Moreover, the record in this case is insufficient to support a detailed examination of the issue. Apart from the two summonses and the subsequent flight of the assailant, the applicant did not approach the police as a result of the threats she subsequently received.

[20] The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. There is no question for certification.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5321-10
STYLE OF CAUSE:	LOPEZ GONZALEZ JAQUELINE (A.K.A. JACQUELINE LOPEZ GONZALEZ) v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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