Federal Court  Cour fédérale

Date: 20110615

Docket: IMM-6374-10

Citation: 2011 FC 699

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, June 15, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

CLAUDIA ALICIA RAMOS VILLEGAS
and
LUIS VILLEGAS RIVERA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review submitted in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision by the Immigration and Refugee Board (Board), dated September 22, 2010 (reasons signed on October 12, 2010), that the applicants are not Convention refugees or persons in need of protection.

I. Background

[2] Claudia Alicia Ramos Villegas (female applicant) and her spouse, Luis Villegas Rivera (male applicant), are Mexican citizens. The male applicant has based his entire refugee protection claim on that of the female applicant.

[3] The female applicant is alleging that she was a victim of verbal and physical abuse on July 2, 2006, while working as a deputy returning officer at a voting office. She was purportedly assaulted by her supervisor, a member of Mexico's Federal Electoral Institute (Mexico's IFE) and the National Action Party (PAN), for apparently letting people over sixty years of age vote, contrary to his instructions. He allegedly threatened to kill her and accused her of being in collusion with the Party of the Democratic Revolution (PRD). She alleges that, after this incident, she went to the Office of the Public Prosecutor on two occasions, on July 4 and 7, 2006, to file a complaint, but with no results.

[4] Subsequently, from July 7, 2006, to April 1, 2008, the female applicant was purportedly a victim of verbal and physical abuse and felt like she was being watched. During the last incident, a ministerial police officer driving a ministerial police vehicle apparently stopped her, telling her that she should stay calm if she did not want to have a little accident.

II. Board's decision

[5] The Board raised concerns as to the female applicant's credibility because of contradictions between the information in her Personal Information Form and her testimony at the hearing, but it found that the determinative issue was an internal flight alternative (IFA).

[6] The Board found that the applicants had not discharged the burden of demonstrating, on a balance of probabilities, that they would be in danger throughout Mexico. The Board believed that the female applicant's answers and explanations were insufficient to demonstrate that her aggressors were willing or able to find her throughout Mexico.

[7] First, the Board did not accept the explanations the female applicant gave for not moving to another location in Mexico. The Board summarized the female applicant's explanations as follows:

> [13] . . . The panel then asked her why she did not move within her country the moment she felt unsafe. She stated, [translation] "It would be the same thing". Asked what she meant when she stated "It would be the same thing", the principal claimant answered, [translation] "Regardless of where I go, I will have to identify myself in the system, and it is easy to find someone". She added, [translation] "A person has to provide their contact information, their CURP, their driver's licence and their voter's card." . . .

[8] The Board rejected these explanations and specified that it was referring " . . . to the documentation on Mexico, which indicates that a court order is required in order to obtain personal information on a Mexican citizen and that not even federal officers can access this data without a court order and written permission from the office of the public prosecutor."

[9] The Board also found that the female applicant's other explanations that referred to a generalized risk caused by the existence of conflicts with regard to killings, violence, drug trafficking and corrupt politicians were insufficient.

III. Issue

[10] The applicants maintain that the Board erred in finding that an IFA existed because its finding was based on an unreasonable assessment of the evidence. The applicants specifically criticize the Board for failing to consider the credible and trustworthy documentary evidence that was contrary to its findings.

IV. Standard of review

[11] It has been established that IFA findings are subject to the standard of reasonableness (*Kumar v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 45, at paragraph 6 (available on CanLII); *Ramirez v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 227, at paragraph 13 (available on CanLII); *Guerilus v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 394, at paragraph 10 (available on CanLII); *Krasniqi v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 350, at paragraph 25 (available on CanLII)).

[12] It has also been well established that the Board's findings of fact, more specifically its assessment of the evidence, are also subject to the standard of reasonableness. It is not up to the Court to substitute its assessment of the evidence for that of the Board's, or to reassess the weight

given by the Board to certain evidence. It will intervene only if the Board made its findings in a perverse or capricious manner or without regard for the material before it (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339).

V. Analysis

Did the Board unreasonably assess the evidence and fail to consider relevant documentary evidence?

[13] The applicants allege that the Board analyzed the documentary evidence in a superficial and selective manner. In particular, they argue that the Board failed to consider the documentary evidence that contradicted its finding that a court order is required to obtain personal information on a citizen. The applicants submit that excerpts from the National Documentation Package on Mexico (Exhibit B in the Applicant's Record) demonstrate that there are, in fact, other ways to obtain personal information in Mexico. This documentary evidence, in the applicants' opinion, corroborates their claims that they would have been found easily by the female applicant's aggressors. The excerpt on which the applicants rely is dated October 2005. It refers to the opinion of the secretary of the United Church of Canada for the Caribbean and Latin America, who says that it is easy to find someone in Mexico because of the widespread use of voting cards as identity cards and the general failure to protect information in public institution databases. The excerpt also refers to an article in the Latin Americana dated June 18, 2003, which indicated that information in Mexico's IFE registry had been illegally sold to American public authorities.

[14] The respondent claims that the Board's decision relied on the evidence. He also submits that the Board is presumed to have considered all of the evidence whether it refers to it in its reasons or not, and that it is not required to mention and comment on specific passages of the documentary evidence. The respondent also contends that this is not a situation where documentary evidence goes directly against the Board's finding, and that the documentation on which the Board relied is more recent (2007) than that raised by the applicants. Furthermore, the respondent maintains that, even if the Court believed that the Board had erred in assessing the agent of persecution's ability to find them, the Board also reasonably found that the evidence did not demonstrate that the agent of persecution was willing to find them.

[15] With respect, I do not share the applicants' opinion.

[16] The Board is presumed to have considered all of the evidence and is not required to mention all of the documentary evidence before it (*Florea v. Canada (Minister of Employment and Immigration)*, (F.C.A.), [1993] F.C.J. No. 598 (available on QL)).

[17] I consider that, in this case, this was not a situation where the Board had to specifically address the evidence submitted by the applicants; the case law requires that this be done when evidence submitted by a party directly contradicts the decision-maker's findings (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425, 157 FTR 35).

[18] First, the documentary evidence relied on by the applicants is dated 2005, whereas the documentary evidence relied on and cited by the Board is dated 2007 and is therefore more recent. Furthermore, the paper from which the excerpt cited by the Board is taken contains information that contradicts the opinions issued in the document raised by the applicants.

[19] This paper contains the following information, among other things:

> . . . Of all the interlocutors interviewed, none was aware of incidents in which witnesses to crime and corruption were located by their aggressors through the use of government databases or registries . . . .

[20] The documentary evidence raised by the applicants is based on the opinion of two persons and is contradicted by the more recent documentary evidence. Although it is true that the evidence submitted by the applicants contradicts the Board's finding, the Board's finding is nevertheless consistent with the more recent documentary evidence that is part of and serves to support the excerpt cited by the Board. I therefore consider that the Board was not required to specifically mention the documentary evidence submitted by the applicants. The Board was entitled to sort through the elements favourable to, or not so favourable to, the applicants and it was its responsibility to weigh this evidence. The Board's assessment of the evidence was reasonable and consequently the Court's intervention is unwarranted.

[21] The application for judicial review is therefore dismissed.

[22] Neither party proposed a question for me to certify and this application does not give rise to any.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Marie-Josée Bédard"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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