Federal Court  Cour fédérale

Date: 20110708

Docket: IMM-132-11

Citation: 2011 FC 855

Vancouver, British Columbia, July 8, 2011

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

MARIA DE LOURDES GONZALEZ DURAN
DAIRA VANESSA GONZALEZ
CESAR ANTONIO GONZALEZ
SANDRA NOEMI GONZALEZ DURAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the tribunal) dated December 8, 2010, whereby the applicants' claims for refugee and protected person status were dismissed.

I. Background facts

[2] Maria de Lourdes Gonzales Duran (the principal applicant), her two children, Daira and Cesar, and her sister, Sandra, sought protection in Canada. They are all citizens of Mexico.

[3] The principal applicant claimed protection in Canada based on alleged abuse at the hands of her former partner, Arturo. The other applicants based their claims on that of the principal applicant.

[4] The principal applicant met Arturo in 1993. As they were living in different cities, they saw each other once or twice a week over a six-year period. Arturo began showing signs of abusive behaviour, but the principal applicant did not recognize them at first. In the summer of 1999, the principal applicant discovered that she was pregnant. Arturo did not support the pregnancy and so he abandoned her. On April 6, 2000, Daira was born. The principal applicant moved out of her parents' home to live with her sister.

[5] In 2001, Arturo re-established contact with the principal applicant. He began visiting her regularly and revealed that he was married to another woman.

[6] In 2005, Maria became pregnant with the couple's second child, Cesar. At this time, Arturo moved to the United States.

[7] In mid-2006, Arturo returned to Mexico. He became physically and verbally abusive towards the principal applicant, and denied being the father of the child. At no time did Maria or her sister make any report to the police.

[8] The principal applicant alleges that in March 2009, Arturo threatened to abduct the children. On April 5, he kept their daughter for two days without her consent. He blackmailed the principal applicant in order to continue their relationship and to ensure that she would not inform the police. He warned her that he had friends and relatives in the police force.

[9] In November 2008, the principal applicant claims that Arturo's wife started to contact her and her family members. She called the principal applicant at work and home to insult her. In April 2009, she insulted her daughter in front of other children at school.

[10] The principal applicant left Mexico with her family on May 11, 2009, and they fled directly to Canada to seek protection. She alleges that she left because she did not believe that she could remain safe anywhere in Mexico since Arturo was a salesman and had a network throughout the country.

II. Issues

[11] This application for judicial review raises the following issues:

a) Did the tribunal err in determining that state protection was available?

b) Did the tribunal err in applying the gender guidelines?

III. Analysis

[12] The jurisprudence has clearly established that the question of state protection should be reviewed using the reasonableness standard (*Corzas Monjaras et al v Canada (Minister of Citizenship and Immigration)*, 2010 FC 771 at paras 15-16; *Hippolyte v Canada (Minister of*

Citizenship and Immigration), 2011 FC 82 at paras 22-23). The question of whether the tribunal adequately applied the gender guidelines should also be reviewed using the reasonableness standard (*Juarez v Canada*, 2010 FC 890, at para 12).

a) *Did the tribunal err in determining that state protection was available?*

[13] In *Mendoza v Canada*, 2010 CF 119 at para 33 [*Mendoza*], my colleague Justice François Lemieux set out a useful summary of the legal principles arising from the jurisprudence on state protection:

> From these cases, I derive and summarize some relevant legal principles:
>
> 1) The state is presumed to be willing and capable of protecting its citizens (*Ward*).
>
> 2) Evidence of the state's willingness to protect cannot be imputed as evidence of adequate state protection (*Ward*).
>
> 3) Each case is sui generis so while state protection may have been found to be available in Mexico, maybe even in a particular state, this does not preclude a court from finding the same state to offer inadequate protection on the basis of different facts (*Avila*).
>
> 4) The claimant is expected to have taken all reasonable steps in the circumstances to seek state protection from his persecutors (*Ward, Avila*). A claimant who does not do so and alleges that the state offers ineffective or inadequate protection bears an evidentiary and legal onus to convince the tribunal (*Carillo*).
>
> 5) This exception to the general expectation that claimants approach the state supports the principle that the claimant is not required to put himself in danger in order to demonstrate ineffectiveness (*Ward, Avila*).
>
> 6) Where a tribunal determines the applicant has failed to take steps to seek protection this finding is only fatal to the claim if the tribunal also finds that protection would have been reasonably forthcoming. A determination of reasonably forthcoming requires that the tribunal examine the unique characteristics of power and influence of the alleged persecutor on the capability and willingness of the state to protect (*Ward, Avila, Heurtado-Martinez*).

> 8) The kind of evidence that may be adduced to show that the state protection would not have been reasonably forthcoming includes: testimony of similarly situated persons, individual experience with state protection and documentary evidence (*Ward*).
>
> 9) The standard of proof is balance of probabilities (*Carillo*).
>
> 10) The quality of such evidence will be raised in proportion with the degree of democracy of a state (*Avila*).
>
> 11) The degree of democracy may be lowered if the state tolerates corruption in its institutions (*Avila*).
>
> 12) Evidence of remedies for corruption is not evidence of their practical effect (*Avila*). In order to neutralize impact of corruption on the evidentiary analysis, the Board must determine that these remedies have a positive practical effect.
>
> 13) The evidence must be relevant, reliable, and convincing to satisfy the trier of fact on a balance of probabilities that the state protection was inadequate (*Carillo*).

[14] The applicants argue that the tribunal erred in applying too high a threshold for rebutting the presumption of state protection. Since Mexico is a developing democracy, they submit that the presumption of state protection is more easily rebutted. Moreover, they argue that there is no evidence that adequate state protection is practically available for women fleeing domestic violence and that the tribunal should not have relied on evidence about mere state efforts to provide protection. Finally, they submit that the principal applicant should not have been required to seek ineffective state protection just to prove its inadequacy. I disagree with the applicants for the following reasons.

[15] It is well established that the claimant bears the burden of introducing evidence and proving, on a balance of probabilities, that state protection is inadequate (*Carillo v Canada*, 2008 FCA 94). In the present case, what is problematic is the lack of evidence to rebut the presumption of state protection and to demonstrate that it is inadequate in Mexico.

[16] Neither the principal applicant nor her sister Sandra ever attempted to seek the assistance of the police in Mexico. They claim that this was because the principal applicant was told that Arturo had a cousin working in the police. However, as noted by the tribunal, the principal applicant could not provide the name of the cousin or the location of the cousin's job within the police or, in fact, provide any evidence that Arturo had connections with the police. Thus, the applicants did not satisfy the burden of convincing the tribunal that protection was ineffective and inadequate. It is insufficient for an applicant to rely solely on documentary evidence of flaws in the judicial system if they have failed to avail themselves of available state protection (*Alvarez v Canada (MCI)*, 2010 FC 197 at para 22).

[17] Further, the tribunal is not required to mention every piece of evidence relied upon in its decision, particularly when it is clear from the reasons that the tribunal has taken into account all the relevant evidence acknowledging that the Mexican state protection apparatus is imperfect and highlighting the shortcomings and improvements **that** the government has made (*Monjaras v Canada (MCI)*, 2010 FC 771).

[18] On the balance of probabilities, the tribunal was unconvinced that state protection was inadequate. It was of the view that the applicants had not demonstrated that, had they actively sought it out, state protection would have been unavailable to them in Mexico. This conclusion is a possible and acceptable outcome, in light of the facts and the law. As such, the intervention of this Court is not justified.

b) *Did the tribunal err in applying the gender guidelines?*

[19] The applicants argue that the tribunal erred by mentioning the Immigration and Refugee Board gender guidelines, but by nonetheless failing to meaningfully apply a gender-based analysis in its decision and to its assessment of state protection. Again, I disagree.

[20] In its reasons, the tribunal acknowledged some inconsistency as to the level of state protection available to victims of gender violence. It recognized that violence against women was widespread and that there was "still much work… to be done regarding official responses to cases of gender-based violence in Mexico".

[21] However, the tribunal also pointed out that the documentary evidence shows that in recent years, there has been a shift in the attitude of the federal and state government and an increase in the implementation of mechanisms to provide a more effective response. Moreover, the tribunal pointed to the fact that new legislation had been implemented that "allows victims to seek protective or restraining orders, and gives police authority to remove the aggressor from the home, prohibit him from approaching the victim's home, workplace, home of relative, places of study and other places regularly visited,…allows police to seize firearms, and provides victims with immediate assistance". Furthermore, the tribunal emphasized that there was a state program established on March 7, 2008, for the eradication of violence against women.

[22] Overall, the tribunal's reasons demonstrate that it took into account the gender-related aspect of the applicants' allegations but nonetheless found that the effectiveness of the state response to the specific issues of gender-based violence raised was improving. In light of the evidence, this

conclusion is reasonable and it is not the role of this Court to reweigh the evidence and to substitute its own conclusion.

[23] For these reasons, the application for judicial review of the decision is dismissed.

JUDGMENT

THIS COURT ADJUDGES that the application for judicial review of the decision is dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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