

Federal Court



Cour fédérale

Date: 20120222

Docket: IMM-3606-11

Citation: 2012 FC 243

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 22, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

GIBRAN ALI OLVERA CORREA

Applicant

and

**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 (the panel) dated May 9, 2011. The panel found that the applicant was neither a refugee nor a person in need of protection under sections 96 and 97 of the Act and, therefore, rejected his refugee claim.

I. Background

A. *Facts*

[2] Gibran Ali Olvera Correa (the applicant) is a Mexican citizen. He had been living in Querétaro but left in 2008 to go to work for his grandfather in Coatzacoalcos, Veracruz. His grandfather owned a construction company and a number of parcels of land. The applicant had to trace and manage these lands and properties. In doing so, he noted that someone else was registered as the owner of one of the parcels of land. Consequently, in June 2008, the applicant filed a lawsuit against that person.

[3] The applicant claims that, after he filed the lawsuit, he and his family were threatened. In July 2008, the applicant received a call from the Los Zetas cartel, demanding 500,000 pesos in exchange for their protection. The applicant refused, saying that he did not have that much money. The Los Zetas cartel told him that he had better hide. The applicant believed that these threats were related to the parcels of land and the work he was doing for his grandfather. Nonetheless, he continued to work but changed his routine to protect himself.

[4] On July 25, 2008, the applicant alleges that he was kidnapped by men in cars. They held him in a garage, struck him repeatedly and forcibly confined him for five days without food. On July 30, 2008, the applicant was released: his family had paid a ransom of 300,000 pesos. The applicant subsequently stopped going out and stopped working for his grandfather in December 2008.

[5] In March 2009, the applicant received a call asking him what price he would put on his own life. Because of this call, the applicant left Mexico and arrived in Canada on April 11, 2009. He applied for refugee protection under sections 96 and 97 of the Act. The panel heard his refugee claim on March 11, 2011.

B. Impugned decision

[6] Although the panel found the applicant credible, it rejected the refugee claim: the applicant had not sought Mexico's protection. The applicant testified that it would have been useless to seek protection from the Mexican police because the municipal police were corrupt. However, the panel noted that the applicant had asked the police to pass by the house often so that he would feel safe, which the police did. Although the panel acknowledged that police corruption exists, the documentary evidence indicates that Mexico is trying to resolve this problem and to establish a more professional police force.

[7] The panel also found that an internal flight alternative was available since the applicant could relocate to Querétaro, a place he was familiar with. The applicant conceded that he could relocate elsewhere with his family but that certain areas, such as Mexico City, were too dangerous. However, for the panel, this did not prevent the applicant from relocating to Querétaro or elsewhere in Mexico.

[8] The panel noted that the applicant appeared to have suffered a great deal as a result of his kidnapping and that he feared that criminal groups would kidnap him again. Los Zetas' criminal activities are documented in the documentation package on Mexico, and the documentary evidence

demonstrates that their crimes are widespread. However, the documentary evidence indicates that Mexico is taking steps to combat this criminality and the drug cartels. Based on that evidence, the panel found that the applicant had not discharged his burden of proof because he had not sought state protection and there were internal flight alternatives available.

[9] On May 25, 2011, the applicant brought this application for judicial review.

II. Issue

[10] This application for judicial review raises the following issue:

Did the panel err by finding that the applicant had an internal flight alternative?

III. Relevant statutory provisions

[11] The relevant sections of the *Immigration and Refugee Protection Act* are as follows:

REFUGEE PROTECTION,
CONVENTION REFUGEES AND
PERSONS IN NEED OF
PROTECTION
Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of

NOTIONS D'ASILE, DE RÉFUGIÉ
ET DE PERSONNE À PROTÉGER

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention – le réfugié – la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces

each of those countries; or
 (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

pays;
 b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
 (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
 (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:
 a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
 b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:

- (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
- (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
- (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

- (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
- (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
- (iii) la menace ou le risque ne résulte pas de sanctions légitimes – sauf celles infligées au mépris des normes internationales – et

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

inhérents à celles-ci ou occasionnés par elles,
(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

IV. Standard of review

[12] The appropriate standard of review in this case is reasonableness (*Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359 at paragraph 23, [2006] FCJ No 439; *Williams v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1004 at paragraph 7, [2011] FCJ No 1239, [*Williams*]; *Pinon v Canada (Minister of Citizenship and Immigration)*, 2010 FC 413 at paragraph 11, [2010] FCJ No 500 [*Pinon*]; *Lopez v Canada (Minister of Citizenship and Immigration)*, 2007 FC 198 at paragraph 15, [2007] FCJ No 278 [*Lopez*]; *Dunsmuir v New Brunswick*, 2008 SCC9, [2008] 1 SCR 190 [*Dunsmuir*]).

[13] Consequently, this Court must determine whether the panel's findings are justified, transparent and intelligible and fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47). As Mr. Justice de Montigny noted, "it is only where none of the arguments put forward by [the panel]

in support of its decision can stand up to somewhat probing examination that judicial review can be allowed” (*Lopez*, above, at paragraph 15).

V. Analysis

[14] The applicant states that the panel erred by finding that Querétaro was an internal flight alternative. The applicant alleges that the panel did not correctly apply the test for an internal flight alternative established in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (CA), [1993] FCJ No 1172, [1994] 1 FC 589 [*Thirunavukkarasu*] because it disregarded evidence in the record.

[15] In this case, the Court cannot agree with the applicant’s arguments. Rather, the evidence in the record demonstrates that the applicant did not discharge his burden of proof. The applicant had to demonstrate that he faced a risk of persecution throughout Mexico and that it was, therefore, unreasonable for him to relocate elsewhere in the country, notably in Querétaro where he had studied, lived and worked for a number of years. Although the Los Zetas organization poses a risk for the entire Mexican population, as the panel noted, the documentary evidence shows that the applicant failed to establish that this situation prevented him from relocating to Querétaro.

[16] An internal flight alternative is defined as “a fact situation in which a person may be in danger of persecution in one part of a country but not in another” (*Thirunavukkarasu*, above, at paragraph 2). Given that an internal flight alternative in another part of the same country is determinative of refugee status, the onus was on the applicant to prove that he was at serious risk of being persecuted throughout Mexico (*Thirunavukkarasu*, above, at paragraphs 2 and 6; *Pinon*,

above, at paragraph 23; *Rasaratnam v Canada (Minister of Employment and Immigration)* (FCA), [1991] FCJ No 1256 at paragraph 8, [1992] 1 FC 706 [*Rasaratnam*] ; *Vallejos v Canada (Minister of Citizenship and Immigration)*, 2009 FC 289 at paragraph 20, [2009] FCJ No 349). Since the panel identified Querétaro as an internal flight alternative, the onus was on the applicant to demonstrate, on a balance of probabilities, that he was nonetheless at risk of being persecuted there (*Thirunavukkarasu*, above, at paragraph 9). In *Thirunavukkarasu*, at paragraph 13,

Mr. Justice Linden of the Federal Court of Appeal wrote as follows:

[13] . . . Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?

[17] More specifically, actual and concrete evidence of such conditions that would jeopardize the applicant's life and safety in relocating was required (*Pinon*, above, at paragraph 24; *Ranganathan v Canada (Minister of Citizenship and Immigration)* (CA), [2000] FCJ No 2118 at paragraph 15, [2001] 2 FC 164).

[18] The Court notes that when the panel suggested Querétaro as an internal flight alternative, the applicant said that the memories he experienced would prevent him from living anywhere in Mexico (Tribunal Record, page 154).

[19] The Court finds that, based on this evidence, the panel had regard to the situation in Mexico and to the applicant's personal situation (see *Williams*, above, at paragraph 8; *Pinon*, above, at paragraph 25) and it was objectively reasonable for the applicant to relocate to Querétaro.

[20] The panel's findings are justified, transparent and intelligible and fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, paragraph 47). Accordingly, the Court's intervention is not warranted.

[21] There is no question to certify.

JUDGMENT

THE COURT RULES that the application for judicial review is dismissed. No question is certified.

“Richard Boivin”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

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