Federal Court  Cour fédérale

Date: 20120417

Docket: IMM-6268-11

Citation: 2012 FC 443

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 17, 2012

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

CLAUDIA MARGARI OLIVARES SANCHEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review from a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated August 22, 2011, which determined that the applicant was neither a refugee nor a person in need of protection. The two determinative issues are state protection and an internal flight alternative (IFA).

I. Background

[2] The applicant is a Mexican citizen. She arrived in Canada on January 26, 2009, and applied for refugee protection upon her arrival. Her application is based on the following allegations.

[3] The applicant worked as a cashier at the Unicornio bar in the city of Tijuana from February 2007 to December 19, 2008, the date on which she was dismissed due to a lack of work. When she was dismissed, her boss apparently confirmed to her that she would be paid everything she was owed for her earnings and severance pay. However, the employer refused to pay her all of the money she was owed. The applicant contacted a lawyer who filed a complaint on her behalf with the Secretariat of Labour and Social Welfare (Secretariat of Labour) in order to try and recover the amount she was owed.

[4] On January 12, 2009, the applicant went to the bar to deliver to her former employer a notice to appear at a conciliation and arbitration hearing before the Secretariat of Labour. On January 15, 2009, the applicant was approached by three individuals who told her to withdraw the complaint she had filed against her employer if she valued her life. Fearing for her life, the applicant tried to withdraw her complaint the following day. She was allegedly informed that her complaint could not be withdrawn because the process was already underway. On January 16, 2009, the applicant was approached by two other individuals who threatened her with death if she did not withdraw her complaint with the Secretariat of Labour. That same day, the applicant filed a complaint with the office of the public ministry regarding the threats she had received on January 15, 2009. At that time she was informed that an investigation would be conducted and the evidence shows that a preliminary investigation was launched.

[5] The applicant did not return to the office of the public ministry after she was threatened on January 16, 2009. Instead, she made arrangements to leave Mexico, which she did on January 26, 2009.

II. Impugned decision

[6] The Board determined that the claim for refugee protection did not fall under section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) and it analyzed the application under paragraph 97(1)(*b*) of the Act.

[7] The Board did not question the credibility of the applicant. Rather, it found that she had not rebutted the presumption of state protection and concluded that there was an IFA available to her.

[8] The applicant challenges the Board's decision on three grounds. She first argues that the Board erred by failing to consider the application from the perspective of section 96 of the Act. She further argues the Board's findings with respect to state protection and an IFA were unreasonable.

[9] The Board's findings regarding the presumption of state protection and the existence of an IFA were both determinative, regardless of whether the application was considered from the perspective of either section 96 or section 97 of the Act. Therefore, it is sufficient for one of these findings to be reasonable to defeat this application for judicial review.

[10] For the reasons that follow, I believe that the Board's finding with regard to the existence of an IFA was reasonable and that the Court's intervention is not warranted. Given this conclusion, there is no need to proceed with the analysis of the Board's finding with regard to state protection.

III. Standard of Review

[11] It is well established that standard of review of reasonableness is to be applied to the findings of the Board with respect to the existence of an IFA (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 926 (available on CanLII); *Lebedeva v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1165 (available on CanLII)). In determining whether the Board's decision was reasonable, the Court will focus on the justification of the decision, the transparency and intelligibility within the decision-making process, as well as whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

[12] At the beginning of the hearing, the Board identified the Federal District of Mexico and Mérida in the Yucatan peninsula as IFAs. Later during the hearing, the Board also cited the city of Puebla as an IFA because the applicant's mother and son have lived there since 2001 and they did not have problems related to the applicant.

IV. Analysis

[13] The Board analyzed the two parts of the test for determining whether there was an IFA available.

[14] With respect to the first part of the test, the applicant stated that she could not live elsewhere in Mexico because her agent of persecution, who works for a company which has bars in other Mexican cities, would end up locating her with the help of government databases. The Board dismissed this argument and concluded that the applicant had not established that it was likely that her life would be at risk in the locations identified as IFAs. The Board concluded from the documentary evidence that it would be difficult to locate someone in Mexico using government databases (Tabs 2.4, 3.4 and 3.6). The Board found the allegation of corruption in Mexico insufficient to lead it to conclude that the applicant's persecutor had such extensive connections so as to enable him to gain access to these databases. The Board also determined that the applicant had failed to show, on a balance of probabilities, that her persecutor would be able to gain access to the databases or that he would have an interest in pursuing her.

[15] With respect to the second part of the IFA test, the Board determined that the applicant had failed to demonstrate that it would be unreasonable for her to move to the locations identified as IFAs. The Board noted that the applicant was young, that there was nothing preventing her from moving to another part of the country and that she would likely be able to find work in the locations identified as IFAs.

[16] I find the Board's decision to be entirely reasonable in light of the evidence.

[17] The question of whether or not an IFA exists is integral to the determination of a refugee claim (*Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), [1992] 1 FC 706, 31 ACWS (3d) 139 (CA)). Once an IFA is raised, the applicant bears the burden of proving that it either does not exist or that it is unreasonable in the circumstances (*Thirunavukkarasu v*

Canada (Minister of Employment and Immigration) (1993), [1994] 1 FC 589 at para 12, 109 DLR (4th) 682 (CA)). A decision with regard to whether or not an IFA exists involves an assessment of the circumstances with regard to the conditions in the applicant's country of origin, but it also requires an assessment of the applicant's particular circumstances. The security conditions in the country are certainly elements to consider, but this assessment should not be carried out in a general and abstract manner; it must be placed in context with the particular situation faced by the applicant in order to determine whether, in light of all of the circumstances, there is an IFA available to the person claiming refugee protection. An IFA assessment is a two-part process. First, the Board must be satisfied, on the balance of probabilities, that there is no serious possibility of the person in question being persecuted, subject to a danger of torture, a risk to life, or subject to a risk of cruel and unusual treatment or punishment in the proposed IFA. Second, it must be reasonable for the person in question to seek refuge there, given the conditions in the proposed IFA (*Rasaratnam*, above; *Thirunavukkarasu*, above).

[18] In this case, it was entirely reasonable for the Board to find that the applicant had not discharged her burden, with respect to both parts of the IFA analysis.

[19] The applicant's allegations regarding the likelihood of her agent of persecution having both the desire and the means to pursue her throughout Mexico are general and purely speculative. It was clearly insufficient to cite the fact that the owner of the bar where she had worked owned other bars elsewhere in the country and that, if he transferred his manager, it was possibly that he might be able to locate her. Moreover, the applicant does not know what resulted from the complaint she had filed and claimed that she was unable to contact her lawyer. In this context, it was pure speculation

to claim that her lawyer must have accepted a bribe from her agent of persecution. It was also pure speculation for her to allege that her former employer was a vindictive person who had dealings with [TRANSLATION] “people who do illegal things”.

[20] The threats received by the applicant had been made as a result of the complaint she had filed and which, in fact, was not successful. The applicant’s agent of persecution obtained what he wanted (for her not to proceed with the complaint) and there is no evidence to indicate that he continued to pursue the applicant; thus, it was entirely reasonable to believe that she could seek refuge in another part of the country without being persecuted. The evidence shows that the applicant’s mother and son remained in Tijuana after the applicant’s departure without incident.

[21] With respect to the second part of the IFA analysis, the applicant in no way discharged her burden of proving that it would be unreasonable for her to relocate to one of the proposed IFAs. One need only think of Puebla as a place where the applicant could live with her mother and son. She failed to demonstrate how it would be unreasonable to believe she could move to that city and find work.

[22] In *Ranganathan v Canada (Minister of Citizenship and Immigration)* (2000), [2001] 2 FC 164 at paras 15-16 (available on CanLII) (CA), the Court of Appeal noted that there is a high threshold with regard to this second part of an IFA analysis:

> **15** We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less that the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives

> in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.
>
> **16** There are at least two reasons why it is important not to lower that threshold. First, as this Court said in *Thirunavukkarasu*, the definition of refugee under the Convention "requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country". Put another way, what makes a person a refugee under the Convention is his fear of persecution by his home country in any part of that country. To expand and lower the standard for assessing reasonableness of the IFA is to fundamentally denature the definition of refugee: one becomes a refugee who has no fear of persecution and who would be better off in Canada physically, economically and emotionally than in a safe place in his own country.

[23] Given these principles and the evidence in the record, I find that the Board's decision contains no errors that would warrant the intervention of this Court.

[24] No question for certification has been proposed by the parties and none arises.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. There is no question for certification.

"Marie-Josée Bédard"
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6268-11
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