

Federal Court



Cour fédérale

Date: 20120731

Docket: IMM-8729-11

Citation: 2012 FC 951

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 31, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

LUCILA BAILON TREVINO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review submitted by Lucila Bailon Trevino (Ms. Trevino) in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of the decision by the Immigration and Refugee Board (IRB), dated November 4, 2011,

that Ms. Trevino is not a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA.

[2] For the following reasons, this application for judicial review is dismissed.

II. Facts

[3] Ms. Trevino is a citizen of Mexico.

[4] She and her former spouse, Javier Chavez Mondragon, left Mexico in 1989 to settle in the United States until 2008. They then returned to Mexico after 19 years of absence.

[5] Upon their return, Ms. Trevino and Mr. Mondragon were threatened on several occasions by members of La Familia.

[6] They left Mexico on May 25, 2009, for Canada. They filed their refugee claim that same day.

[7] Ms. Trevino based her initial claim on the allegations of Mr. Mondragon. On August 16, 2009, Ms. Trevino filed an amendment to her Personal Information Form (PIF) to add the following:

- (a) In November 2009, Ms. Trevino left the couple's home to seek refuge in a shelter for women victims of violence. In the beginning of 2010, she returned to her home. However, she again suffered violence and threats from her spouse.
- (b) On April 29, 2011, she filed a complaint against Mr. Mondragon with the Montréal police.
- (c) In May 2011, counsel for Ms. Trevino filed a second file separation application before the IRB. The Board accepted Ms. Trevino's application.
- (d) On November 4, 2011, the IRB refused Ms. Trevino's refugee claim. The Board found that Ms. Trevino lacked credibility. The IRB also noted that she could benefit from state protection in Mexico and from an internal flight alternative (IFA) in Mexico City, Guadalajara, Monterrey, Saltillo and Acapulco.

III. Legislation

[8] Sections 96 and 97 of the IRPA specify the following:

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

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,

of that fear, unwilling to avail themselves of the protection of 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.

Person in need of protection

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

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that

du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces 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.

Personne à protéger

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) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

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

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

(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.

(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 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.

(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. Issues and standard of review

A. Issues

1. *Did the IRB err by finding that Ms. Trevino lacked credibility?*
2. *Did the IRB err by finding that Ms. Trevino could benefit from state protection in Mexico?*
3. *Did the IRB err by finding that Ms. Trevino had an IFA in Mexico?*

B. Standard of review

[9] Assessing a refugee claimant's credibility and the plausibility of his or her account is within the expertise of the IRB (see *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at paragraph 4 (*Aguebor*)). Thus, the standard of review applicable to credibility issues is reasonableness (*Owochei v Canada (Minister of Citizenship and Immigration)*, 2012 FC 140 at paragraph 20).

[10] In *Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, the Federal Court of Appeal specified that the standard of review that applies to a finding of state protection is reasonableness.

[11] With respect to the IFA issue, the applicable standard of review is also reasonableness (see *Diaz v Canada (Minister of Citizenship and Immigration)*, [2008] FCJ No 1543 at paragraph 24).

[12] Thus, the Court must determine whether the IRB's 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 paragraph 47).

V. Position of the parties

A. Position of Ms. Trevino

[13] Ms. Trevino maintains that the IRB failed to clarify how it applied the IRB's Guideline No 4 concerning women refugee claimants fearing gender-related persecution to her case. She also alleges that the Board failed to evaluate why she could have been wrong in her testimony or omitted certain facts in her narrative.

[14] Furthermore, Ms. Trevino claims:

- (a) that the IRB did not consider the report by Reida Real Reyes, a psychologist (see page 60 of the Applicant's Record);
- (b) that the IRB failed to mention other evidence, including Ms. Trevino's statement (see pages 64 and 66 of the Applicant's Record);
- (c) that her claim to Indemnisation des victimes d'actes criminels (IVAC) was disregarded (see pages 67 and 68 of the Applicant's Record) as well as the letter from the shelter for immigrant women victims of domestic violence (see page 63 of the Applicant's Record).

[15] Ms. Trevino notes that the IRB has the duty to take into account and assess the relevance of all of the evidence in the record in support of her position. She alleges that by [TRANSLATION] “omitting any reference to a significant portion of the contradictory evidence, [the IRB] erred, [thus warranting] the intervention of this Court” (see page 141, paragraph 46 of the Applicant’s Record).

[16] Ms. Trevino also argues that the IRB erred by finding her account not credible because of a few minor contradictions (see *Romo v Canada (Minister of Citizenship and Immigration)*, 2006 FC 543 at paragraphs 12 and 13).

[17] Furthermore, Ms. Trevino claims that the IRB disregarded Guideline No 4 in its analysis of state protection as well as several excerpts from the National Documentation Package on Mexico (package) that rebut its finding that Ms. Trevino could benefit from adequate state protection in Mexico.

[18] Ms. Trevino also alleges that the IRB’s finding on the existence of an IFA is unreasonable because the IRB was “engaging in utter speculation as to the motive, behaviour and personality of [Mr. Mondragon]” (see *Awolo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1122 at paragraph 12).

B. Position of the respondent

[19] First, the respondent points out that the IRB mentioned Guideline No 4 in its analysis of Ms. Trevino’s credibility. According the respondent, even though Ms. Trevino cited *Keleta v*

Canada (Minister of Citizenship and Immigration), 2005 FC 56 and *Griffith v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1142, the facts in this case and the evidence in the record do not make it possible to apply those cases.

[20] Because Ms. Trevino and her counsel did not raise any inability to testify at the hearing, the respondent submits that Ms. Trevino is now precluded from doing so. Ms. Trevino alleges that her inability to testify can be attributed to her psychological state. However, the report by Ms. Reyes does not state that Ms. Trevino is unable to testify, but simply claims that she may omit certain facts because of the mistreatment that she suffered at the hands of Mr. Mondragon. According to the respondent, the psychological report must establish the connection between Ms. Trevino's cognitive abilities and the contradictions or omissions identified by the IRB (see *Moscol v Canada (Minister of Citizenship and Immigration)*, 2008 FC 657 at paragraph 10).

[21] The IRB clearly specified that it considered Guideline No 4. The respondent points out that IRB guidelines cannot be used to address the shortcomings in Ms. Trevino's refugee claim.

[22] The respondent also points out that the IRB was correct in finding that Ms. Trevino is not credible. First, she abandoned her claim based on her fear of La Familia and omitted certain important facts in her PIF, *inter alia*, the threats uttered by Mr. Mondragon with respect to her children. Moreover, she failed to mention that Mr. Mondragon is a jealous man (see *Grinevich v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 444; *Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 1867).

[23] The respondent notes the principle that a state is capable of protecting its citizens. Refugee claimants must seek help from the authorities in their country before they claim refugee protection. There is a presumption that state protection exists.

[24] According to the respondent, the evidence submitted by Ms. Trevino demonstrates, at best, that the protection offered by the Mexican state is imperfect. The IRB also pointed out that there are specific shelters in Mexico, psychological, legal and medical assistance, an emergency telephone line, the possibility of obtaining an emergency protection order and regulations requiring the police to intervene immediately in cases of domestic violence.

[25] The IRB found that Ms. Trevino has an IFA in Mexico. The respondent maintains that it is also up to Ms. Trevino to prove that she would be at risk throughout Mexico and that it would be objectively unreasonable for her, given the circumstances, to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA); *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) (*Ranganathan*)).

[26] According to the respondent, the IRB correctly analyzed the IFAs because it considered Ms. Trevino's specific situation. It analyzed the documentary evidence based on the practices and resources available for women victims of domestic violence in Mexico. The IRB also found that it would be difficult for Mr. Mondragon to find Ms. Trevino. Furthermore, she could find employment in one of the cities mentioned.

[27] According to the respondent, the fact that Mr. Mondragon likely knows the address of Ms. Trevino's children in Mexico is not sufficient in itself to establish that the suggested IFAs are unreasonable.

VI. Analysis

1. *Did the IRB err by finding that Ms. Trevino lacked credibility?*

[28] The IRB erred by finding that Ms. Trevino lacked credibility.

[29] It is important to point out that “[t]he Court should not interfere with the findings of fact and the conclusions drawn by the [IRB] unless the Court is satisfied that the [IRB] based its conclusion on irrelevant considerations or that it ignored evidence” (see *Kengkarasa v Canada (Minister of Citizenship and Immigration)*, 2007 FC 714 at paragraph 7; see also *Miranda v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 437). The case law has established that assessing the evidence and the testimony, as well as attaching probative value to them, is up to the IRB (see *Aguebor*, above, and *Romhaine v Canada (Minister of Citizenship and Immigration)*, 2011 FC 534 at paragraph 21).

[30] The IRB pointed out that Ms. Trevino stated in her testimony that Mr. Mondragon had threatened her and had said the following to her: [TRANSLATION] “If you don’t get out right now, you’ll see that you’ll be met with death”. (see paragraph 11 of the IRB decision). The IRB therefore asked her why she failed to state this fact in her PIF. Ms. Trevino replied that this fact appears in her

form. In its decision, the IRB found that “[t]alking about being seriously threatened is not as specific and unequivocal as stating [translation] ‘you’ll be met with death’”.

[31] Ms. Trevino also raises the death threat uttered against her children. The IRB found that those threats are not in Ms. Trevino’s PIF because it states that the children would pay for it all. That is not the same thing. The IRB refused the initial explanation provided by Ms. Trevino that the death threats were included in the narrative (see paragraph 11 of the IRB decision).

[32] The IRB pointed out that Ms. Trevino contradicted herself in her testimony by hesitating with respect to the exact date of the threats uttered against her children. It also noted that Ms. Trevino did not mention in her PIF that Mr. Mondragon is a jealous man and that she fears only him.

[33] The IRB findings are based on irrelevant considerations because they focus on minor details that cannot undermine Ms. Trevino’s credibility to the point of leading to the rejection of her refugee claim. The IRB findings cannot withstand a more probing examination with the result that if its decision was only based on these points, the Court would not have any difficulty in allowing this application for judicial review.

[34] Ms. Trevino’s testimony and the content of her PIF are consistent. The IRB cannot reasonably find that the two versions are profoundly different from one another.

[35] It is evident that Ms. Trevino's account demonstrates that Mr. Mondragon is a jealous man. She wrote the following in her PIF: [TRANSLATION] "On November 20, 2010, he broke a mirror because I asked a friend what time he was leaving work. That make him very angry and he broke things in our home" (see page 25 of the Applicant's Record). The fact that Ms. Trevino failed to mention in her file separation application that she fears La Familia in no way alters her refugee claim. That omission should not undermine Ms. Trevino's credibility.

[36] The Court would like to point out, moreover, that the findings with respect to Ms. Trevino's credibility are not determinative in this case.

2. *Did the IRB err by finding that Ms. Trevino could benefit from state protection in Mexico?*

[37] In *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at paragraph 51, the Supreme Court of Canada pointed out that there is a presumption that a state is capable of protecting its citizens unless the refugee claimant rebuts this presumption. In *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at paragraph 57, the Federal Court of Appeal specified that "a claimant coming from a democratic country will have a heavy burden when attempting to show that he should not have been required to exhaust all of the recourses available to him domestically before claiming refugee status".

[38] In this case, even though Ms. Trevino fears Mr. Mondragon, the IRB found that she was not successful in rebutting the presumption that there is protection for women victims of domestic

violence in Mexico. The IRB pointed out that a “refugee protection claimant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state” (see paragraph 25 of the IRB decision).

[39] Furthermore, the IRB specified that there is an emergency telephone line, a possibility of obtaining an emergency protection order and regulations requiring the police to intervene immediately in cases of domestic violence.

[40] Ms. Trevino submitted evidence to establish the insufficiency of the measures put in place by the Mexican state. The IRB rejected those elements relying on other reports contained in the package. The IRB also rejected Hellman’s report. Ms. Trevino raises two decisions of this Court, *Villicana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1205 and *Lopez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1176, that allow applications for judicial review on the ground that the Board’s analysis of the Hellman report raises problems. In this case, the IRB explained at paragraph 30 of its decision why it rejected that report and why it accepted other documentary evidence. Ms. Trevino therefore did not successfully demonstrate, in light of Guideline No 4, that it would be objectively unreasonable for her to obtain state protection in Mexico. The IRB’s finding on this point is reasonable.

3. *Did the IRB err by finding that Ms. Trevino had an IFA in Mexico?*

[41] Given the facts in this case, the finding by the IRB with respect to the existence of an IFA in Mexico is also reasonable. As specified by the Federal Court of Appeal in *Ranganathan*, above, at

paragraph 15, “[i]t requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area” and “actual and concrete evidence of such conditions”.

[42] The IRB argued, among other things, that Ms. Trevino could find work in Mexico City, Guadalajara, Monterrey, Saltillo and Acapulco. Ms. Trevino replies that Mr. Mondragon could find her children and threaten them. The fact that she alleges that her children could be threatened by Mr. Mondragon does not make it possible to find that Ms. Trevino could not seek refuge in one of the cities suggested by the Board. This does not involve “conditions which would jeopardize the life and safety [of Ms. Trevino] There was no evidence before the Board that would have met the test” (see *De Argueta v Canada (Minister of Citizenship and Immigration)*, 2011 FC 369 at paragraph 22).

[43] The Court, after reviewing the hearing transcript in a detailed manner, found that the Board member carried out his duty in accordance with Guideline No 4. The Board member’s questions sought to properly understand the explanations given by Ms. Trevino and the decision, both with respect to Mexican state protection and the existence of an IFA, seems completely reasonable.

VII. Conclusion

[44] The IRB’s decision falls within a range of “possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above, at paragraph 47). The IRB reasonably found that Ms. Trevino could benefit from state protection and that there is an IFA in Mexico City,

Guadalajara, Monterrey, Saltillo and Acapulco. For these reasons, Ms. Trevino's application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. the application for judicial review is dismissed; and
2. there is no question of general interest for certification.

“André F.J. Scott”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-8729-11

STYLE OF CAUSE: LUCILA BAILON TREVINO
v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 5, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** SCOTT J.

DATED: July 31, 2012

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