Federal Court  Cour fédérale

Date: 20121129

Docket: IMM-3296-12

Citation: 2012 FC 1385

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, November 29, 2012

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

JUANA MARTINEZ CHAVEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is disputing the legality of a decision by the Refugee Protection Division of the Immigration and Refugee Board [panel], which found that she is not a Convention refugee or a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] The determinative issue in this case is the credibility of the applicant's story. In fact, the availability of state protection was raised only in the alternative. The applicable standard of review is that of reasonableness. The Court must therefore verify "the justification, transparency and intelligibility [of] the decision-making process" and " 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 190 at para 47, [2008] 1 SCR 190).

[3] The applicant, a young woman, is 34 years old and a citizen of Mexico. According to the applicant, she became romantically involved with a Mexican police officer named Ricardo Soto [persecutor] in 2007. Mr. Soto insisted on having sexual relations with her, but the applicant refused because of her moral principles and religious beliefs. Since the applicant resisted, the persecutor assaulted her and even threatened to kill her. The persecutor allegedly slapped the applicant on two occasions, a friend of the persecutor allegedly threatened the applicant with a broken bottle, and, together, they followed her by car, pointing a gun at her. Afterwards, she took refuge at an aunt's for nine months. A few months later, the applicant left Mexico without ever filing a written complaint with the police.

[4] I will begin with the question of state protection since the panel chose to make this an alternative ground for rejecting the application for refugee protection. In that regard, the applicant forcefully argues that the panel did not really consider the applicant's personal situation or the specific facts alleged. For example, the documents referred to in paragraph 27 of the panel's decision deal with the situation in the Federal District of Mexico City, where the applicant has never lived. Furthermore, the panel's finding that the applicant did not make

sufficient efforts to obtain state protection from her country, since she failed to make a written complaint, can be explained by the fact that the applicant does not trust the police given that her persecutor is a police officer and the police did not come when she called them. The panel failed to deal with the applicant's explanations.

[5] I agree with the applicant that the panel must examine the personal situation of every refugee protection claimant, a suggestion with which the respondent seems to agree. Indeed, at paragraph 27 of the reasons for judgment in *Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, [2006] FCJ No 439, I myself noted as follows:

> In order to determine whether a refugee protection claimant has discharged his burden of proof, the Board must undertake a proper analysis of the situation in the country and the particular reasons why the protection claimant submits that he is "unable or, because of that risk, unwilling to avail [himself] of the protection" of his country of nationality or habitual residence (paragraphs 96(*a*) and (*b*) and subparagraph 97(1)(*b*)(i) of the Act). The Board must consider not only whether the state is actually capable of providing protection but also whether it is willing to act. In this regard, the legislation and procedures which the applicant may use to obtain state protection may reflect the will of the state. However, they do not suffice in themselves to establish the reality of protection unless they are given effect in practice: see *Molnar v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 1081, [2003] 2 F.C. 339 (F.C.T.D.); *Mohacsi v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 429, [2003] 4 F.C. 771 (F.C.T.D.).

[6] At the risk of repeating myself, the panel must consider the particular context in which each refugee protection claimant is persecuted, which clearly excludes any generic analysis of the availability of state protection. In fact, many factors must be considered, going well beyond a simple analysis of the available documentary evidence (*Torres v Canada (Minister of Citizenship and Immigration)*, 2010 FC 234 at paras 37-42, [2010] FCJ No 264). However, I hasten to say

that it was particularly important that the panel first ensure that the applicant was credible. In fact, the initial question as to whether or not the applicant's persecutor was a police officer could have affected the ensuing assessment of the availability of state protection, in this case, that of Mexico, or even of an internal flight alternative in other cities in Mexico.

[7] In the matter at bar, the applicant submits that the panel's reasoning regarding her credibility was not well articulated. In addition, the panel arbitrarily set aside the applicant's explanations while failing to properly consider the fact that she had been sexually harassed. The respondent submits on the contrary that the panel's decision is reasonable: the omissions in question are significant and go to the heart of the applicant's fear of persecution since the applicant had the opportunity to explain the omissions in her personal information form [PIF] and the panel could find her explanations to be unsatisfactory and incomplete.

[8] This application for judicial review must fail. The panel in question did not believe the applicant's persecution story. Its reasoning, albeit imperfect, is well articulated. The panel mainly criticized the applicant for failing to mention in her PIF (1) the fact that the persecutor was a municipal police officer; (2) the fact that she lived in hiding at an aunt's in Leon from late March 2008 to December 2008; and (3) the gun-pointing incident of February 2008, which led the applicant to complain to the police by telephone.

[9] As mentioned in *Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 1867 (FCTD) [*Basseghi*], "[a]ll relevant and important facts should be included in one's PIF. The oral evidence should go on to explain the information contained in the PIF". I therefore

agree with the respondent that the omission of critical facts from a PIF can form the basis for an adverse finding on credibility. The fact that the applicant's persecutor may be a person in a position of authority—he is apparently a municipal police officer—is an extremely significant factor. The same is true of the applicant's behaviour towards her persecutor, meaning that her fleeing to her aunt's a few months after a gun was pointed at her in February 2008 is also very important. Asking why these facts were not in the PIF was therefore legitimate.

[10] I note that the panel confronted the applicant with the various omissions pointed out in the decision and gave her the opportunity to explain herself. Having read the transcripts of the hearing closely, I do not believe that the panel's refusal to accept the explanations provided by the applicant are unreasonable in the present case. The hearing took place on January 30, 2012, almost three months after the applicant found new counsel, that is, in November 2011. It was only in the course of her testimony—almost at the end in some cases—that the applicant added a number of new facts. The applicant states that she omitted certain facts in her PIF simply because she was pregnant. The panel was entitled not to find this credible. In fact, the applicant gave birth to her child on February 11, 2010, but signed her PIF on June 10, 2009, nine months before the birth of her child. As the panel indicated, she would therefore have been in the early stages of her pregnancy.

[11] Given that the general finding of non-credibility is not unreasonable, there is no reason to intervene in this case, even if the panel's state protection analysis may seem somewhat truncated and flawed.

[12] For these reasons, the application for judicial review will be dismissed. No question of general importance is raised by this case, and none will be certified by the Court.

JUDGMENT

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

"Luc Martineau"
Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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