

Federal Court



Cour fédérale

Date: 20130510

Docket: IMM-7642-12

Citation: 2013 FC 492

Ottawa, Ontario, May 10, 2013

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ABANI ISACHAR RODRIQUEZ LLANES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Abani Isachar Rodriguez Llanes sought refugee protection in Canada based upon his alleged fear of the Zetas gang in Mexico, whose wrath he says he had incurred as a result of his romantic relationship with the girlfriend of “El Milo”, a gang member.

[2] The applicant asserts that the Board erred by finding that his claim had no nexus to a Convention ground. The Board further erred, the applicant says, by misidentifying the feared agents

of persecution, and in making the unreasonable finding that the applicant had an internal flight alternative (IFA) in several cities in Mexico.

[3] For the reasons that follow, I am satisfied that the Board properly understood who the alleged agents of persecution were in this case, and that its IFA finding was reasonable. These findings are dispositive of the case, with the result that it is not necessary to deal with the issue of nexus.

The Identity of the Agents of Persecution

[4] The applicant argues that the Board wrongly focused on El Milo as the agent of persecution, when it was the Zetas who were feared by the applicant. The Board further erred by focusing on El Milo's motivation to find him, rather than the motivation of the gang itself. According to the applicant, the Board's focus on El Milo's motives failed to take into account the possibility that the Zetas might have their own reasons for wanting to harm him, namely the desire to preserve the gang's honour and integrity.

[5] It is, however, clear from the Board's reasons that it did not misidentify the agent of persecution, and that it did consider the potential threat to the applicant posed by the Zetas in addition to that posed by El Milo. References to the applicant's alleged fear of both El Milo and the Zetas appear in a number of places in the Board's decision. In particular, at paragraph 14 of the decision the Board specifically addressed the gang's motivation to find the applicant in addition to considering the motivation of El Milo himself.

The Reasonableness of the IFA Finding

[6] The applicant also takes issue with the Board's finding that it had not been established that El Milo had connections to the Mexican police, submitting that the proper question for the Board was whether *the Zetas* had such connections. The applicant points out that the Board itself recognized that the Zetas are violent and have "infiltrated many areas", and that this is confirmed by the country documentation. As such, the applicant says that the Board's finding that he could live safely in other parts of Mexico was unreasonable.

[7] I do not read the Board's reasons to take issue with the reach of the Zetas gang in Mexico, or its ability to locate people when it wants to do so. The question that concerned the Board was whether the gang itself had any interest in using its resources and connections to pursue the applicant, or whether it was only El Milo and his immediate circle that were out to get him.

[8] In seeking to demonstrate that the Zetas were after the applicant and would be able to find him anywhere in Mexico, the applicant relied on an opinion from a history professor at the University of Winnipeg. Amongst other things, the professor stated that an affront to one member of the Zetas gang could be considered as an affront to the honour of the entire gang, prompting the gang as a whole to seek retribution against the perpetrator of the affront.

[9] The Board chose to give this opinion little weight, as the facts relating to the applicant's own experience in Mexico upon which the opinion was based and the extent to which he had been pursued by gang members had not been established by the evidence. This was a finding that was reasonably open to the Board on the record before it.

[10] It was, moreover, entirely reasonable for the Board to look to the fact that no one had ever contacted the applicant's wife or children in his hometown in an effort to locate him as evidence of the fact that no one other than El Milo and his immediate associates were interested in the applicant. This finding was based on the common-sense proposition that if the gang was truly looking for the applicant, one of the first places it would go is to his family. In contrast, the theories provided by the applicant in an effort to explain why the gang might have chosen not to contact his wife are speculative in nature and are not grounded in the evidence.

[11] At the end of the day, the Board was simply not satisfied that anyone outside of El Milo and his immediate circle had any interest in the applicant or would be motivated to locate him anywhere in Mexico. In the circumstances, it was reasonably open to the Board to conclude that the applicant had an IFA elsewhere in Mexico.

[12] Finally, I am not persuaded that the decision in *Zhuravlev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3, [2000] F.C.J. No. 507, is of assistance to the applicant. Unlike the situation that confronted the Court in *Zhuravlev*, there is no suggestion that the applicant's ability to move about within Mexico was in any way restricted.

Certification

[13] Counsel for the applicant proposes the following question for certification:

In a refugee protection claim made under the *Immigration and Refugee Protection Act*, where the claimant seeks to establish a well-founded fear of persecution by reason of membership in a particular social group, can the fact of having committed adultery, either alone

or in combination with other factors, become the basis for membership in a social group?

[14] I agree with the respondent that this is not an appropriate question for certification. Given my conclusions with respect to the availability of an IFA for the applicant in Mexico, the answer to the question would not be dispositive of this case. Consequently, I decline to certify it.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

“Anne L. Mactavish”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7642-12

STYLE OF CAUSE: ABANI ISACHAR RODRIQUEZ LLANES v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: May 7, 2013

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

DATED: May 10, 2013

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