

Federal Court



Cour fédérale

Date: 20150507

Docket: IMM-2186-14

Citation: 2015 FC 603

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 7, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

**TOMAS GOMEZ MONDRAGON
LEONOR AYALA LEYVA
EDUARDO GOMEZ AYALA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER AND REASONS

I. Introduction

[1] The applicants, Mr. Mondragon, his wife, Ms. Leyva, and the couple's minor child, Eduardo, are citizens of Mexico. They are seeking, in this case, judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (RPD) dated March 12,

2014, that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act).

[2] This was the second time that the RPD was called upon to rule on the applicants' refugee protection claim. It did so for the first time in April 2012, but its decision was set aside by the Court in a judgment rendered in December 2012 by my colleague Justice Michel Beaudry. The matter was therefore returned for redetermination.

[3] For the following reasons, the applicants' application for judicial review is dismissed.

II. The refugee protection claim

[4] The facts underlying the applicants' refugee claim can be summarized as follows:

- a. On February 26, 2009, while driving home, the applicants were apparently stopped by a vehicle and forced to get out of theirs. The occupants of that vehicle, masked and armed, purportedly searched the applicants' car, took their identity documents and made some telephone calls. After realizing that they had stopped the wrong people, the assailants allegedly let the applicants go but stated that they would kill them if they told anyone about it;
- b. Following that incident, Mr. Mondragon apparently decided to file a complaint with the authorities. The police, after being unreceptive because Mr. Mondragon was unable to identify his assailants, apparently finally agreed to receive the complaint;
- c. Three days after the complaint was received, that is, on March 20, 2009, a neighbour purportedly informed Mr. Mondragon that armed men were looking for him and had

shown up at his house during his absence, which made Mr. Mondragon think that corrupt police officers had informed his assailants of the complaint that he had filed;

- d. Fearing for his life, Mr. Mondragon stated that he moved his family that same day to the home of a relative who lives in a neighbouring village, and that, three days later, on March 23, 2009, he left Mexico for Canada by himself and claimed refugee protection here on March 25, 2009;
- e. Ms. Leyva, who was apparently not fit to travel because of psychological problems for which she was receiving therapeutic counselling, allegedly returned to the family home on April 1, 2009, with her son, convinced that the assailants of the February 26 incident were only targeting her husband;
- f. However, on May 5, 2009, she apparently received a telephone call from someone claiming to be a police officer who asked to speak with her husband. She therefore allegedly pretended she was a neighbour and asked the caller to call back later. That telephone call purportedly terrorized Ms. Leyva to the point where, from that day on, she stopped answering the phone and withdrew her son from school;
- g. One week later, a car apparently parked close to Ms. Leyva's house and someone dressed in civilian clothing allegedly got out of it and purportedly watched the house for about an hour. That incident apparently aggravated Ms. Leyva's anxiety to the point where she apparently decided to go join her husband in Canada, which she did, accompanied by her son, on May 24, 2009. Their refugee claim was filed the day after they arrived.

[5] The fear raised in support of the applicants' refugee claim is twofold: first, the applicants fear being killed by those who stopped them on February 26, 2009, who Mr. Mondragon

suspects are members of a criminal gang, because of the complaint he filed with the police; second, having stayed in Canada, a rich country, they fear extortion upon their return to Mexico.

[6] In its first decision, the RPD rejected the applicants' refugee claim on the ground that Mr. Mondragon apparently failed to report, in a timely manner, the events related to his refugee claim that occurred since his arrival in Canada. The Court, however, found that the RPD did not adequately consider Mr. Mondragon's explanations in that regard and returned the matter for redetermination.

III. Decision under review

[7] In the decision under review, the RPD first did not believe that a complaint was filed following the incident on February 26, 2009, and also did not believe, as a result, that the perpetrators of the incident took an interest in them afterwards. Its decision in that respect was based on the fact

- a. That according to her psychosocial follow-up since arriving in Canada, Ms. Leyva allegedly did not mention to the case workers who treated her the complaint or the post-complaint incidents (suspicious calls and visits to the house, presence of a suspicious person close to the house);
- b. That Mr. Mondragon purportedly contradicted himself as to the number of complaints he made to the authorities and as to the date of the filing of the complaint related to the incident on February 26, 2009; and
- c. That the content of the document submitted by Mr. Mondragon as being a copy of said complaint had little probative value because it was not consistent, in terms of substantive

information, with content typically found in that type of document, according to the objective documentary evidence.

[8] The RPD also found that, even accepting that a complaint was indeed filed and that the events subsequent to that filing, between April and May 2009, did occur, the applicants did not establish the existence of a prospective risk if they were to return to Mexico. In that respect, the RPD found that

- a. Mr. Mondragon was simply speculating on the identity of the perpetrators of the incident on February 26, 2009, because they were apparently masked;
- b. Having been released because they were not the individuals who the perpetrators of the incident had been looking for, the applicants were not targets or persons of significance for those individuals;
- c. The neighbours' letters submitted by the applicants, which report that, after they left for Canada, they have still apparently been sought by suspicious persons, could not be given any probative value because none of them are handwritten, they do not report any incident between December 2011 and December 2012 and save one letter, they are all contemporaneous with the second hearing of the refugee claim; and
- d. The fact that the applicants are apparently still being sought is inconsistent with the objective documentary evidence, which shows that the powerful criminal groups that they allege to fear have ways of knowing that they are in Canada, as well as with the fact that the local crime group responsible for kidnapping one of Mr. Mondragon's cousins who lives in another Mexican state was, itself, apparently aware that the applicants were in Canada.

[9] Finally, the RPD determined that the applicants' fear of extortion should they return to Mexico because they stayed in Canada was unfounded because, first, Mr. Mondragon hesitated when asked the question and, second, that is a generalized risk in a country such as Mexico.

IV. Issue

[10] The issue here is whether the RPD committed errors in assessing the applicants' situation that warrant the intervention of the Court. The applicants specifically take issue with the findings made by the RPD regarding the credibility of their fear of persecution.

[11] The parties agree that the applicable standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190). According to that standard of review, the Court must show deference to the RPD's findings and, as a result, intervene only if they are not justified, transparent or intelligible and if they fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above, at para 47).

V. Analysis

[12] It has been well established that the prospective nature of the risk raised in support of a refugee claim is a central element in the entitlement to protection set out in section 97 of the Act (*Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678, [2014] 1 FCR 295, at para 40). In fact, the applicants, as also specified by the RPD, had to establish not only that they were targeted by criminals before leaving Mexico, but also that they are at risk of being targeted if they were to return to that country. In other words, they also had to demonstrate that the threat to them is prospective (*Acosta v The Minister of Citizenship and Immigration*, 2009 FC 213, at

para 13; *Gonzalez v The Minister of Citizenship and Immigration*, 2013 FC 426, at para 18; *Mancillas v The Minister of Citizenship and Immigration*, 2014 FC 116, at para 25).

[13] In this case, the RPD found that the applicants did not succeed in proving this.

[14] For the purposes of this application for judicial review, the applicants certainly focused their efforts on trying to demonstrate that the RPD erred by finding that they did not establish, in a credible manner, the threat that purportedly led them to leave Mexico for Canada. However, they said very little about the RPD's findings on the absence of a prospective risk.

[15] In fact, the applicants are essentially criticizing the RPD for giving, on that point, no weight to the neighbours' letters that report that suspicious people have been looking for them since they left for Canada. In particular, they criticize the RPD for having disregarded those letters on the basis that they were not supported by any proof of mailing when that evidence was submitted to the RPD as additional evidence.

[16] However, as stated by the respondent, that was not the only factor that led the RPD to find that there was a lack of a prospective risk. In fact, the following factors also influenced the RPD's decision on that point:

- a. The purely speculative nature of the membership of the individuals who were responsible for the incident on February 26, 2009, in an organized crime group that could be attributed a *modus operandi* that may constitute a threat for the applicants if they were to return to Mexico;

- b. The release of the applicants once their assailants understood that they were not whom they were supposed to stop, which made it possible to infer that the applicants were not, for them, targets or persons of significance;
- c. The outcome of the complaint presumably filed by Mr. Mondragon, which was not acted upon and, therefore, apparently did not worry those who were the subject of it, thus rendering it not credible that the applicants' assailants, four years after the fact, could still be interested in them and might deploy efforts and resources to find and persecute them;
- d. The fact that there was supposedly no incidents by those supposed persecutors according to the applicants' neighbours between December 2011 and December 2012 and the fact that the letters from those neighbours were contemporaneous with the hearings of the refugee claim before the RPD; and
- e. The inconsistency in that the local crime group that kidnapped one of Mr. Mondragon's cousins is said to have known that the applicants were in Canada, which is allegedly not the case for the powerful criminal groups who are apparently still looking for them, while the objective documentary evidence shows that those groups have the resources and means to know that the applicants are in Canada.

[17] Based on all of these factors, it seems evident to me that the RPD did not disregard the neighbours' letters based only on the fact that apparently no proof of mailing was provided. Its analysis seems to me to have been more extensive than what the applicants imply and involved, in my opinion, a reflection on the weight to be given to those letters in light of all of the evidence.

[18] Ultimately, the applicants' argument amounts to saying that the RPD should have given more weight to those letters. However, the role of the Court is not to reweigh the evidence and to substitute its own findings of fact for those of the RPD. Instead, the Court must show deference to the RPD's findings of fact and intervene only if they were made in a perverse or capricious manner or without regard for the material before it. In other words, the issue is not whether a reassessment of the evidence could lead to a different result, but whether not having given predominant weight to those letters affected the reasonableness of the RPD's decision (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 72; *Idony v Canada (Minister of Citizenship and Immigration)*, 2010 FC 970, at para 13; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319).

[19] In my opinion, there was ample support for the RPD's finding on the central issue of the prospective nature of the risk of persecution alleged by the applicants. As previously stated, it assessed that issue according to a number of factors from which it drew inferences that seem to me to fall within the range of possible, acceptable outcomes in respect of the facts and law (*Dunsmuir*, above, at para 47).

[20] Having found that the RPD's decision on the lack of a prospective risk is reasonable, within the meaning of *Dunsmuir*, this is sufficient to dispose of this application for judicial review because the presence of such risk is an essential element of a refugee claim filed under sections 96 and 97 of the Act. In those circumstances, it is unnecessary to determine whether the RPD erred by finding that the applicants did not credibly establish the very existence of the risk alleged in support of their refugee claim.

[21] The application for judicial review will therefore be dismissed. Neither party requested the certification of a question by the Federal Court of Appeal, as set out in paragraph 74(*d*) of the Act. I also do not see any matter for certification in this case.

ORDER

THE COURT ORDERS that

1. The application for judicial review is dismissed.
2. No question is certified.

“René LeBlanc”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2186-14

STYLE OF CAUSE: TOMAS GOMEZ MONDRAGON, LEONOR AYALA
LEYVA, EDUARDO GOMEZ AYALA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 27, 2015

ORDER AND REASONS: LEBLANC J.

DATED: MAY 7, 2015

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