Date: 20071204

Docket: IMM-6554-06

Citation: 2007 FC 1271

Ottawa, Ontario, December 4, 2007

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

EDWIN BOSTON

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

REASONS FOR ORDER AND ORDER

[1] Mr. Edwin Boston, the Applicant, is a citizen of the Philippines who arrived in Canada in 2002 and made a claim for refugee protection. In a decision dated March 4, 2005, a panel of the Immigration and Refugee Board, Refugee Protection Division (the Board) rejected his claim on the basis that state protection is available to the Applicant. Upon judicial review, this decision was quashed and the matter returned to the Board (*Edwin Boston* v. *Minister of Citizenship and Immigration* (22 November 2005), Toronto IMM-1922-05 (F.C.)).

[2] A newly-constituted panel of the Board was convened for the rehearing. The Board concluded that the only question to be determined was that of the availability of state protection. On

consent of counsel for the Applicant, the Board made its decision on the basis of the record before the earlier panel and further written submissions made by counsel. In its decision, dated November 16, 2006, the Board determined that the Applicant is neither a Convention refugee, as contemplated by s. 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), nor a person in need of protection, pursuant to s. 97 of IRPA. In its decision, the Board found that (a) the Applicant had an internal flight alternative (IFA) in Manila; and (b) there is adequate state protection in the Philippines.

[3] The Applicant seeks judicial review of this decision

Issues

[4] As argued before me, the issues to be addressed are the following:

1. Did the Board fail to properly consider the issue of state protection? In particular, did the Board:
    a. Misapprehend who the agent of persecution was?
    b. Fail to properly consider the documentary evidence before it?
    c. Err by stating the Applicant did not face a particularized risk in the Philippines?

2. Did the Board misapprehend the facts as to where the Applicant was fleeing from and thereby err in its analysis of whether there was a possibility of an IFA?

[5] The Respondent acknowledges that the Board erred in its IFA finding. I agree. However, in light of the state protection conclusion, this error is not material to the decision (*Sarfraz v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1974 (T.D.) (QL)). Accordingly, these reasons will only deal with the Board's findings on state protection. For the reasons that follow, I am satisfied that there is no basis for judicial intervention and the application for judicial review will be dismissed.

Analysis

[6] In general, a finding of state protection is reviewable on a standard of reasonableness (see, for example, *Robinson v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 402 at para. 8). On this standard, the decision of the Board must stand up to a somewhat probing examination.

Did the Board err by misapprehending who the agent of persecution was?

[7] Although, overall, the appropriate standard of review is reasonableness, identification of the agent of persecution is a factual determination subject to the highest deference. So long as there is evidence to support the finding, I will not intervene. In its decision, the Board stated that, "The claimant states that it is the Philippine National Police (PNP) or a group related to them who were extorting money from [the Applicant]". In the context of the decision, it is clear that the "group" referred to is the New People's Army (NPA), a guerilla group operating in the Philippines.

[8] The Applicant submits that the Board erroneously stated that the PNP is the group extorting money from the Applicant and that the NPA is in some way sharing the funds it exploits with the PNP. In the Applicant's view, this is a fundamental erroneous finding of fact (*Carlos Enrique Sangueneti Toro v. Minister of Employment and Immigration*, [1981] 1 F.C. 652 (C.A.); *Makoni v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1632 (QL); *Hodgkinson v. Simms*, [1994] S.C.J. No. 84 (QL); *W.W. Lester (1978) Ltd. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 740*, [1990] 3 S.C.R. 644).

[9] There is no question that, based on the totality of the record, the NPA is at the root of the Applicant's fears. The Board correctly refers to the fact that the NPA – and not the PNP – was extorting money from the Applicant. The question is whether the Board erred by suggesting that the Applicant believed that the PNP and the NPA were working together. In my view, there was no error.

[10] I first note that the Board states (in the first paragraph of its analysis that "The claimant states that it is the [PNP] or a group related to them who were extorting money from him" [emphasis added]. Later in the same paragraph the Board clarifies that the NPA was responsible for the extortion.

[11] As to whether it was reasonable for the Board to state that the Applicant feared the PNP, as well as the NPA, and that the two organizations were connected in some way, I turn to the evidence before the Board.

[12] In the record that was before the Board, there were a number of references to the Applicant's fears of the PNP. The first reference is contained in the Applicant's initial refugee claim document. When asked who he was afraid of, his only response was "Government". In his Personal Information Form (PIF), the Applicant did not identify the NPA as the extorting organization. Indeed, in his PIF, the Applicant appears to name the police or PNP for the extortion when he states that he "was aware that various forms of corruption amongst the Police forces, including extortion, were rampant" [emphasis added].

[13] Even after he acknowledged the role of the NPA, the Applicant continued to implicate the PNP, as evidenced by the following transcript reference from the Applicant's first hearing, which was before the Board in the case at bar:

> PRESIDING MEMBER: So, Mr. Boston, why did you decide not to go back?
>
> CLAIMANT: Because that time – that time I believe that the group, behind the group, they are the Philippine National Police, and they have the connection that I'm still doing the same thing…
> …
> CLAIMANT: …and behind them I believe they Philippine National Police because that time they told me that I have to continue the pay and I believe they are behind for that. So, I don't have the choice to transfer because they're operating nationwide.
>
> PRESIDING MEMBER: What makes you think that the Philippine National Police is behind this?
>
> CLAIMANT: Because when I reported this a second time that there is a death threat on my life and there is extortion…they strongly recommend that I had to abide for illegal demand and it was says that I know it's existing. In the Philippine National Police there is corruption and the – and they doing extortion.

[14] Given the record before the Board, it was not unreasonable for the Board to describe the Applicant's fears and alleged agent of persecution as it did.

Did the Board err in its assessment of the documentary evidence?

[15] There was significant documentary evidence before the Board on the activities of the NPA. Based on its review of the documentary evidence, the Board made a number of findings:

1. The Board found the documentary evidence showed that there were violent clashes between government forces and the NPA which contradicted the Applicant's testimony that they were working together in extortion. Any incidents of security officials working together in extortion were not sanctioned by the state.
2. The NPA is small and generally confined to two areas away from the cities.
3. The evidence pertaining to extortion by the NPA is mostly related to extortion of businesses and politicians.
4. People are being killed by the NPA but the government is making serious efforts to deal with them. The evidence "hardly points to a large force controlling the country".

[16] The Applicant submits that certain documentary evidence was ignored and that the Board made factual errors. Among those alleged errors are the following:

- The documentary evidence does not indicate that the NPA is a small group confined to areas away from the cities.
- The documentary evidence shows the NPA extorts and kills ordinary citizens; its actions are not confined to "businesses and politicians".
- The Board failed to consider a recent affidavit by the Applicant's mother that stated the police did not take any action when she was threatened by the NPA.
- The Board's remark that "..one death is too many [b]ut…it hardly points to a large force controlling the country" hides the fact that the Amnesty International Philippines article ("Amnesty International Philippines", online: Amnesty International Philippines http://web.amnesty.org/web/web.nsf/print/8A589C2B4C3A570680256FE3004CD1B1>.) indicates that the government is not making serious efforts to deal with the insurgents (*Toro,* above; *Canadian Imperial Bank of Commerce v. Rifou*, [1986] 3 F.C. 486 (C.A.)).

[17] I am not persuaded that the Applicant has overcome the presumption that the Board considered all the evidence before it. First, footnotes of the Board's decision refer to most, if not all, of the documentary evidence. Second, the Board specifically cites – in footnote 12 of the decision – one of the articles (Manny Mogato, "To fund a revolution" *Newsbreak* (31 March 2003)) that the

Applicant alleges was ignored. Finally, the Board makes a number of explicit references to the documentation package containing the articles the Applicant alleges were ignored.

[18] Contrary to the Applicant's assertions, these articles are capable of supporting the Board's findings that the size of the NPA and the extent of its extortion activities are limited in the Philippines.

[19] Although I agree with the Applicant that there were articles in the material before the Board which indicate that the NPA is now targeting "private citizens" across the Philippines in its extortion activities, the Board placed greater weight on the articles which suggest a more limited role of the NPA. In particular, the Board relied on the *Country Reports of Human Rights Practices 2005* and the *Europa World Book 2005*, both found in the Toronto Documentation Package for the Philippines, on the basis that they came from sources which have "no interest in the outcome of the claim". Although the Board could have been clearer as to why it preferred the material it cited, I do not find its decision so unreasonable as to warrant it being set aside. It is impossible for the Board to reference every article in a documentation package. Where there are indications that the Board has considered all the evidence before it and it rationally explains why it prefers a particular article, its findings should not be disturbed (*Sarfraz*, above, at para. 11).

[20] Contrary to the Applicant's assertions that the Board did not have regard to the affidavit of the Applicant's mother, I note that the Board did in fact refer to that evidence. As stated by the Board in its decision:

> Claimant's counsel submitted numerous documents in support of the claim which were carefully considered by the panel…The first two documents are affidavits from the claimant's mother and her neighbour…the affidavits are dated in 2006…It should be noted that the claimant's mother stated in an earlier affidavit that when she reported strangers around her house, police patrolled her vicinity [emphasis added].

[21] Again, I do not find the Applicant has overcome the presumption that the Board considered all the evidence before it.

[22] Moreover, as will be addressed in more detail below, the Board found that the government of the Philippines was making "serious efforts to deal with the [NPA]". In view of this finding, it was not necessary for the Board to specifically address the Applicant's mother's statement in her affidavit that the "I blottered the incidents…but until now there was no action and the lawless people are still free" because, as noted in *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (C.A.) (QL):

> …where a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens from terrorist activities, the mere fact that it is not always successful at doing so will not be enough to justify a claim that the victims of terrorism are unable to avail themselves of such protection [emphasis added].

[23] In sum, I am not persuaded that the Board ignored the documentary evidence or that its findings with respect to the nature of the NPA or its level of activity were made without regard to the evidence.

Did the Board err by failing to take into account the Applicant's personalized risk?

[24] The Applicant's claims to have been extorted were not disbelieved by the first panel. Although the Board's review of the Applicant's case was *de novo*, the Board did not make any finding of negative credibility against the Applicant. The Board, in this second decision, must be presumed to have accepted the credibility of the Applicant's story. In light of this, the Applicant submits that the Board erred by failing to take his personalized risk into account in determining whether state protection was available to him. I do not agree.

[25] Having accepted the Applicant's story (or at least not making any negative credibility findings), the Board's statement that "Corruption and political killings are a generalized risk anywhere in the Philippines and extending protection to persons such as the claimant is outside of the Board's mandate" is confusing to say the least. However, the Board's decision should be examined as a whole and not subject to a microscopic analysis (*Miranda v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 437 (T.D.) (QL)). When one looks to the totality of the reasons provided in the decision, it is evident that the Board's reasoning was, in effect, the following: "The Board accepts there is some corruption in the Philippines, including within the police. The Board accepts the Applicant's story of extortion by the NPA. However, the Board finds that police corruption is not endemic and that the state is actively combating the NPA with some success. Accordingly, the Board thinks the state can still provide adequate protection to the Applicant."

[26] Thus, when read as a whole, the Board's decision is consistent with the Court of Appeal's view of state protection in *Villafranca,* above.

[27] The argument of the Applicant is based on his interpretation of the Supreme Court of Canada in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at 726 and his view that the decision of the Court of Appeal in *Villafranca* is inconsistent with *Ward*. I do not agree on either count. The Board, this Court and the Court of Appeal have applied these two cases and others (see, for example, *Kadenko* v. *Canada (Solicitor General)* (1996), 143 D.L.R. (4th) 532 (F.C.A.)) in countless situations such as this. Even though the Applicant has suffered persecution at the hands of a non-state agent, an examination of state protection may be viewed through the lens of protection available to all citizens of a state. The question is: does the evidence establish that there is a reasonable chance that the Applicant will be persecuted on return?

[28] The Board, in this case, assumed the Applicant's story was credible and analyzed all of the documentary evidence related to the agent of persecution – the NPA. Absent evidence to the contrary, a state that can provide adequate protection to all of its citizens who may be subject to persecution by the NPA, can also reasonably be found to be able to protect an individual who has suffered at the hands of the same organization. Thus, the Board did not err by focusing its examination on the level of protection vis-à-vis the NPA available for all citizens in the Philippines.

Conclusion

[29] In conclusion, I am not persuaded that the Board's decision with respect to the adequacy of state protection was unreasonable. As this finding is determinative of the Applicant's claim, any error with respect to the existence of an IFA is immaterial. The application for judicial review will be dismissed.

[30] Neither party requested that I certify a question. No question will be certified.

ORDER

THIS COURT ORDERS that

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Judith A. Snider"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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