Date: 20080320

Docket: IMM-1977-07

Citation: 2008 FC 367

Ottawa, Ontario, March 20, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

VANESSA DOSSETI VARGAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] It is important not to expand or lower the threshold of objective unreasonableness for two reasons. First, to do so, fundamentally denatures the definition of refugee: "…one becomes a refugee who has no fear of persecution and who would be better off in Canada physically, economically and emotionally than in a safe place in his own country". Second, it "creates confusion by blurring the distinction between refugee claims and humanitarian and compassionate applications..."

(*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, [2000] F.C.J. No. 2118 (QL).)

[2] The Refugee Protection Division considered the caselaw in assessing the reasonableness of the Applicant's Internal Flight Alternative (IFA), and cannot be deemed to have erred by failing to mention the Applicant's psychological report. On the "very high" threshold for unreasonableness, specified by the Federal Court of Appeal, the Applicant's psychological report cannot be said to "contradict" the Refugee Protection Division's finding that she could relocate to either Guadalajara or Monterrey without undue hardship.

[3] The Federal Court of Appeal's decision in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, [1993] F.C.J. No. 1172 (QL), at paragraph 12, makes it clear that the test for determining whether an IFA is reasonable is an objective one, with the onus of proof resting on the applicant as it does with all other aspects of a refugee claim. In *Ranganathan*, above, at paragraphs 14 and 15, the Federal Court of Appeal further specified that *Thirunavukkarasu* establishes a "very high threshold for the unreasonableness test. It 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. In addition, it requires actual and concrete evidence of such conditions."

II. Judicial Procedure

[4] The Applicant, a citizen of Mexico, seeks a judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated April 18, 2007, wherein the Board determined that the Applicant was not a Convention refugee or a person in need of

protection, pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA).

III. Background

[5] The Applicant, Ms. Vanessa Dosseti Vargas, is a full time university student, majoring in English and an entrepreneur who owns a promotional assistants agency in Pachuca, Hidalgo, Mexico.

[6] On February 5, 2005, Ms. Dosseti Vargas was hired by a man, named Guzman, who she later learned, is known as “El Chapito” Guzman, the son of a known narcotics trafficker, named “El Chapo” Guzman. She was hired to send a group of four “beautiful” exotic dancers to a nearby club; this was to assist the presentation of prizes at a cock fight, held at a ranch party, given by Mr. Guzman to entertain Hidalgo government and police officials.

[7] On February 12, 2005, at about midnight, the night of the event, Ms. Dosseti Vargas was allegedly raped by Mr. Guzman and a friend of his in his ranch office.

[8] Ms. Dosseti Vargas, with the help of one of the other girls, was able to escape from Mr. Guzman’s office. Once outside his property, Ms. Dosseti Vargas met a family member who drove her home.

[9] On February 14, 2005, after having consulted a gynecologist, Ms. Dosseti Vargas decided not to report the incident to the police; she alleges that she concluded, due to the political status of the guests who attended the event, she could not expect anything from the authorities. (Record of Hearing, Tribunal Record, p. 316.)

[10] The next day, on February 15, 2005, Ms. Dosseti Vargas received a note with an exotic flower, warning her not to tell anyone of the incident. (Application Record, Applicant's Narrative, p. 41.)

[11] On, or about, February 17, 2005, Mr. Carlos Cordero Bolio, a lawyer for the Public Ministry of the General Attorney's Office of the State of Hidalgo, who had known Ms. Dosseti Vargas and her family for more than ten years, told Ms. Dosseti Vargas that an order had been issued to all the public Ministry Offices by the Director of Investigations to decline taking any statement or complaint made by Ms. Dosseti Vargas; furthermore, if a claim was made, he was to be notified immediately so as to take care of the matter personally. Mr. Bolio warned Ms. Dosseti Vargas not to file a complaint as the consequences could be fatal. Ms. Dosseti Vargas alleges that she, therefore, did not go to the police nor seek state protection. (Application Record, p. 62.)

[12] In light of the threats received, Ms. Dosseti Vargas abandoned her studies, closed her business, decided to leave Pachuca, on February 18, 2005, and to move in with a friend of her mother, Ms. Yaritzy Chavez Garcia, in Mexico City (Application Record, Applicant's Narrative, p. 42).

[13] Three months later, on May 12, 2005, Ms. Dosseti Vargas, received the same type exotic flower. As the flower was not accompanied by a note, Ms. Dosseti Vargas thought it was a mistake and made nothing of it. (Record of Hearing, Tribunal Record, p. 320.)

[14] A week later, on, or about, May 20, 2005, while out walking near a shopping mall, Ms. Dosseti Vargas was followed by two men in a black van. One of them stepped out of the van, holding a similar exotic flower, called her by name and began to chase her. Ms. Dosseti Vargas ran toward a shopping mall and told a policeman that someone was following her. Ms. Dosseti Vargas alleges that she and the policeman went outside to look; however, they saw no one. Two hours later, the policeman suggested that she take a subway home. (Application Record, Applicant's Narrative, p. 42).

[15] The next day, again, the same type of flower was sent to Ms. Dosseti Vargas new residence with another threatening note. (Application Record, Applicant's Narrative, p. 42.)

[16] After having consulted her mother, Ms. Dosseti Vargas, subsequent to a passport application, left Mexico City on the first available flight to Canada, on June 16, 2005.

IV. Relevant Legislation

[17] Section 96 and subsection 97(1) of the IRPA define the expression "refugee" and "person in need of protection":

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 of that fear, unwilling to avail themself 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

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, 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.

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

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

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 themself of the protection of that 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.

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,

(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.

V. Issues

[18] (1) Was the Board's state protection finding unreasonable?

(2) Was the Board's IFA finding patently unreasonable?

VI. Standard of Review

[19] The question of state protection is one of mixed fact and law, and, as such, the standard of review is reasonableness *simpliciter*. (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, [2005] F.C.J. No. 232 (QL).)

[20] The standard of review to be applied to the question of whether or not an IFA is available to the applicant is one of patent unreasonableness. (*Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, [2003] F.C.J. No. 1263 (QL).)

VII. Decision Under Review

[21] Ms. Dosseti Vargas argued that she was entitled to judicial review as the Board acted without jurisdiction, erred in law, made capricious or perverse findings of fact, without regard to the material before it and/or breached the rules of natural justice or procedural fairness in determining that the she is not a Convention refugee.

[22] Ms. Dosseti Vargas further stated that her life is in danger as she has been wrongfully associated with a criminal gang that sold narcotics and stole vehicles. If returned to Mexico, Ms. Dosseti Vargas alleges that she will surely be beaten, raped and assassinated by gang members,

who are very influential with the authorities; and, therefore, she could not count on the latter for protection. (Application Record, Applicant's Narrative, p. 37.)

VIII. Analysis

[23] The Board concluded that Ms. Dosseti Vargas had not met the burden of establishing "clear and convincing" proof of lack of state protection for individuals residing in Mexico. It further noted that an applicant had an obligation to "approach his or her state for protection, providing state protection might be reasonably forthcoming". (Board Decision, Application Record, p. 9).

[24] The Board noted that, despite her relocation, Ms. Dosseti Vargas did not make any attempt to seeking the assistance of federal law enforcement agencies in Mexico City, particularly agencies which investigate criminality, drug-trafficking and corruption, e.g., the Secretariat of Public Administration (SFP), which investigates federal police abuse, the Federal Agency of Investigation (AFI), which investigates criminality, corruption and drug trafficking, the Deputy Attorney General's Office in-charge of investigations into organized crime and drug trafficking (SIEDO), and the Federal Attorney General's Office (PGR) in Mexico City, which investigates crimes or offences perpetrated on victims. (Board Decision, Application Record, p. 9.)

[25] Furthermore, the Board specified that Ms. Dosseti Vargas could have been provided with assistance by the National Human Rights Commission (CNDH) and the National Institute for Women (INMUJERES), both of which have direct links with government investigative and law enforcement agencies. Moreover, Ms. Dosseti Vargas did not avail herself of SACTEL, a 24-hour

hotline service created for citizens to make complaints about public servant's misconducts, or the General Comptroller's Citizen Assistance directorate, with which she could have filed a complaint in regard to her fear that the Hidalgo Attorney General's office may be in collusion with Mr. Guzman. (Board Decision, Application Record, p. 9.)

[26] The Board concluded that these agencies and organizations would also be available to Ms. Dosseti Vargas were she to return to Mexico. (Board Decision, Application Record, p. 10.)

[27] When questioned as to whether she had thought about going to any other agencies to assist her in filing a complaint, Ms. Dosseti Vargas stated: "I thought about that, but at this even there were people present not only from Hidalgo but throughout the whole Mexican Republic. There were Governor Generals; Governors, what could I (inaudible) they were all his friends". (Record of Hearing, Tribunal Record, p. 325.)

[28] Where a state is in control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the fact that it is not always successful will not be necessarily enough to justify a claim to the effect that the victim is unable to avail himself or herself of that protection. (*Canada (Minister of Employment and Immigration) v. Villafranca* (F.C.A.), [1992] F.C.J. No. 1189 (QL).)

[29] When the state in question, is a democratic state, the applicant must do more than simply demonstrate having sought a member of the police force and that such an effort was unsuccessful.

The burden of proof rests on the applicant and is directly proportional to the level of democracy of the state in question: the more democratic the state's institutions, the more the applicant must do to exhaust all courses of action open to him or her. (*Kadenko v. Canada (Solicitor General)* (1996), 143 D.L.R. (4th) 532 (QL); Board Decision, Application Record, p. 10.)

[30] The Board considered whether Ms. Dosseti Vargas had rebutted the presumed availability of the state to protect her. The Board concluded that Ms. Dosseti Vargas did not attempt to avail herself of Mexico's protection before fleeing to Canada; furthermore, the documentary evidence indicates that Mexico's police reforms were improving the situation: twenty-eight major actions took place involving the arrests of key traffickers and corrupt officials in 2005, the arrest of over 50,000 drug traffickers from 2000 to 2005; 4,512 investigations in 2005 into possible misconduct by government officials, all of which resulted in the issuance of warnings, reprimands, suspensions and dismissals. (Board Decision, Application Record, pp. 11-12; Respondent's Memorandum of Arguments, para. 10.)

[31] The Board also considered issues specifically related to violence against women and state protection that had become available to them:

- The establishment of the of the National Institute for Women (INMUJERES), which catalyzed the creation of the Institutional Panel to Coordinate Preventive Action and Attention to Domestic Violence Against Women, mandated to establish a national framework for combating the problem of violence in a coordinated manner.

- The adoption of new legislation in respect of violence against women in fifteen states, the implementation of programs in sixteen states by which to combat such violence, and the creation of a national women's health program under the direction of the Ministry of Health, which seeks to develop an integrated prevention, detection and assistance model in domestic violence cases.
- Local initiatives by many Mexican states, including those in six shelters in Aguascalientes, the Federal District, Morella, Mexicali, Puebla and Monterrey which provide women with psychological, legal and medical assistance.
- The 2006 Report of the United Nations Commission on Human Rights, entitled: "Integration of the Human Rights of Women and a Gender Perspective: Violence Against Women." The Board acknowledged the Special Rapporteur's concerns in respect of Mexico's numerous problems with respect to combating violence against women, but was also cognizant of the comment in the conclusions of the report that stated: "The Government of Mexico has taken significant steps to prevent, punish and eradicate violence against women with due diligence." (Emphasis added.)

(Board Decision, Application Record, pp. 12-14; Respondent's Memorandum of Arguments, para. 11.)

[32] The Board acknowledged that Mexico was struggling with its share of law and order problems, as were many other democracies; however, the Board was satisfied that Mexico was providing adequate state protection to its citizens. (Board Decision, Application Record, pp. 14-15.)

[33] Ms. Dosseti Vargas, living in a democracy, simply did not reasonably exhaust all courses of action open to her by not having attempted to avail herself of state protection. (Board Decision, Application Record, p. 9.)

[34] On the question of the degree of reasonableness of state protection, a standard accepted by the Federal Court of Appeal in the case of *Zalzali v. Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605, [1991] F.C.J. No. 341 (QL), which specifies that state protection can be "… adequate though not necessarily perfect". This was echoed in *Villafranca*, above. Based, thereupon, it can be concluded, that, as a progressive democracy, Mexico can be said to be providing adequate, though not necessarily perfect, state protection to its citizens. Ms. Dosseti Vargas did not reasonably exhaust any course of action available to her, prior to her having sought international protection; and, therefore, she did not flee her country due to the failure of the state to protect her. (Board Decision, Application Record, p. 15.)

[35] The Board found that Ms. Dosseti Vargas could relocate in other large cities, e.g., Guadalajara with its 4.10 million people, similar to that of West of Hidalgo, Mexico City, and Monterrey, with its 3.66 million people, located considerably North of Hidalgo and of Mexico City. If she where to return to Mexico City or another city with a large population and took reasonable precautions in regard to revealing her new address to relatives and friends, the Board concluded that no serious possibility existed that Ms. Dosseti Vargas would be found by Mr. Guzman. (Board Decision, Application Record, p. 16.)

[36] Ms. Dosseti Vargas made three arguments on the issue of IFA:

(a) The Board erred by requiring her to be "in hiding" in the IFAs it identified.

(b) It was patently unreasonable for the Board to find that Ms. Dosseti Vargas had an IFA, when her persecutor was able to locate her in Mexico City.

(c) The Board erred by failing to take her psychological report into account in considering the reasonableness of her IFAs.

(a) No finding by the Board that the Applicant would be required to "hide" to remain safe

[37] The Board concluded: "if [the Applicant] were to return to Mexico at one of these alternative cities with their large populations and took reasonable precautions as to revealing her new address to relatives and friends, I see no serious possibility that the claimant would be tracked down by Guzman". (Board Decision, Application Record, p. 15-16.)

[38] The concept of IFA does not require that a person go into hiding. It does not ask of Ms. Dosseti Vargas to refrain from revealing her address to relatives and friends. (*Escobar v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1436 (QL), para. 8.)

[39] The Board did not state that Ms. Dosseti Vargas would have to remain in hiding in Guadalajara or in Monterrey to be safe. Rather, in the context of its extensive consideration of whether Ms. Dosseti Vargas could be found by Mr. Guzman, in any of the specified large cities, the Board concluded that it saw no serious possibility that Ms. Dosseti Vargas would be found by using electronic means, on the basis of government identification numbers, e.g., the voter's registration

card and that nothing indicates that illegal requests are or can be used to find particularly-targeted individuals within the system. The Board also noted that it was "not persuaded that [the system] can be used by agents of persecution to track down claimants within Mexico and finds, on the balance of probabilities, that it cannot be used for that purpose". (Board Decision, Application Record, pp. 15-16 and 20.)

(b) No inconsistency on the part of the Board in its finding of an IFA

[40] The Board determined that, with Ms. Dosseti Vargas' "business background and experience, … the claimant should be able to settle into her new location and environment in either of those two cities without undue hardship, taking into consideration the tests concerning IFA based on the cases of *Rasaratnam* and *Thirunavukkarasu*". (Board Decision, Application Record, p. 21.)

[41] Once the issue of IFA was raised by the Board, the onus was on Ms. Dosseti Vargas to show that she did not have an IFA in Mexico. This prospective finding with respect to an IFA is not inconsistent with the Board's finding on credibility. (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, [1991] F.C.J. No. 1256 (QL); *Thirunavukkarasu*, above.)

[42] In *Rasaratnam*, above, Justice Patrick M. Mahoney of the Federal Court of Appeal, noted:

> [10] …in finding the IFA, the Board was required to be satisfied, on a balance of probabilities, that there was no serious possibility of the appellant being persecuted in Colombo and that, in all the circumstances including circumstances particular to him, conditions in Colombo were such that it would not be unreasonable for the appellant to seek refuge there.

[43] Furthermore, in *Thirunavukkarasu*, above, Justice Allen M. Linden of the Federal Court of Appeal, clearly stated:

> Since the existence or not of an IFA is part of the question of whether the claimant is a Convention refugee, the onus of proof rests on the claimant to show, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including the area which is alleged to afford an IFA…

[44] As this Court noted in *B.O.T. v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 284, [2005] F.C.J. No. 343 (QL), in respect of IFA findings for Mexico:

> [8] …the Court is cognizant of the Board's public documents which establish that Mexico is a large country with many diverse regions where a person can have an IFA. Moreover, Mexico is a democratic country which does provide adequate state protection to its citizens within the meaning of the Refugee Convention. For these reasons, the finding of the Board that the applicant had an IFA is not an unreasonable finding of fact. Accordingly, this application for judicial review must be dismissed. (Emphasis added.)

[45] The Board, therefore, did not err in concluding that Ms. Dosseti Vargas had an IFA in Mexico.

(c) The Board considered the psychological report

[46] The Federal Court of Appeal's decision in *Thirunavukkarasu*, above, makes it very clear, however, that the test for determining whether an IFA is reasonable, is an objective one, with the onus of proof, resting on the applicant as it does with all other aspects of a refugee claim.

[47] In *Ranganathan*, above, the Federal Court of Appeal further specified that, *Thirunavukkarasu*, above, establishes a "very high threshold for the unreasonableness test. It

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. In addition, it requires actual and concrete evidence of such conditions." (Reference is also made to *Thirunavukkarasu*, above, para. 12.)

[48] It is important not to expand the threshold of unreasonableness, recognizing, firstly, that a person is not a refugee due to being "better off in Canada physically, economically and emotionally than in a safe place in his own country". Secondly, such a definition creates confusing by "blurring the distinction between refugee claims and humanitarian and compassionate applications..." (*Ranganathan*, above, paras. 16-17.)

[49] The Board carefully considered the caselaw in assessing the reasonableness of Ms. Dosseti Vargas' IFA, and it is deemed to have considered the psychological report by having discussed the concepts in the jurisprudence, specified above.

[50] On the high threshold for unreasonableness established by the Federal Court of Appeal, Ms. Dosseti Vargas' psychological report cannot be said to "contradict" the Board's finding that she could relocate in either Guadalajara or Monterrey without undue hardship.

[51] As this Court has duly noted, in respect of psychological reports, in *Ortiz v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1365, [2006] F.C.J. No. 1716 (QL):

> [58] … The fact that the Principal Applicant received therapy in Mexico, and showed symptoms of post traumatic stress, and that such symptoms may have

> been triggered by her abusive former partner, is not at issue. The report was simply not relevant to the Board's concerns, namely the Principal Applicant's failure to rebut the presumption of state protection and the availability of an IFA in Mexico City.
>
> [59] Moreover, psychological reports do not *per se* prove the underlying refugee claim. The Principal Applicant cannot rely on the psychological reports alone to demonstrate that she would be persecuted if returned to Mexico City. It is incumbent on the Board to consider the evidence and make a determination.

VIX. Conclusion

[52] Based on the foregoing, the Board did not err in determining that Ms. Dosseti Vargas was not a Convention refugee and that she would not face a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture, if she returned to Mexico; and, she is, therefore, not a person in need of protection within the meaning of subsection 97(1) of the IRPA. Consequently, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1977-07
STYLE OF CAUSE:	VANESSA DOSSETI VARGAS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	February 11, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	March 20, 2008

APPEARANCES:

Mr. John Norguay	FOR THE APPLICANT
Mr. John Provart	FOR THE RESPONDENT

SOLICITORS OF RECORD:

VANDERVENNEN LEHRER Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT