Date: 20080627

Docket: IMM-5270-07

Citation: 2008 FC 816

Ottawa, Ontario, June 27, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ELIAS HUMBERTO ORTEGON PALACIOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] The documentary evidence relating to drug trafficking in Mexico paints a picture of a very serious situation: the various clans are waging a bloody battle, which is becoming increasingly violent, over the market for transporting drugs to the United States; cities along the American border, such as Nuevo Laredo, Ciudad Juarez, Tijuana and Reynosa, are controlled by drug traffickers, who have infiltrated the police to the point that state protection can no longer be reasonably assured in those places.[citation omitted] Fortunately, that is not the situation throughout Mexico. The documentary evidence does not mention Ecatepec as a city where protection may not be available to citizens.

A well-established principle is the presumption that a state is capable of protecting its citizens. The Federal Court has repeated many times that international protection

> should be offered only to a person who shows that he or she cannot receive the protection of his or her country. In order to rebut the presumption that a state can effectively protect its citizens, the claimant had to present to the panel clear and convincing evidence of the state's inability to protect him.

This is what Presiding Member Michelle Langelier stated in the decision of the Immigration and Refugee Board's Refugee Protection Division.

[2] In addition, as thoroughly analyzed by Mr. Justice Yves de Montigny in *Campos Navarro v. The Minister of Citizenship and Immigration*, 2008 FC 358, [2008] F.C.J. No. 463 (QL),

> [11] It is now trite law that the applicable standard of review for decisions regarding state protection is reasonableness *simpliciter* (see *Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 F.C. 193).
>
> [12] With regard to internal flight alternative, it has been common practice to apply the standard of patent unreasonableness given the highly fact-driven nature of such decisions: see, for example, *Ali v. Canada (Minister of Citizenship and Immigration)*, 2001 F.C.T. 193; *Ezemba v. Canada (Minister of Citizenship and Immigration)*, 2005 F.C. 1023. However, the Supreme Court of Canada recently determined in *Dunsmuir v. New Brunswick*, 2008 S.C.C. 9 [*Dunsmuir*] that the two reasonableness standards should be merged into a single standard, given the problems that arise in trying to apply the two standards and the incongruity of parties being required to accept an irrational decision simply because, on a deferential standard, the irrationality of the decision is not clear enough.
>
> [13] Does this mean that the application of a single standard of reasonableness invites greater judicial intervention? I do not think that this is the intended meaning and scope of the *Dunsmuir* judgment. On the contrary, Bastarache and LeBel JJ. emphasize the deference courts must show when lawmakers decide to entrust an administrative body with the responsibility of making certain decisions when enforcing its enabling legislation. Here is what they have to say about the matter.
>
> > [48] The move towards a single reasonableness standard does not pave the way for a more intrusive review by courts and does not represent a return to pre-Southam formalism. In this respect, the concept of deference, so central to judicial review in administrative law, has perhaps been insufficiently explored in the case law. What

> does deference mean in this context? Deference is both an attitude of the court and a requirement of the law of judicial review. It does not mean that courts are subservient to the determinations of decision makers, or that courts must show blind reverence to their interpretations, or that they may be content to pay lip service to the concept of reasonableness review while in fact imposing their own view. Rather, deference imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law. The notion of deference "is rooted in part in a respect for governmental decisions to create administrative bodies with delegated powers" (*Mossop*, at p. 596, per L'Heureux-Dubé J., dissenting).…
>
> [49] … In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.

[14] What can be learnt from these considerations? It would seem that courts of law will have to continue to show a high degree of deference when there is more than one right answer to issues decided by administrative tribunals. This would be the case, for example, where a question is essentially one of fact or involves the discretion of the administrative body or policy it is tasked with enforcing (*Dunsmuir*, *supra*, paragraph 53). In such cases, courts must ask whether the decision under review is reasonable in terms of its "justification, transparency and intelligibility within the decision-making process" and in terms of "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, *supra*, paragraph 47).

[15] Given this standard of review, can one conclude that the Board erred in concluding that state protection was available to the applicants and that they had an internal flight alternative within Mexico? I do not think so.

II. Introduction

[3] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated November 7, 2007, in which the Board

determined that the applicant was not a “refugee” as defined in section 96 of the IRPA or a “person in need of protection” as defined in section 97 of the IRPA, and therefore rejected his refugee protection claim.

III. Facts

[4] The applicant, Elias Humberto Ortegon Palacios, is a citizen of Mexico. While he was in high school, he was approached by a group of youths connected with drug trafficking.

[5] The applicant based his claim on the grounds that he belongs to a particular social group, namely, “[TRANSLATION] youths persecuted by drug traffickers for refusing to deal drugs” (the Board’s decision at page 2).

IV. Issues

[6] Does the Board’s decision contain irregularities that would warrant this Court’s intervention, considering

(a) state protection and

(b) the existence of an internal flight alternative?

More specifically, is the Board’s finding concerning an internal flight alternative unreasonable? Is there supporting evidence for the finding concerning state protection?

V. Analysis

Does the Board’s decision contain irregularities that would warrant this Court’s intervention?

[7] Some important exchanges took place between the applicant and the Board concerning state protection and an internal flight alternative, including concrete evidence that it would not be unreasonable for the applicant to flee to another part of Mexico because his situation would not prevent him from moving.

Internal flight alternative

[8] The Board explained the following:

> The evidence does not support a conclusion that the claimant could be in danger in his country, much less the conclusion that the claimant credibly established how his attackers could find him anywhere in a country as large as Mexico.
>
> Consequently, the claimant did not establish that he does not have an internal flight alternative and that the risk to which he would allegedly be subjected exists throughout Mexico.
>
> (The Board's decision at page 4.)

[9] It is settled law that in matters concerning internal flight alternatives the burden of proof is on the applicant:

> [18] Ms. Del Real did not meet her burden of establishing on a balance of probabilities that there was a serious possibility of persecution everywhere in Mexico and that it would be unreasonable for her to seek refuge in another part of her country. (*Thirunavukkarasu v. Canada (Minister of Citizenship and Immigration)*, [1994] 1 F.C. 589 (C.A.); [1994] F.C.J. No. 1172 (QL).)

(*Del Real v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 140, [2008] F.C.J. No. 170 (QL).)

[10] Therefore, the refugee claimant must demonstrate that it would be unreasonable for him or her to seek refuge in a different part of the country:

> [8] … For an IFA to be unreasonable, conditions must exist that would jeopardize the life and safety of a claimant if travelling or temporarily relocating to that area. The absence of relatives in the IFA is not relevant unless it affects the claimant's safety. (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.)).

(*Parras Camargo v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 472, [2006] F.C.J. No. 601 (QL).)

[11] The Court realizes the following:

> [28] It should be noted that the existence of an internal flight alternative is in itself sufficient to dispose of the refugee claim. In *Shimokawa v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 445, Madam Justice Tremblay-Lamer explained that "the existence of a valid IFA is determinative of a refugee claim and, consequently, the other issues raised by the applicant upon judicial review need not be considered" (see also *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 1256 (QL)).

(*Carrasco Baldomino v. Canada (Minister of Citizenship and Immigration*), 2007 FC 1270, [2007] F.C.J. No. 1638 (QL).)

[12] The presiding member's finding concerning the existence of an internal flight alternative in Mexico is reasonable. Consequently, this Court's intervention is not warranted.

State protection

[13] The applicable standard of review for findings respecting state protection is reasonableness. Therefore, only the existence of findings made without regard for the evidence would warrant the Court's intervention. Justice Simon Noël recently recalled the following:

> [8] First of all, the appropriate standard of review in cases involving the question of state protection is reasonableness *simpliciter*: see *Amiragova v. Canada*

> *(Minister of Citizenship and Immigration)*, 2006 FC 882, [2006] F.C.J. no. 1116. To succeed, the applicant must prove that the RPD's decision was unreasonable—that no evidence exists to support its finding. This is a heavy burden for the applicant to meet.

(*Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 66, [2008] F.C.J. No. 76 (QL); also, *Dunsmuir v. New Brunswick*, 2008 SCC 9, 372 N.R. 1 at paras. 43–64.)

[14] The Court concurs with the Board's finding that the applicant had not demonstrated, using clear and convincing evidence, that Mexico could not provide him with the necessary protection:

> Consequently, the panel concludes that the claimant did not show that he was justified in not claiming the protection of his state following the attack in March 2005. With respect to the July 2006 complaint, because no assault took place, it was reasonable for the authorities not to investigate in the circumstances. The claimant did not present any clear and convincing evidence that the state of Mexico could not protect him.
>
> (The Board's decision at page 3.)

[15] In reading the decision, it is clear that the Board had consulted the documents describing the situation in Mexico, including the one that indicates that obtaining protection in certain places can sometimes be difficult. The Board referred to the objective documentary evidence in several places in its decision.

[16] The Board reasonably interpreted and analyzed all of the evidence and the applicant's testimony.

[17] Consequently, the Court's intervention is not warranted.

VI. Conclusion

[18] As a signatory to the Convention on refugees and persons in need of protection who could be in danger as defined in section 97 of the IRPA, Canada grants protection to claimants who cannot obtain the protection of their own country. However, the IRPA imposes an obligation on the claimant that he or she must have exhausted every resource of his or her own country's protection and that, despite every effort, his or her life may be in danger. Acknowledging that the applicant did not discharge his burden of proof, this Court must dismiss his application for judicial review.

JUDGMENT

THE 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

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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