Date: 20080630

Docket: IMM-5068-07

Citation: 2008 FC 821

Ottawa, Ontario, June 30, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

ROCIO ECHAVARRIA CONTRERAS
JESUS SALVADOR ECHAVARRIA DIAZ
JESUS ECHAVARRIA CONTRERAS

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The principal Applicant, Rocio Echavarria Contreras, is an adult female citizen of Mexico. The other two Applicants are her father, Jesus Salvador and her brother, Jesus Echavarria also citizen of Mexico. All three claimed refugee protection under the provisions of sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). By decision of the Refugee Protection Division dated November 16, 2007 that claim was rejected, hence this judicial review.

[2] For the reasons that follow, I find that the application is dismissed.

PRELIMINARY ISSUES

a) Evidence

[3] The principal Applicant filed an Affidavit in this application. That affidavit attaches as exhibits certain articles that she downloaded from the internet all dated in the period of January to April 2008, that is, after the date of the decision under review. Those articles are said to support the Applicant's allegations that the police are corrupt, therefore untrustworthy, and that it was reasonable for her not to attend to the police.

[4] Such an affidavit is inadmissible on this judicial review. The review undertaken here is based on the record before the person making the decision. Further affidavits are admissible only in respect of matters going to whether procedural fairness was afforded or bias. The affidavit here does not address these issues. This is not an appeal but a review. The affidavit is inadmissible (*Hussain v. Canada (MCI)*, 2005 FC 1194 at paragraph 10).

[5] The Applicant filed a further affidavit from a translator who testifies that she listened to an audio track of the hearing and says that the interpreter at the hearing did not translate some of the evidence given in Spanish by the principal Applicant. Apparently no objection was made at the time during the hearing, even though the Applicants' counsel is fluent in Spanish. This affidavit was not referred to in the hearing before me and I give it little weight.

b) Bias

[6] The Applicants' allege that the Member was biased. At the hearing Applicants' counsel made it clear that this allegation went only to the fact that there was no Refugee Protection Officer present at the hearing and the Member did the questioning himself. There is no evidence on the record to show that any objection was raised before or during the hearing in this regard. The absence of an Officer is not itself sufficient to give rise to a reasonable apprehension of bias (*Benitez v. Canada (MCI)* 2006 FC 461, aff'd 2007 FCA 199).

STANDARD OF REVIEW

[7] Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, there are only two standards of review applicable in matters such as this, reasonableness and correctness. The standard of correctness is applied to question of law and jurisdiction and reasonableness to questions of fact and mixed fact and law where the two cannot be separated. Credibility findings are to be reviewed on the basis of reasonableness *Khokhar v. Canada (MCI)* 2008 FC 499 at paras. 17-20. A question as to adequacy of state protection, post *Dunsmuir* is also dealt with on the basis of reasonableness, *Wong v. Canada (MCI)*, 2008 FC 534 at para. 5.

CREDIBILITY

[8] It is clear that the Member concluded that the principal Applicant lacked credibility. In the hearing before me the Applicants' Counsel went to considerable pains to review the evidence and to point out a number of times when the Board Member misconstrued or misunderstood the evidence.

[9] Put simply, the principal Applicant is a university graduate employed by the international accounting firm, PriceWaterhouseCoopers. She resides in Chihuahua Mexico and was sent by her employer to Juarez City, some four hundred kilometres away, to do some audit work at a factory which was a client of the firm. Some several weeks after she began, the Applicant was leaving work late when she witnessed two men forcing a screaming woman into a car. One of these men she recognized as a security guard who regularly inspected the pass cards of those, such as the Applicant, entering the factory premises. The Applicant fled by getting on a bus that was passing by. The bus stopped at a vacant lot near the Applicant's hotel where she was accosted, presumably by somebody associated with the woman's abduction. She was threatened with a knife and presumably about to be killed when her assailant was called away by some colleague. The Applicant was roughed up and warned not to go to the police. Her purse was stolen, it included several identity documents. The Applicant made her way back to her hotel where she was told by a friend and hotel staff to report the incident to the police. She did not. Later the friend agreed that, given the circumstances, it would be unwise to go to the police. The Applicant subsequently sought medical attention, complaining only of an assault. She quickly left Mexico for the United States and within a few days, came to Canada.

[10] I accept that the Member, in his interpretation of the evidence and in questioning the witness appeared to misunderstand some of the Applicant's evidence. He confused her fear expressed as "to people that are involved in the mafia, kidnapping, torture, disappearance of young women's death in Juarez Chihuahua city of which I received threats", a statement made by the Applicant who has limited ability in English, when entering Canada, to mean that the Applicant witnessed the death of

two women. The questioning on this and related issues as recorded in the transcript demonstrate that the Member did not fully understand the principal Applicant's experience.

[11] However, even given these misunderstandings, there remains the issue of the obligation to seek state protection.

STATE PROTECTION

[12] There is no evidence that the Applicants at any time sought the protection of the state whether from the police or others in Mexico. The principal Applicant did not state the true nature of her injuries when receiving attention from the hospital. The principal Applicant was advised by the hotel management to report the matter. Her friend stated likewise but later agreed that it would be more prudent not to.

[13] The principal Applicant gave no evidence that she reported the matter to her employer, an international accounting firm, to seek their advice and assistance. She simply fled Mexico and came to Canada.

[14] Applicants' counsel argues that there is widespread corruption in the Mexican police and points to several articles in that regard.

[15] The Board Member found that while police abuse exists in certain circumstances, Mexico has in place facilities for dealing with such matters.

[16] The onus rests on the Applicants to provide clear and convincing proof that state protection is not available or that it would be futile to seek such protection. It is argued that the Applicants subjective fear is sufficient. It is not. The Supreme Court of Canada in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 has provided clear guidance, there is a rebuttable presumption of state protection and while, in some circumstances, subjective fear that such protection cannot be afforded may be sufficient, the Applicant must provide clear and convincing proof that such protection is lacking.

[17] Here, the Applicant lived several hundreds kilometres away from where the events at issue occurred. She never approached the police whether at home or where the events occurred. There is no evidence that she spoke to her employer for the purpose of seeking assistance. She reported the matter to no one, she simply came to Canada. The Board Member found that there was no clear and convincing evidence as to lack of state protection. I find that such a determination was reasonable.

CONCLUSION

[18] The application is dismissed. The parties agree that the matter is fact specific and that no question is required to be certified. No order as to costs.

JUDGMENT

For the Reasons provided:

THIS COURT ADJUDGES that:

1. The application is dismissed;

2. No question is certified;

3. No Order as to costs.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-5068-07**
STYLE OF CAUSE:	**ROCIO ECHAVARRIA CONTRERAS et al. v. MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	OTTAWA
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