

Date: 20081020

Docket: IMM-4989-07

Citation: 2008 FC 1180

Ottawa, Ontario, October 20, 2008

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

ALBA IXTLAXOCHITL PELAYO AGUILAR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Alba Ixtlaxochitl Pelayo Aguilar, the applicant, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, applies for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the “Board”), dated October

31, 2007, where the Board determined that Ms. Aguilar had an internal flight alternative (“IFA”) in Mexico City and rejected her claim.

BACKGROUND

[2] Ms. Aguilar is a citizen of Mexico and a resident of Autlan, in the state of Jalisco. She has claimed an alleged fear of persecution at the hands of her ex-common law partner.

[3] She met Jorge Quintero Ponceano (“Jorge”), an older man, in 2000 when she was 19 years of age. They began a relationship in 2002. Jorge was well off and had political influence. After they began to live together in 2005, he became verbally abusive, very possessive and controlling. His abusive behaviour became physically and sexually violent. She reported his domestic violence to the police but the police were not interested in acting on her complaint.

[4] Ms. Aguilar left Jorge and fled to nearby Nayarit, but he found her within three days and brought her back. He also located her when she fled to the neighbouring country of Guatemala. Jorge would use his gun to pistol whip her. On April 10, 2006, Jorge shot at her when she locked herself in the bathroom to escape him. She fled to her parents and her father accompanied her to file a denunciation with the police. Although the police accepted her denunciation, they took no action on her complaint.

[5] The copy of Ms. Aguilar's April 11, 2006 denunciation, a doctor's medical certificate confirming her three attendances at the medical centre and a letter of confirmation by a neighbour corroborate her testimony. The Board decided that she was credible witness.

[6] I have decided that the application for judicial review will succeed. My reasons follow:

DECISION UNDER REVIEW

[7] On October 31, 2007, the Board determined that Ms. Aguilar had a well-founded fear of persecution at the hands of Jorge, her common-law partner. However, the Board concluded that the determinative issues were the availability of state protection and a suitable IFA in the Federal District of Mexico City.

[8] The Board considered the fact that Ms. Aguilar and Jorge were no longer a couple to be significant in determining whether she had an IFA. The Board found that she could live safely in Mexico City where there is protection available for victims of domestic violence.

ISSUES

[9] The issue to be determined is if the Board erred in its finding of an IFA in Mexico City?

STANDARD OF REVIEW

[10] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 62 the Supreme Court of Canada stated that the first step in conducting an analysis for standard of review is to "ascertain whether the

jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question.”

[11] The determination of the viability of an IFA is a factual inquiry, and as such, a deferential standard of review is to be applied. Prior to *Dunsmuir* the standard of review for issues related to an IFA were reviewed on the patent unreasonableness standard (*Sivasambo v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 741; *Ramachanthran v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 673; *Ali v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 193.

[12] Most recently, in *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449, at paras, 21-22, Justice Russel held that the standard of review for issues related to an IFA is reasonableness. I would agree. Given the fact-driven nature of an IFA analysis, this Court should show deference to the decision maker unless the Board’s decision was made in a perverse or capricious manner (s. 18.1(4)(d) of the *Federal Court Act*, R.S.C. 1985, c.F-7), or was not reasonable having regard to whether the decision fell within a range of possible, acceptable outcomes which were defensible in respect of the facts and the law (*Dunsmuir* at para. 47)

ANALYSIS

Did the Board err in its finding of an IFA in Mexico City?

[13] The test for finding an IFA was set out in *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 67. The test is two-pronged: first, the Board must be satisfied on a

balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country in which it finds an IFA exists. Second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[14] Ms. Aguilar is not from Mexico City. She is from the city of Autlan, in the state of Jalisco, Mexico. The Board focussed its evaluation of the adequacy of state protection at an internal flight alternative and found that Ms. Aguilar had a viable IFA in Mexico City. The Board based its conclusion that she would have a viable IFA in Mexico City on its assessment that Jorge was no longer interested in Ms. Aguilar.

[15] The Board stated:

“When she went to Nayarit and Guatemala, they were still a couple. He now has given her sister permission to pick up the claimant’s things which leaves the panel with the impression that he accepts that she is gone. The fact that Jorge comes to her parents’ house when he is drunk, from time to time, does not indicate that he seriously expects to see her again or has an interest in her.” (underlining added)

[16] The Board treats the situation more as simply the end of a relationship rather than a flight from domestic violence. The Board explains Ms. Aguilar and Jorge were still a couple when she tried to leave him the prior two occasions but no longer are because he allowed her sister to pick up her belongings. It draws the contradictory conclusion, without evidence or analysis that Jorge is no longer interested in her despite his drunken appearances and threats he has made at Ms. Aguilar’s parents’ home after allowing Ms. Aguilar’s sister to pick up her possessions. The Board does not make any reference to her mother’s letter reporting Jorge’s efforts to locate her whereabouts. It

does not assess Jorge's threats to Ms. Aguilar of what he would do to her if she left him. Jorge's conduct, when examined in the context of the dynamics of an abusive domestic relationship, indicates a continuing obsession and interest in Ms. Aguilar.

[17] Ms. Aguilar asserts that, because Jorge is a wealthy man and has political influence, he would be able to locate. He was able to easily locate her twice before when she fled: he found her when she fled to Nayarit and again when she fled to Guatemala. In Issue Paper 2.4: *Mexico: Situation of Witnesses to Crime and Corruption, Women Victims of Violence and Victims of Discrimination based on Sexual Orientation* of February 2007, the report notes at 4.4 that women fleeing men in positions of power would face a higher risk of being found. The Board's analysis of the state protection available in the Federal District of Mexico City did not address the possibility that Jorge would try to track her down and bring her back to Autlan.

[18] The Board's factual conclusion that Jorge is no longer interested in Ms. Aguilar was made without regard to evidence before it. Its IFA analysis, resting on factual error, is flawed and therefore I find the Board's analysis of an IFA in Mexico City is unreasonable.

[19] The application for judicial review is granted.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is granted and the matter referred back to a differently constituted board for reconsideration on the issue of a suitable IFA.
2. No general question of importance is certified.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4989-07

STYLE OF CAUSE: Alba Ixtlaxochtil Pelayo Aguilar v. The Minister of
Citizenship and Immigration

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 18, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANDAMIN J.

DATED: October 20, 2008

APPEARANCES:

Hart A. Kaminker

FOR THE APPLICANT

Alexis Singer

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hart A. Kaminker
Toronto, Ontario

FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT