

Date: 20081222

Docket: IMM 1806-08

Citation: 2008 FC 1385

Ottawa, Ontario, the 22nd day of December 2008

Present: The Honourable Mr. Justice Pinard

BETWEEN:

**LUZ MARIA SONIA CARRERA MENDEZ
DAFNE PAOLA FUJARTE CARRERA
AMANDA CLIO FUJARTE CARRERA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, of a March 17, 2008 determination by the Refugee Protection Division (RPD) of the Immigration and Refugee Board that the principal applicant is neither a Convention refugee nor a person in need of protection.

[2] Luz Maria Sonia Carrera Mendez, the principal applicant, and her two minor daughters, Dafne Paola Fujarte Carrera and Amanda Clio Fujarte Carrera, are citizens of Mexico.

[3] The applicant has alleged that she and her daughters have been persecuted by and have received death threats from her spouse, Antonin Fujarte Victorio.

[4] The panel identified two determinative issues in the case: (1) the credibility of the applicant's allegations; and (2) protection by the Mexican state.

[5] On the issue of credibility, in its reasons and at the hearing the panel emphasized a number of contradictions that were not satisfactorily explained. Administrative tribunals have been given broad discretion in matters of fact, including matters of credibility (see *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 51; *Aguebor v. Minister of Employment and Immigration* (1993), 160 N.R. 315). It is also well settled that the Court should not substitute its reasoning for that of the panel, as long as the panel's determination falls within "a range of possible, acceptable outcomes" (*Dunsmuir, supra*, at paragraph 47).

[6] In the present case, after reviewing the evidence, the Court is not satisfied that the panel based its determination on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the evidence before it (see paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7).

[7] With regard to the issue of the state's ability to protect her, the applicant has alleged that the panel failed to take into account the documentary evidence of domestic violence in Mexico and the endemic corruption in that country's police and judicial system.

[8] The standard of judicial review applicable to an RPD determination with regard to state protection is that of reasonableness (see, for example, *Gorria v. Minister of Citizenship and Immigration*, 2007 FC 284, 310 F.T.R. 150, at paragraph 14; *Chaves v. Minister of Citizenship and Immigration*, 2005 FC 193, at paragraphs 9 to 12).

[9] In order to establish a state's inability to protect its citizens and the reasonableness of a claimant's refusal actually to seek that protection, a claimant must "provide clear and convincing confirmation of a state's inability to protect" (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at page 724). In the absence of such evidence the claim must fail, given the presumption that states are capable of protecting their citizens. In the present case, after reviewing the evidence, the Court cannot find that the panel's conclusion that the applicant failed to discharge her burden of proof was unreasonable.

[10] The panel wrote: "The documentary evidence shows that, in Mexico, violence against women is a serious problem, as cases of violence against women are widespread and police officers are reluctant to intervene in cases of domestic violence."

[11] The panel noted, however, that the documentary evidence established efforts by the state to improve the situation, including the existence of court-ordered constraints, the enactment of a federal law concerning violence against women providing for three types of protection orders, and the existence of a number of government and non-government organizations that provide assistance to victims of violence. The panel concluded as follows:

The panel . . . is of the opinion, . . . in light of the documentary evidence, that despite her personal frailty, with the support of her family and of women's advocacy organizations, the principal claimant could benefit from the measures available in Mexico if, in the future, she were to be subjected to any form of violence by her husband. . .

[12] It is clear that the panel took into account all the evidence before it. The Court therefore sees nothing in the determination that would warrant its intervention.

[13] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the March 17, 2008 determination by the Refugee Protection Division of the Immigration and Refugee Board is dismissed.

“Yvon Pinard”

Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1806-08

STYLE OF CAUSE: LUZ MARIA SONIA CARRERA MENDEZ, DAFNE
PAOLA FUJARTE CARRERA, AMANDA CLIO
FUJARTE CARRERA v. MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 19, 2008

**REASONS FOR JUDGMENT
AND JUDGEMENT BY:** Pinard J.

DATED: December 22, 2008

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