Date: 20081117

Docket: IMM-2113-08

Citation: 2008 FC 1282

Ottawa, Ontario, November 17, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

JUAN DAVID RUIZ CASTRO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated April 16, 2008, in which the Board determined that Mr. Juan David Ruiz Castro (the Applicant), is not a Convention refugee nor a person in need of protection.

I. Issues

[2] The Applicant raises the following issues:

1. Did the Board err in its interpretation of section 96 of the Act in finding the Applicant's case is not linked to race, nationality, religion, real or imputed political opinion or any other Convention ground and therefore he is not a Convention refugee?
2. Did the Board err in its determination that the Applicant has an internal flight alternative?

[3] For the reasons that follow, the application for judicial review shall be dismissed.

II. Factual Background

[4] The Applicant, Juan David Ruiz Castro, is a 29 year old male from Mexico who claimed refugee status in Canada after fleeing from a criminal gang involved in money laundering.

[5] The Applicant is a self-employed contractor who was hired by a company called Mr. Money, which owns a chain of pawn shops across Mexico, to carry out an audit of their business in order to analyse suspected fraudulent loans. While auditing the accounting practices of Mr. Money, the Applicant accidentally came across documents which indicated that employees of the company were engaged in illegal money laundering where consumer products brought to the pawn shop in exchange for currency were being overvalued and sold at auctions and the excess profits were diverted to members of a criminal gang.

[6] In August 2005, the Applicant alerted Mr. Hugh Salazar, who was the head of the Senior Management staff of Mr. Money. Mr. Salazar promised to look into the situation but never did.

[7] The Applicant then started to receive anonymous phone calls at home and at work where he was told to hand over all the information he had regarding the scam he discovered or he and his family would be killed. The Applicant received over 50 calls of this nature between August and September of 2005. The Applicant subsequently reported the matter to the police, who promised to further investigate the situation.

[8] Mr. Salazar was called upon to testify to the police but he never appeared. The Applicant complained again to the police because the threatening telephone calls were continuing, but no concrete action was taken. One day, a senior police officer advised the Applicant to discontinue his complaints because the people he was dealing with were too powerful and dangerous for him to take on.

[9] The Applicant decided to relocate to San Andres, Tuxtla, where he and his family could be safe. However, he was traced to Tuxtla and continued to receive death threats while there. One day, he was held to a ransom at gunpoint and the man demanded the records of his investigation. The Applicant had his secretary bring the information on compact discs which were given to the gunman.

[10] The Applicant came to Canada in November 2006 but was told he could not stay because he would be detained for a long time before his case would be heard if he made a refugee claim, so he travelled back to Mexico without applying for refugee status.

[11] When he returned to Mexico, he went to the Attorney General's office and handed over all documents and information in his possession. Subsequently, he was again confronted by a gunman, but this time, the criminal gang demanded that he use his business to take part in the money laundering operations since he was aware of their secrets.

[12] Following this incident, the Applicant felt he had no choice but to leave Mexico. He arranged to make it look like he was separating from his wife. His daughters went to live with his mother and his wife returned to live with her parents. The Applicant travelled to Canada on January 26, 2007 and made a refugee claim on the same day.

III. Decision Under Review

[13] Regarding the first issue, the Board found that the Applicant's fear is not linked to race, nationality, religion, real or imputed political opinion or any other Convention ground.

[14] The Applicant alleged that he fears persecution by a group of individuals who are in an organized criminal gang because he discovered their money laundering operation. The Board concluded that the Applicant is a target as a victim of crime and this does not provide him with a link to a Convention ground.

[15] As for the second issue, the Board found that, on the balance of probabilities, the Applicant could safely live in Mexico City or Guadalajara without being persecuted. The Applicant bears the

burden of proof to show that persecution will occur in the entire country and specifically in the internal flight alternative (IFA) named.

[16] The Board found that there is an IFA for the Applicant in Guadalajara, a city with a population of 1.8 million citizens which is an international destination for tourists, hence creating an atmosphere where criminality is combated to ensure tourism flourishes. As well, it found that it is unlikely that the Applicant will be pursued in Guadalajara and even if he was discovered, police protection would be reasonably forthcoming; also, there was no evidence that in Guadalajara a Mr. Money store was present.

[17] The Board found that, on the balance of probabilities, the Applicant would not be subjected to a risk to life or a risk of cruel and unusual treatment or punishment if he were to return to Mexico and the claim for refugee protection was rejected.

IV. Analysis

A. *Standard of Review*

[18] Regarding the first question, the Applicant submits that the standard of review in determining whether the Board misinterpreted section 96 of the Act in coming to his conclusion is that of correctness (*Mugesera v. Canada (Minister of Citizenship and Immigration),* 2005 SCC 40, [2005] 2 S.C.R. 100 at paragraph 37). The appropriate standard of review when a decision-maker is interpreting a statute is correctness (*Conkova v. Canada (Minister of Citizenship and Immigration),* 95 A.C.W.S. (3d) 719 (F.C.T.D.), [2000] F.C.J. No. 300 (QL)).

[19] Before the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the appropriate standard of review in an application for judicial review which raises the issue of an IFA, based on the jurisprudence and the pragmatic and functional analysis, was patent unreasonableness (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 44, 136 A.C.W.S. (3d) 912 and *Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, 238 F.T.R. 289).

[20] Following *Dunsmuir*, the determination of an IFA should continue to be subject to deference by the Court and this decision is reviewable on the newly articulated standard of reasonableness. As a result, this Court will only intervene to review a Board's decision if it does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47). For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process.

1. Did the Board err in its interpretation of section 96 of the Act in finding the Applicant's case is not linked to race, nationality, religion, real or imputed political opinion or any other Convention ground and therefore he is not a Convention refugee?

[21] In its written submissions, the Applicant alleges that in order to support a finding that he is a Convention refugee, as per section 96 of the Act, the standard of proof required is less than the balance of probabilities but more than a mere possibility of persecution upon return to his home country (*Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593 at paragraph 120, *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680

(F.C.A.). The evidence must not necessarily show that he has suffered or would suffer persecution; the evidence must show that the Applicant has good grounds for fearing persecution (*Seifu v. Canada (Immigration Appeal Board)*, [1983] F.C.J. No. 34 (F.C.A.) (QL)). The Applicant believes he has more than a reasonable apprehension of fear of imminent risk if he returns to Mexico.

[22] According to the Applicant, the interpretation given to section 96 of the Act to exclude him on the basis of his fear not being linked to a Convention ground effectively shuts out applicants who fear persecution or are at risk of torture or cruel and unusual treatment because there is a lack of nexus between their claims and one of the Convention grounds. The decision of the Board is therefore based on an erroneous and misleading interpretation of facts which was made in a perverse and capricious manner without regard to the evidence before it.

[23] The Respondent submits that the determination of the existence of a nexus between an alleged harm and the Convention refugee definition is a question of fact which is within the expertise of the Board. Nothing shows that the Board's determination was made in a perverse or capricious manner or without regard to the material before it, therefore requiring the intervention of this Court (*Mia v. Canada (Minister of Citizenship and Immigration)*, 94 A.C.W.S. (3d) 970, [2000] F.C.J. No. 120 (F.C.T.D.) (QL); *Lara v. Canada (Minister of Citizenship and Immigration)*, 86 A.C.W.S. (3d) 950, [1999] F.C.J. No. 264 (F.C.T.D.) (QL) at paragraph 16).

[24] The Respondent states that the Court has held that victims of crime do not necessarily have a nexus to one of the Convention grounds (*Rawji v. Canada (Minister of Employment and*

Immigration), 87 F.T.R. 166, 51 A.C.W.S. (3d) 1143 (F.C.T.D.); *Mousavi-Samani v. Canada (Minister of Citizenship and Immigration)*, 74 A.C.W.S. (3d) 655, [1997] F.C.J. No. 1267 (F.C.T.D.) (QL)) and the principle that fearing criminal reprisal or personal vengeance does not constitute persecution on the grounds of race, religion, nationality, membership in a particular social group or political opinion is well-established (*Suarez v. Canada (Minister of Citizenship and Immigration)*, 64 A.C.W.S. (3d) 1196, [1996] F.C.J. No. 1036 (F.C.T.D.) (QL); *Marincas v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1254 (F.C.T.D.) (QL)).

[25] It is trite law that for an applicant to succeed on a refugee claim under section 96 of *IRPA*, the claimant cannot only show that they have suffered or will suffer persecution in their country of origin. This persecution must also be linked to one of the Convention grounds set out in the definition of refugee pursuant to subsection 2(1) of the Act. As explained in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at paragraph 61:

> … the drafters of the Convention limited the included bases for a well-founded fear of persecution to "race, religion, nationality, membership in a particular social group or political opinion". Although the delegates inserted the social group category in order to cover any possible lacuna left by the other four groups, this does not necessarily lead to the conclusion that any association bound by some common thread is included. If this were the case, the enumeration of these bases would have been superfluous; the definition of "refugee" could have been limited to individuals who have a well-founded fear or persecution without more. The drafters' decision to list these bases was intended to function as another built-in limitation to the obligations of signatory states. …

[26] The Applicant claims he has a well-founded fear of a group of individuals involved in money laundering on the basis of being a victim of crime. This does not fall under one of the

enumerated categories of the Convention refugee definition and as such, the Board's decision in this regard is reasonable.

2. Did the Board err in its determination that the Applicant has an internal flight alternative?

[27] The Applicant sustains that the Board's conclusion that state protection is available to him if he travels to Guadalajara is patently unreasonable. The fact that the chosen IFA is a tourist attraction, which implies a greater focus by the police on this city, is a faulty conclusion that cannot be supported, especially given the present situation in Mexico where tourists have been victims of crime and some have disappeared.

[28] According to the Respondent, the Applicant is asking the Court to take judicial notice that there has been an increase in crimes in Mexico, therefore rendering it a dangerous place for anyone. Judicial notice may be taken of any fact of matter which is so generally known and accepted that it cannot reasonably be questioned, or any fact of matter which can readily be determined or verified by resort to sources whose accuracy cannot be reasonably questioned (*R. v. Potts* (1982), 36 O.R. (2d) 195, 66 C.C.C. (2d) 219 (Ont. C.A.).

[29] The Respondent asserts that it is inappropriate, within the context of this judicial review application, for the Applicant to be supplementing the record or giving evidence as to prevailing country conditions in Mexico (*Lemiecha (Litigation guardian of) v. Canada (Minister of Employment and Immigration)*, 72 F.T.R. 49 (F.C.T.D.). The Applicant has failed to show that the

information he is alluding to regarding general country conditions in Mexico meets the criteria required for the Court to take judicial notice of it in the case at bar.

[30] The judicial review of a decision of an administrative tribunal should proceed on the basis of the evidence that was before the decision-maker. The information provided in the Applicant's memorandum concerning an increase of violence in Mexico in the past few years was not evidence before the decision-maker.

[31] The Applicant believes the Board placed an unreasonable burden on him by expecting him to seek state protection under a corrupt police force that has failed him twice. The Applicant cites *Franklyn v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1249, 142 A.C.W.S. (3d) 308, in stating that it is unreasonable for the Board to expect him to seek further state protection after having been rebuffed or ignored.

[32] The Respondent contends that in order to rebut the presumption of state protection in a democratic country such as Mexico, the Applicant cannot only show that he approached the local police or one particular police officer for protection and that no meaningful or effective assistance was provided. In democratic states, local failures of policing are insufficient to establish a failure of state protection. The Applicant must show that he has exhausted all reasonable avenues available to him and that none are forthcoming (*N.K. v. Canada (Minister of Citizenship and Immigration)*, 206 N.R. 272, 143 D.L.R. (4th) 532) (F.C.A.). The Respondent cites also *Hinzman v. Canada (Minister*

of Citizenship and Immigration; Hughey v. Canada (Minister of Citizenship and Immigration, 2007 FCA 171, [2007] F.C.J. No. 584, where at paragraph 44 the Federal Court of Appeal wrote:

> To rebut the presumption, the Court stated that "clear and convincing confirmation of a state's inability to protect must be provided": *Ward* at page 724.

[33] The Board correctly noted that the Applicant did not provide any persuasive evidence to confirm his allegation that the police are corrupt everywhere in Mexico. The Applicant has not shown that he has exhausted all reasonable options available to him.

[34] The Applicant also argues that the Board did not sufficiently address his particular fear concerning his link to the criminal gang in Mexico and the danger or consequences ensuing from this connection because they are a sophisticated gang who will not desist until they find the Applicant since he has information which is very valuable to them. The Applicant cites *Jawaid v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 220, 122 A.C.W.S. (3d) 753, and submits that this kind of error warrants the intervention of the Court.

[35] The Respondent alleges that since the Applicant knew that Mr. Money did not have any stores in Guadalajara city, it was reasonable for the Board to infer, based on the Applicant's testimony, that this meant that there were limitations on the scope and influence which the criminal gang exercised through the network of Mr. Money business operations across Mexico.

[36] Finally, the Applicant submits that the Board erred in failing to consider the particular circumstances of this case and in concluding that because his family is in Mexico and has not been threatened, it is reasonable to assume that he could safely stay in Mexico City or in Guadalajara.

[37] The Respondent maintains that in its assessment of the attainability and overall viability of an IFA in Guadalajara, the Board was entitled, after considering and weighing all the evidence, to give preference to reliable, objective evidence on country conditions in the city of Guadalajara over the speculative and unsupported testimony of the Applicant (*Zvonov v. Canada (Minister of Employment and Immigration)*, 83 F.T.R. 138, 49 A.C.W.S. (3d) 573 (F.C.T.D.); *Pacasum v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 822, [2008] F.C.J. No. 1024 (QL) at paragraph 29).

[38] The Respondent explains that the test to show that the IFA is unreasonable is a very high one which requires nothing less than the existence of conditions which would jeopardize the life and safety of the Applicant in relocating to a safe area (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (F.C.A.)). Actual and concrete evidence of adverse conditions is required of the Applicant who, in the case at bar, has not discharged the onus of proof and has failed to show that the Board ignored or misconstrued any evidence, misapplied the legal test in its IFA analysis or made any perverse or capricious findings.

[39] The Board noted that the Applicant could not provide any evidence as to the alleged group that had targeted him. Although he speculated that the group had influence everywhere in Mexico,

there is no persuasive evidence to confirm this contention. Also, the Applicant's family is still in Mexico and there is no evidence that they have been bothered by the group of money launderers since the Applicant left Mexico.

[40] I find that the Board did not err. It was open to the Board to make a finding of fact that the Applicant would not be at risk if he relocated with his family to Guadalajara. This determination is supported and justified by the reasons.

[41] No question for certification was proposed and none arises.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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