Date: 20090309

Docket: IMM-1015-09

Citation: 2009 FC 247

Ottawa, Ontario, this 9th day of March 2009

Present: The Honourable Orville Frenette

BETWEEN:

Jorge VALDEZ RUIZ
Nubia JIMENEZ ZAVALA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
and
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR ORDER AND ORDER

[1] This is a motion seeking a stay of execution of an order of removal of the applicants to Mexico, scheduled to be executed on March 11, 2009 at 12:15 p.m.

Background facts

[2] The applicants are Mexican nationals who came to Canada in 2007. Their refugee claim was dismissed on July 11, 2007. Their first Pre-removal Risk Assessment ("PRRA") decision was negative as decided on January 19, 2008. The applicants left Canada and returned to Mexico on March 12, 2008.

[3] The applicants came back to Canada in October 2008 asking for refugee protection at the airport. A second negative PRRA decision was rendered on February 3, 2009.

[4] The applicants have presented a request for leave and judicial review of the last PRRA decision. They now seek a stay of the removal order until the application for leave and for judicial review is disposed of.

[5] The applicants, who are husband and wife, claim a risk emanating from the male applicant's sister's marital problems with her husband. This risk is the same as the one alleged in the first PRRA application in 2007. The applicants allege risk because the male applicant's sister, a criminal court employee in Mexico, was threatened by criminals, including relatives, and the police and judicial system cannot protect them. They also allege they were threatened by criminals because they refused to rent their house to them in May 2008. They claim they fear the male applicant's brother-in-law who is a violent man.

The test for a stay of removal

[6] The Federal Court of Appeal in *Toth v. Minister of Employment and Immigration* (1988), 86 N.R. 302, established a test for a stay which had to meet a tri-partite conjunctive set of conditions, *i.e.* (1) there is a serious issue to be tried; (2) the applicant will suffer irreparable harm if the order is not granted; and (3) the balance of convenience favours granting the stay.

[7] The courts have generally decided that there is a low threshold for a finding of a "serious issue" to be tried in stay instances. It is stated that it is only necessary to establish that the issue is not frivolous and vexatious. Yet, the legislator uses the word "serious" which, in ordinary dictionary meaning signifies "thoughtful, earnest, sober, sedate, responsible, not reckless or given to trifling … important" (*The Canadian Oxford Dictionary* (Don Mills: Oxford University Press, 2001)).

[8] The applicants allege that the PRRA officer failed to address the grounds of the alleged risk, and failed to consider adequately the situation in Mexico in 2008. The respondents submit that a simple reading of the impugned decision shows the officer did identify the personal risks involved, *i.e.* (1) threats, including relatives, by dangerous criminals, and the allegation that the Mexican state was unable or unwilling to provide adequate protection. This same risk was also involved in the first PRRA decision in 2008. (2) Threats by criminals because of the applicants' refusal to rent a house. The officer considered this claim but decided there was insufficient evidence to support it. (3) He also took into account the fact that the male applicant's sister is employed in the Mexican judicial system and has received threats and the allegation the state cannot protect her.

[9] The officer examined these issues and found that the applicants had not sought protection from the police or the appropriate government authorities in Mexico. He also found the situation in Mexico has not been proved to have deteriorated between 2007 and 2008. Therefore the applicants were not at risk as they claimed.

[10] The applicants submitted general documentation about the human rights situation in Mexico, documentation which the officer states he consulted. He concluded the applicants had not discharged the required burden of showing the Mexican Government could not provide adequate protection, even if not necessarily perfect.

[11] The applicants claim that the PRRA officer's finding concerning state protection is overly simplistic and did not consider new, relevant material evidence before him.

[12] In summary, the application raises the following issues: (1) the matter of state protection in Mexico; (2) the corruption and infiltration of criminal influence in government institutions in Mexico; and (3) the failure of the PRRA officer to assess the personal risks the applicants face if returned to Mexico.

[13] The applicants argue that the officer did not adequately assess these issues in light of the evidence particularly that of the situation in 2008.

[14] The respondents contest these arguments by stating that the officer did consider all of these issues and found the evidence did not support the applicants' criticism.

[15] The respondents submit that the applicants did not satisfy the onus of producing evidence on a balance of probabilities that supports their claim.

Analysis

[16] An analysis of these issues clearly shows that the officer did consider and assess all of them, including personal and general risks feared by the applicants including the so-called new evidence. The officer did analyse in particular the male applicant's situation, and therefore believed the decision fell within the standard for decisions set by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190. Therefore the serious issue condition has not been met in this case.

[17] The applicants allege the personal risk they face in Mexico constitutes irreparable harm. There is no doubt that risks exist in Mexico for all the citizens but this is not sufficient; there must be personal irreparable harm, which must be proven and not be speculative. This requirement has not been satisfied.

[18] There is no doubt in my opinion, that state protection in Mexico is far from perfect but the applicants have not sought it. Many recent decisions of our Courts concerning Mexico have dismissed applications on this ground (see, for example, *Rios et al. v. Minister of Citizenship and Immigration*, 2008 FC 1383; *Gutierrez v. Minister of Citizenship and Immigration*, 2008 FC 971; *Malagon v. Minister of Citizenship and Immigration*, 2008 FC 1068; *Ayala v. Minister of Citizenship and Immigration*, 2008 FC 1258; *Araujo v. Minister of Citizenship and Immigration*, 2009 FC 39; *Roberto v. Minister of Citizenship and Immigration*, 2009 FC 180).

[19] The applicants claim their interest to have their case heard in Canada takes precedence over the Minister's interest in enforcing the removal order. Yet, subsection 48(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is clear: "If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable."

[20] Stays against removal orders are an exceptional recourse which must satisfy all of the above conditions. Furthermore, the latest pronouncement of the Supreme Court of Canada states that, when applying the standard of review of reasonableness, courts must give deference to factual based decisions of administrative tribunals (*Canada (Citizenship and Immigration) v. Sukhvir Singh Khosa*, 2009 SCC 12, paragraphs 59 to 64).

[21] Also in the present case, the applicants, who had two negative PRRA decisions, and returned to Canada notwithstanding the first decision, can pursue their judicial review outside of Canada.

[22] The question of *mootness* has no relevance in this case.

[23] Considering the evidence and the submissions, I must conclude that they have not satisfied the required conditions for a stay.

[24] Therefore, this Court must dismiss this application.

ORDER

THIS COURT ORDERS that the motion seeking a stay of execution of an order of removal of the applicants to Mexico, scheduled to be executed on March 11, 2009, is dismissed.

"Orville Frenette"
Deputy Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-1015-09
STYLE OF CAUSE:	Jorge VALDEZ RUIZ, Nubia JIMENEZ ZAVALA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	March 6, 2009
REASONS FOR ORDER AND ORDER:	The Honourable Orville Frenette, Deputy Judge
DATED:	March 9, 2009

APPEARANCES:

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