Federal Court  Cour fédérale

Date: 20090508

Docket: IMM-4045-08

Citation: 2009 FC 478

Ottawa, Ontario, May 8, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

EVELIA MUNOZ
JORGE OMAR REYNA MUNOZ
RAMSES IVAN REYNA MUNOZ
EDGAR JONATHAN REYNA MUNOZ
MIRIAM ANGELICA REYNA MUNOZ
SERGIO AXEL REYNA MUNOZ
IRAZU ESMERALDA REYNA MUNOZ
JENNIFER YOSELI REYNA MUNOZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), the applicants are seeking judicial review of a decision dated August 21, 2008, by the

Refugee Protection Division of the Immigration and Refugee Board (the panel) finding that the applicants were neither “Convention refugees” nor “persons in need of protection” within the meaning of sections 96 and 97 of the Act and consequently rejecting their claim for refugee protection.

II Facts

[2] The principal applicant, Evelia Munoz, her three sons, Jorge Omar, Ramses Ivan and Edgar Jonathan, her two daughters, Miriam Angelica and Irazu Esmaralda, her grandson, Sergio Axel and her granddaughter, Jennifer Yoseli, who are Mexican citizens, all arrived in Canada on August 6, 2006, except for Jorge Omar, who arrived earlier, and sought refugee protection.

[3] On October 13, 2003, Jorge Omar allegedly witnessed a youth gang stealing tools from the hardware store in which he worked. Subsequently attacked by two members of the gang, Jorge Omar allegedly filed a report against the individuals, who were arrested following a police investigation.

[4] On February 20, 2006, Jorge Omar and his sister, Myriam Angelica, allegedly heard gunshots fired at their home and death threats made against him. The police allegedly refused to accept their complaint on the ground that they needed three witnesses.

[5] Following that incident, Jorge Omar left Mexico to come to Canada and claim refugee protection.

[6] In August 2006, the principal applicant's minor son, Ramses Ivan, was allegedly surrounded by eight youths wanting to rape him near his school. The school principal, after she was informed of the incident, allegedly arranged for increased surveillance around the school and the applicants' home.

[7] During the hearing, the principal applicant added to her initial narrative, stating that she also feared Salvador Perez Juarez, a long-time friend who allegedly made death threats against her three or four times in the six months before she left Mexico. She added that she also feared her ex-spouse, Jesus Reyna Palomo, alleging that he sexually abused her and her children when they were very young. However, it should be noted that despite her allegations against her ex-spouse, the principal applicant and the ex-spouse continued to live under the same roof after their divorce in 1996. Those new revelations during the hearing do not appear in the principal applicant's Personal Information Form (PIF) or in the immigration notes.

III. Impugned decision

[8] Having analyzed the case in detail, the panel found in its decision that the applicants' narrative was not credible and that they had failed to discharge their burden of demonstrating that

they are “persons in need of protection” and would have a “well-founded fear of persecution” were they to return to Mexico.

IV. Issue

[9] Did the Board err unreasonably in finding that the narrative which forms the basis of the applicants’ claim is not credible and that they are not entitled to the protection sought, given the existence of an internal flight alternative (IFA)?

V. Analysis

Appropriate standard of review

[10] The panel’s decision is based on the lack of credibility of the principal applicant’s narrative. It is well established that assessing the credibility of witnesses is a matter within the purview of the panel and that the panel has expertise in analyzing and assessing questions of fact that enables it to assess the credibility and subjective fear of persecution of a refugee claimant (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL), at paragraph 14).

[11] In an application for judicial review concerning issues of credibility, the applicable standard of review is the reasonableness standard set in *Dunsmuir v. New Brunswick*, 2008 CSC 9. Accordingly, the Court must show considerable deference because it is for the panel to consider an applicant’s testimony and to assess the applicant’s credibility. If the panel’s findings are reasonable,

the Court must not intervene. However, the panel's decision must be based on the evidence; it should not be made arbitrarily on the basis of erroneous findings of fact or without regard for important evidence put forward (*Mugesera v. Canada (Minister of Citizenship and Immigration),* [2005] 2 S.C.R. 100, at paragraph 38).

Internal flight alternative (IFA)

[12] The applicants had to demonstrate that, on a balance of probabilities, no internal flight alternative existed for them in their home country (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration),* (1993), 163 N.R. 232 (C.A.)). However, the panel found that not only did the applicants fail to demonstrate that it would be unreasonable for them to go and live in Mexico DF, Guadalajara, Tijuana, Monterrey or Cancun, but they never seriously considered any internal flight alternative. Yet the onus was on them to prove all elements of their claim, including the fact that it would be unreasonable or too difficult for them to take refuge in their home country (Rule 7 of the *Refugee Protection Division Rules,* SOR/2002-228; *Ramanathan v. Canada (Minister of Citizenship and Immigration),* 2004 FC 862; *Akhtar v. M.C.I.*, 2004 FC 1319; *Taha v. Canada (Minister of Citizenship and Immigration),* 2004 FC 1675).

[13] It is also well established that the existence of a valid IFA is determinative of a refugee claim and, consequently, the other issues raised by applicants upon judicial review need not be considered (*Shimokawa v. Canada (Minister of Citizenship and Immigration),* 2006 FC 445, at paragraph 17; *Sran v. Canada (Minister of Citizenship and Immigration),* 2007 FC 145, at paragraph 11).

[14] Here the panel is satisfied that, on a balance of probabilities, there is no serious possibility of the applicants being persecuted in one of the IFAs available to them. The Court finds that it was not unreasonable or unrealistic for the panel to find as it did, to require that the applicants avail themselves of IFAs in their country before seeking refugee protection abroad and not to consider them *Convention refugees* or *persons in need of protection* under sections 96 and 97 of the Act. The panel's decision regarding the existence of an IFA for the applicants meets the test set out in *Thirunavukkarasu,* above, and *Rasaratnam v. Canada (Minister of Employment and Immigration),* [1992] 1 F.C. 706 (C.A.), and is sufficient to dispose of their refugee claim.

[15] The applicants criticize the panel for not considering in its analysis whether or not their seeking refuge in their country would have protected them from the violence that they are seeking to escape. Here they overlook the presumption of state protection, which they failed to rebut. And, since they made no effort to find an IFA, it will never be known whether or not an IFA would have protected them from the violence they sought to escape by claiming refugee protection in Canada.

State protection

[16] Moreover, unless the applicants are able to establish the contrary, the Court must presume that the panel has weighed and considered all of the evidence (*Florea v. Canada (Minister of Employment and Immigration),* [1993] F.C.J. No. 598 (F.C.A.)). However, as the applicants have not presented any credible evidence that would lead the panel to conclude that they would face the

same risk if they sought refuge elsewhere in their country, the Court does not see any ground for intervening on the issue of IFAs.

[17] Contrary to the applicants' claims, the panel was able to conclude from the evidence that state protection was available to them in Mexico and that they in fact received protection following certain alleged incidents, namely: the attack on Jorge Omar in August 2006, which was followed by a police investigation and the arrest and even imprisonment of the assailants; and the sexual assault on Ramses Ivan in August 2006 by eight youths near his school, which was followed by the school principal's intervention and police surveillance of the school and the principal applicant's home over a number of weeks.

[18] It is recognized that, except in situations where the state apparatus has broken down completely, it should be presumed that the government is capable of protecting a claimant; the presumption is well founded here, since the evidence reveals that some of the applicants were protected when required.

[19] It is also settled that general documentary evidence on conditions in the country of origin is not adequate to rebut this presumption (*Sholla v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1299, 2007 FC 999, and *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). The state protection available need not necessarily be "perfect" (*Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (QL), at paragraph 7). Yet that is precisely the kind of evidence that the applicants were content to provide. No country, not

even the greatest democracies, can guarantee the safety of its nationals at all times and in all places. It is sufficient that there be reasonable protective measures put in place by the state.

[20] It is then up to the citizens not only to avail themselves of those measures, but also to take reasonable steps to ensure their own safety, such as seeking an IFA in their country.

[21] When an applicant lives in a democratic state such as Mexico, the obligation to seek the protection of that state becomes greater. Accordingly, the applicant must show that he or she exhausted all reasonable courses of action available in his or her country to obtain the necessary domestic protection before contemplating seeking protection from another country (*Kadenko v. Canada (Minister of Citizenship and Immigration)* (1996), 143 D.L.R. (4th) 532 (F.C.A.)).

[22] The applicants have advanced no ground or evidence here that the Mexican government was unable, in their case, to protect them adequately. Rather, the evidence shows that they obtained protection when required. The panel correctly determined that the applicants "have not adduced clear and convincing evidence rebutting the presumption of state protection."

Credibility

[23] The conclusion drawn by the Court on the first two issues analyzed above is sufficient for this application to be dismissed without the need to comment on the panel's findings regarding the applicants' credibility.

[24] Nevertheless, it should be noted that the panel found that the applicants lacked credibility as a result of a number of inconsistencies, material omissions and certain unsubstantiated allegations that the applicants were unable to explain satisfactorily, and that the panel had the authority and expertise to make the finding it did, for the reasons it takes care to point out in its decision.

[25] The panel's findings of lack of credibility are based on the evidence, are reasonable and merit this Court's deference.

VI. Conclusion

[26] For all these reasons, the Court finds that the decision that is the subject of this application is more than justified, in fact and in law, and contains no error sufficiently important to warrant the intervention of this Court. It follows that the application for judicial review will be dismissed.

[27] And since no serious question of general importance was proposed or warrants being proposed, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISSES the application for judicial review.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4045-08
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