Date: 20090512

Docket: IMM-4750-08

Citation: 2009 FC 487

Ottawa, Ontario, May 12, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

DANIA PERLA CORTEZ GUTIERREZ

Applicant

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 decision by the Refugee Protection Division of the Immigration and Refugee Board (panel) dated September 30, 2008, that the applicant is not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] For the following reasons, the application for judicial review will be dismissed.

[3] The panel found that the applicant was not credible because the narrative on which her claim was based was inconsistent and implausible. Furthermore, the panel noted that the applicant contradicted herself regarding a significant event.

[4] According to the panel, even if the applicant was credible, she did not persuade it that the Mexican state could not protect her.

[5] Even if the applicant was credible and even if state protection was not available, the panel decided that there was an internal flight alternative (IFA) for the applicant in the cities of Tijuana, Guadalajara, Monterrey and Cancun.

Standard of review

[6] In questions of credibility and assessment of evidence, it is well established under paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, that the Court will intervene only if the panel based its decision on an erroneous finding of fact made in a perverse or capricious manner or if it made its decision without regard to the material before it (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.), 42 A.C.W.S. (3d) 886).

[7] Assessing credibility and weighing the evidence fall within the jurisdiction of the administrative tribunal called upon to assess the allegation of a subjective fear by a refugee claimant (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (F.C.T.D.), 83 A.C.W.S. (3d) 264 at paragraph 14). Before *Dunsmuir v. New Brunswick*,

2008 SCC 9, [2008] 1 S.C.R. 190, the standard of review that was applicable in comparable circumstances was patent unreasonableness. Since that decision, the standard is reasonableness.

[8] The appropriate standard of review for state protection issues is reasonableness (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, 137 A.C.W.S. (3d) 392 at paragraphs 9 to 11; *Gorria v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 284, 310 F.T.R. 150 at paragraph 14; and *Chagoya v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 721 at paragraph 3, [2008] F.C.J. No. 908 (QL)).

[9] The appropriate standard of review for IFA issues 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). Following *Dunsmuir*, the Court must continue to show deference when determining an IFA and this decision is reviewed according to the new standard of reasonableness. Consequently, the Court will intervene only if the decision does not fall within the range "of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47). The reasonableness of a decision is concerned with the existence of justification, transparency and intelligibility within the decision-making process.

[10] The applicant alleges that the panel erred in law because the reasons relied upon by the panel were unreasonable and not based on the evidence and constituted errors of law. In *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302, the Federal Court of

Appeal stated that when an applicant swears to the truth of certain facts, this creates a presumption that those facts are true unless there are valid reasons to doubt their truthfulness.

[11] The respondent noted that findings concerning the lack of credibility, the availability of state protection and the existence of an IFA are each sufficient to defeat her claim (*Salim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1592, 144 A.C.W.S. (3d) 326 at paragraph 31; *Singh v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 185, 121 A.C.W.S. (3d) 127; *Jaffier v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 722, 131 A.C.W.S. (3d) 503 at paragraphs 7 and 10; *Rodriguez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 153, 137 A.C.W.S. (3d) 399 at paragraph 36; *Baldomino v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1270, 167 A.C.W.S. (3d) 771 at paragraph 8; *Del Real v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 140, 168 A.C.W.S. (3d) 368 at paragraphs 12 and 39).

[12] The respondent argued that the applicant did not establish any critical error that could invalidate the panel's decision as a whole. The panel's decision relied on the evidence and respected the appropriate principles of law. The panel provided clear and unequivocal reasons with respect to the denial of the refugee claim.

[13] It was open to the panel to find that the implausibilities, contradictions, and omissions undermined the applicant's credibility, as was repeatedly noted and established by this Court.

[14] The panel is in the best position to assess the explanations provided by the applicant with respect to the perceived contradictions and implausibilities. It is not up to the Court to substitute its judgment for the findings of fact drawn by the panel concerning the applicant's credibility (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, 146 A.C.W.S. (3d) 325 at paragraph 36; *Mavi v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1 (F.C.T.D.) (QL)).

[15] In this case, the panel's finding was not unreasonable given the multiple discrepancies in the applicant's testimony. She did not provide any evidence corroborating her romantic relationship with Roy Moran, a person with whom she had a serious 13-month relationship that seemed to be heading towards marriage. Furthermore, it is implausible that the applicant did not know whether an autopsy had been performed on his body.

[16] The panel's finding can be considered rational and acceptable with regard to the evidence submitted (*Dunsmuir*, above, at paragraph 47).

[17] Regarding state protection, this Court has confirmed decisions maintaining the presumption of Mexican state protection (*Luna v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1132, [2008] F.C.J. No. 1501 at paragraph 14; *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, 165 A.C.W.S. (3d) 336 at paragraph 12; *Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358, 169 A.C.W.S. (3d) 626 at paragraph 17; *Canseco v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 73, 154 A.C.W.S. (3d) 1182 at paragraph 14; *De La Rosa v. Canada (Minister of Citizenship and Immigration)*,

2008 FC 83, 164 A.C.W.S. (3d) 497 at paragraph 11; *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 343, 146 A.C.W.S. (3d) 1052 at paragraph 12).

[18] In this case, it was legitimately open to the panel to find, given the present context, that the applicant had not exhausted all possible avenues offered by the state. Furthermore, the panel could reasonably consider as insufficient the applicant's explanation in her testimony that she went to see the police only once and that the police refused to take her complaint.

[19] In *Kadenko v. Canada (Minister of Citizenship and Immigration)* (1996), 206 N.R. 272, 143 D.L.R. (4th) 532 (F.C.A.), the Court noted that it cannot automatically be determined that a democratic state is unable to protect one of its nationals because certain local police officers refused to intervene. In this case, the applicant did not diligently seek her country's protection before coming to Canada. Consequently, the applicant did not provide clear and convincing evidence to rebut the presumption that Mexico was able to protect her.

[20] I agree with the respondent that the applicant did not give the state the possibility of ensuring her protection because she left the country before giving the authorities time to act.

[21] Regarding the internal flight alternative, the Court held that a claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling to and staying in a region. In *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.), the Court held that two criteria applied in establishing an IFA: 1) there is no serious risk of

the claimant being persecuted in the part of the country where there is a flight alternative; and 2) the situation in the part of the country identified as an IFA must be such that it is not unreasonable for the claimant to seek refuge there, given all of the circumstances.

[22] In *Thirunavukkarasu v. Canada (Minister of Employment and Immigration*), [1994] 1 F.C. 589, 163 N.R. 232 (F.C.A.) the Court ruled as follows by citing *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 at paragraph 15:

> . . . requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. . . .

[23] The panel's decision was based on the applicant's testimony as well as on the documentary evidence in the record. It took into account the applicant's personal situation and the reasonable possibility that she could relocate elsewhere in Mexico. The applicant did not meet her burden of demonstrating that the panel had made a reviewable error. The Court considers this decision reasonable because it is consistent with the jurisprudence.

[24] This application does not raise any serious question of general importance.

JUDGMENT

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

"Michel Beaudry"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-4750-08**
STYLE OF CAUSE:	**DANIA PERLA CORTEZ GUTIERREZ v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Montréal, Quebec
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REASONS FOR JUDGMENT AND JUDGMENT:	BEAUDRY J.
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