Federal Court  Cour fédérale

Date: 20090813

Docket: IMM-3914-08

Citation: 2009 FC 828

Ottawa, Ontario, August 13, 2009

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

Hector Mauricio RAMIREZ RUEDA
Claudia Agenlica ROSALES MAR

Applicants

and

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 (IRPA) and section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, of the decision by the Refugee Protection Division of the Immigration and Refugee Board (panel). The panel determined that the applicants, who are Mexican citizens, were not "refugees" under section 96 of the IRPA or "persons in need of protection" under section 97 of the IRPA since an internal flight alternative (IFA) was available in Mexico.

[2] The principal applicant, Hector Mauricio Ramirez Rueda, age 33, and his wife, Claudia Angelica Rosales Mar, age 30, lived in Veracruz, Mexico. They arrived in Canada on February 3, 2007, and claimed refugee status the same day under sections 96 and 97(1)(*b*) of the IRPA. The female applicant is basing her narrative on her husband's.

[3] On November 21, 2006, while driving his taxi, the principal applicant witnessed the murder of a motorcyclist. When the applicant got close to the crime scene, the killers saw him in his taxi, number 0326. The applicant drove away from the area quickly.

[4] He then called for help on his cell phone. The operator told him to go to the Boca del Rio police because a patrol was usually there, but there was none. The operator then advised him to remain in hiding, and the applicant took refuge in an alley.

[5] The applicant called his father to come and get him because he was too nervous to drive. When his father arrived, the applicant called the police and was told that they were looking for the killers. The next day, November 22, the applicant found out that the killers had gotten away from the police.

[6] The applicant hid out at his home for a number of days after the incident and did not return to work until November 27, 2006. On that day, a customer flagged him down and told him that he wanted to go to this address: Tecoltutla 20 Geovillas del Puerto. This address was, in fact, the applicant's own address.

[7] The customer then pressed a knife against the applicant's ribs and threatened to rape his mother and his wife and to kill his entire family if he did not keep quiet. The applicant stated that, following this threat, he noticed the same man and his accomplices four times at various locations, including in front of his home.

[8] The next day, November 28, the applicant filed a complaint with the Public Prosecutor's office where he was told that protection would be possible if he paid 30.000 pesos for each family member who had been threatened. The same day, the applicant received a call on his cell phone from an individual claiming to know that he had filed a complaint.

[9] On November 30, 2006, two police officers went to the applicant's home to question him about his complaint. Seeing him in a state of shock, the police officers referred him to a psychologist.

[10] On December 5, 2006, police officers told the applicant that they had searched the house belonging to a suspect nicknamed Dracula but found no evidence regarding the motorcyclist's murder.

[11] The applicant said that his father and his wife also received threats.

[12] Last, the applicant stated that, since his arrival in Canada, he learned from his father that the Zetas and Gente Nueva gangs were responsible for the events related to these problems.

[13] Although the panel concluded that the applicants' story was plausible, that finding did not automatically result in refugee status being granted because the panel believed there was an internal flight alternative in this case.

[14] The panel noted that, according to the documentary evidence, Mexico has over 100 million inhabitants living in 31 states in addition to the Federal District, which alone has a population of over 8 million. There are a number of other large cities with a population of more than a million where the applicant and his wife could settle.

[15] When asked about the possibility of settling elsewhere, such as in Mexico City, the principal applicant replied that he could work anywhere in Mexico but that he would not be safe because he could be readily found through his voter registration card. When the panel asked him why, in his opinion, these people would spend time and money looking for him everywhere, he replied that these gangs also operate in Mexico City.

[16] The panel did not agree and found that the applicants did not discharge their onus of demonstrating that the people who threatened them would search for them throughout Mexico to prevent the principal applicant from testifying in the case of the motorcyclist's murder.

[17] The panel noted that the applicant's evidence was that the Mexican police had taken charge of the murder case from the outset. It is possible that those responsible for the motorcyclist's murder tried to prevent the principal applicant from filing a complaint against them by threatening him.

[18] The panel found it odd that the principal applicant did not attempt to call the police to have them arrest the person who threatened him with a knife on November 27, 2006, when that person appeared in front of his home. Also, the principal applicant stated that he hid out at his home even though the killers knew where he lived.

[19] Under these conditions and given that during the two months he spent in Mexico after the motorcyclist's murder, the applicant was unable to provide the police with any evidence about the murderers' identities, the panel did not see why they would pursue the principal applicant and his wife throughout Mexico.

[20] Consequently, in the panel's opinion, the applicants failed to demonstrate that there was a serious risk that they would be found and subjected to cruel and unusual treatment.

[21] It should be noted that applying section 97(1) of the IRPA to this case did not allow the panel to rule out an IFA.

[22] The applicants submit that the panel erred by finding that the applicants did not discharge their onus of demonstrating that the people who threatened them were capable of finding them anywhere in Mexico.

The transcript of the newscast

[23] The applicants submit that they adduced sufficient evidence that the Zetas gang is very powerful and is everywhere in Mexico. The applicants filed the transcript of an excerpt of an audio tape of a Mexican newscast. The applicants claim that this transcript shows the power of the

organization that was victimizing them. It is a transcript of an interrogation between an "interrogator", Jesus Arano Servin, and Victor Manuel Perez Rocha. It is clear from the interrogation that the Gulf Cartel eliminates members who are no longer suited to the organization's interests or who do not keep their promises.

[24] The applicants submit that the panel did not analyze the transcript. They contend that this evidence demonstrates the persecutors' reach. The applicants describe the Zetas as a well-established criminal organization that exists throughout the country and is constantly asserting their interests. The applicants claim that these bandits do not need to put resources in place to find and kill someone in Mexico City or any other city.

Criteria for determining an internal flight alternative

[25] The applicants state that the two-pronged test for determining whether an IFA exists was established in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.):

> (i) the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
>
> (ii) conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claimant, for him to seek refuge there.

[26] The applicants maintain that the panel did not listen to the evidence showing that the applicants would be persecuted elsewhere in Mexico.

Voter registration card

[27] The applicants submitted a document entitled “Selected Issues of Internal Flight Alternatives” (July 2003 to July 2005) from the National Documentation Package on Mexico at point 4.2 “Traceability of people in Mexico”. In that document, Jim Hodgson contends that the extensive use of the voter registration card makes it easy for the police to find a person using the IFE (Federal Electoral Institute) database. In addition, an article in the *Latin America Press* dated June 18, 2003, states that 4,000 underpaid IFE public servants have access to the electors lists in 32 states. The lists are contained in a series of compact discs that are easy to copy. It appears that all political parties, whose corruption is legendary, have access to these discs.

[28] The applicants note that the evidence provided to the panel demonstrates that it is possible for someone to obtain information on individuals through the voter registration card.

Serious risk of persecution

[29] Last, the applicants argue that there is a serious risk they would be persecuted elsewhere in Mexico, specifically in Mexico City, which the panel suggested as an IFA at the hearing. It is not reasonable to ask the applicants to take refuge in Mexico City, given their persecutor’s aggression and the methods available to find them.

[30] The applicants submit that the panel did not explain why it disregarded the evidence in the record that contradicts an IFA and that this error warrants the intervention of this Honourable Court.

[31] The applicants respectfully request that this Honourable Court allow the application for judicial review and remit the matter to a differently constituted panel for a *de novo* hearing or make any other order that the Court deems just.

[32] The respondent submits that the panel's finding is reasonable and completely consistent with the teachings of this Court.

[33] The respondent argues that the test for determining an internal flight alternative is well-established. This test was mentioned by the applicants.

Burden

[34] The respondent submits that refugee claimants have the burden of proof and cites Mr. Justice Shore at paragraph 18 of *Valenzuela Del Real v. Canada (Citizenship and Immigration)*, 2008 FC 140:

> 18 Ms. Del Real did not meet her burden of establishing on a balance of probabilities that there was a serious possibility of persecution everywhere in Mexico and that it would be unreasonable for her to seek refuge in another part of her country. (*Thirunavukkarasu v. Canada (Minister of Citizenship and Immigration)*, [1994] 1 F.C. 589 (C.A.); [1994] F.C.J. No. 1172 (QL).)

[35] The respondent submits that claimants must establish that it would be unreasonable for them to seek refuge in another part of the country and must adduce actual and concrete evidence of the conditions preventing them from settling elsewhere in their country, *Valenzuela Del Real* at paragraph 30:

> 30 The bar must be placed very high when determining what would be unreasonable: "it 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" (*Ranganathan, supra*, paragraph 15).

[36] The respondent contends that the applicants did not adduce actual and concrete evidence of conditions that prevent them from relocating elsewhere in Mexico. In fact, the respondent submits that, at the hearing, the panel suggested various places where the applicants could relocate, including the Federal District, but the applicants did not provide satisfactory evidence that it was impossible to relocate there.

Internal flight alternative

[37] The respondent notes that, other than indicating that they are disappointed with the panel's analysis, the applicants do not specify what the panel omitted or how the decision could have been different. Nevertheless, the mere fact that the applicants disagree with the decision certainly does not warrant the intervention of this Court. The respondent cites Mr. Justice Shore at paragraph 28 of *Nijjar v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 829:

> 28 The Court may intervene only if Mr. Nijjar demonstrates that the Board erred in law or in fact in its decision. The Court cannot intervene simply because it (or the applicant) disagrees with the Board's decision. In *Nxumalo v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 413, [2003] F.C.J. No. 573 (QL), at paragraph 7, Mr. Justice Simon Noël said:
>
> With regard to the applicant's credibility, I believe that the applicant is trying to get the Court to substitute its opinion to the one of the Board. As Justice Blanchard held in *Hosseini v. Canada (M.C.I.)*, [2002] F.C.J. No. 509 (F.C.T.D.):
>
> > The assessment of the value of the applicant's explanations, like that of the other facts, is entirely within the jurisdiction of the Refugee Division, which

> also has recognized expertise in weighing the merits of testimony on the situation in various countries. This being so, I agree with the respondent's arguments, namely that the applicant could not simply repeat on judicial review an explanation already given to the specialized tribunal and dismissed by it. In *Muthuthevar v. M.C.I.*, [1996] F.C.J. No. 207, on line: QL, Cullen J. was entirely of this opinion at para. 7 of his reasons:
> While the applicant seeks to "explain away" testimony that the Board found implausible, it must not be forgotten that these same explanations were before the Board and were not accepted as credible. The applicant has not directed to this Court evidence that was ignored or misconstrued, and in the absence of such a finding, the Board's conclusions on credibility must stand.

[38] The respondent notes that the applicants' disappointment and disagreement with the decision certainly does not warrant the intervention of this Court.

Disinterested agents of persecution

[39] The respondent notes that the agents of persecution threatened the applicants because of the complaint filed by the principal applicant. However, the principal applicant was unable to identify the suspect during photo identification sessions and did not confirm his complaint. The suspects who had been arrested were released.

[40] The respondent notes that the Mexican authorities took charge of the matter at the outset, as appears from the documents that the applicant submitted in evidence. The respondent also notes that the applicants stayed in Mexico for two months after the murder and were not able to provide any evidence to the police to further the investigation.

[41] It was, therefore, reasonable for the panel to conclude that the agents of persecution no longer had a reason to pursue the applicant throughout Mexico because they had been released.

Newspaper articles

[42] The respondent submits that the newspaper articles that the applicants tendered in evidence do not show how they would be personally at risk. The overall situation of drug traffickers in Mexico, which the applicants raised, has no connection with the applicants' personal situation and does not constitute actual and concrete evidence of conditions preventing them from relocating.

[43] It is settled law that general evidence cannot by itself establish that a claim is well-founded. The respondent cites *Morales Alba v. Canada (Citizenship and Immigration)*, 2007 FC 1116 at paragraphs 3 and 4:

> 3 It is not sufficient for claimants to provide documentary evidence about problematic situations in their country in order to be recognized as "Convention refugees" or "persons in need of protection". **The claimants must also demonstrate a connection between that evidence and their personal situation, which they failed to do** (*Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89, [2002] F.C.J. No. 302 (F.C.A.) (QL)). [Emphasis in the decision.]
>
> 4 Documentary evidence about the current general situation in a refugee claimant's country cannot by itself establish that the refugee claim is well-founded (*Alexibich v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 53, [2002] F.C.J. No. 57 (QL); *Ithibu v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 288, [2001] F.C.J. No. 499 (QL).)

Transcript of newscast

[44] As for the applicants' argument that the panel did not analyze the evidence, referring to the transcript of an excerpt of a video taken from YouTube, the respondent submits that this argument is not founded and should be disregarded.

[45] Indeed, the respondent notes on the one hand that, as the panel stated, the only useful information in the video excerpt is that a motorcyclist was killed and that the Zetas gang exists. It is clear that the panel considered and assessed the evidence. Thus, it is erroneous to contend that the panel ignored the evidence.

[46] The respondent notes on the one hand that it is settled law that the panel is presumed to have considered all the evidence and that there is absolutely no requirement that it refer to all the documents submitted. The respondent cites *Xocopa Martell v. Canada (Citizenship and Immigration)*, 2008 FC 1029 para. 22:

> [22] The applicants also argued that the Panel ignored documents filed in evidence. It should be pointed out that there is a presumption to the effect that the Panel is deemed to have considered all of the evidence before making its decision, despite the fact that not all of the various pieces of evidence are specifically mentioned in its reasons. It is up to the Panel to weigh the evidence before it and to make the appropriate findings. In so doing, the Panel may choose from among the evidence as it sees fit, and this choice is an integral part of its role and expertise: *Mahendran v. Canada (MCI)*, (1991) 134 N.R. 316, 14 Imm. L.R. (2d) 30 (F.C.A.); *Tawfik v. Canada (MCI)* (1993), 137 F.T.R. 43, 26 Imm. L.R. (2d) 148; *Akinlolu v. Canada (MCI)* (1997), 70 A.C.W.S. (3d) 136, [1997] F.C.J. No. 296 (QL); *Florea v. Canada (MEI)*, [1993] F.C.J. No. 598 (C.A.) (QL).

[47] In any event, it is important to note that, in this case, the panel's decision refers specifically to certain evidence filed by the applicants.

Voter registration card

[48] As for the applicants' argument that the agents of persecution could find them through their voter registration cards, the respondent contends that the opposite is stated in an article from the Immigration and Refugee Board of Canada entitled "Responses to Information Requests (RIR)" dated June 2, 2006:

> Regarding whether the police, government authorities or individuals can use the Voter Registration Card to access information in the official computer system in order to locate an individual within Mexico, the IEEM official noted that, according to Article 135 of the Federal Code of Institutions and Electoral Procedures, documents, data and information provided by Mexican citizens to the Federal Registry of Voters is strictly confidential and cannot be divulged to anyone except authorized users within the organization (Mexico 12 May 2006). No reports of police, government authorities or individuals using the Voter Registration Card to access the information in the official computer system in order to locate an individual within Mexico could be found among the sources consulted by the Research Directorate.

[49] On the other hand, the respondent notes that this document is more recent that the one referred to in the applicants' supplementary memorandum.

[50] Moreover, the document filed by the applicants also states that no one has been located through these registries:

> Magalí Amieva, from the IFE's international affairs division, stated that the information gathered is used only to establish electors lists for the federal elections; it is strictly confidential, protected by law and cannot be shared with any other administration, whether it is public, private or foreign . . .

[51] Consequently, the respondent submits that it was reasonable for the panel to find that the applicants had not demonstrated that they would be located anywhere in Mexico. The applicants did not discharge their onus.

[52] On the other hand, the respondent contends that the principal applicant testified that the only reason why he could not work elsewhere was his fear of being found. The transcript reads as follows:

> [TRANSLATION]
>
> Q. Sir, is there, is there, could you find work somewhere other than Veracruz, for example, could you drive a taxi somewhere else?
> A. I don't know the city; it would be the same as looking for work here in Montréal.
> Q. Could you find other work in Mexico somewhere other than Veracruz?
> A. I don't think so because, because of the social insurance number.

[53] The respondent says, however, that the documentary evidence shows the opposite. Thus, it was reasonable for the panel to conclude that the applicants could clearly find work elsewhere in Mexico and relocate. The applicants did not adduce actual and concrete evidence demonstrating the contrary.

Lack of relatives elsewhere in Mexico

[54] The respondent submits that it appears from their Personal Information Form (PIF) that they do not want to move elsewhere in Mexico because they do not know anyone. The respondent notes that the jurisprudence of this Court has clearly established that the lack of relatives does not affect

the availability of an internal flight alternative. The respondent cites Mr. Justice Kelen at paragraph 8 of the decision in *Camargo v. Canada (Citizenship and Immigration)*, 2006 FC 472:

> 8 The IFA legal test is two-fold: first, the applicant must show that there is a serious possibility of being persecuted in the identified IFA. Second, he must show that the conditions in the potential IFA are such that it would be unreasonable for him to seek refuge there (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.)). For an IFA to be unreasonable, conditions must exist that would jeopardize the life and safety of a claimant if travelling or temporarily relocating to that area. The absence of relatives in the IFA is not relevant unless it affects the claimant's safety. (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.)).

[55] The respondent submits that, having considered all these factors, the panel concluded that the applicants had not proven that they would be traced throughout Mexico. Absent evidence that the applicants could not relocate, it was reasonable for the panel to find that there was an internal flight alternative. The respondent cites Mr. Justice Tannenbaum at paragraphs 34 and 35 of *Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1126:

> 34 In countering these submissions, the applicant was able to do little more than offer vague allegations of the risks of being located arising from the state's inability to protect her; however, she did not avail herself of this protection before leaving her country to seek protection in Canada. In addition, she did not file any genuine, concrete evidence of existing conditions preventing her from relocating in her country. Under these circumstances, the Board could reasonably find that there was an internal flight alternative in Mexico.
>
> 35 Further, expecting the applicant to move to another region of the country to live elsewhere with a family member cannot be considered undue hardship or even be qualified as unreasonable.

[56] In light of the foregoing, the respondent maintains that there is nothing in the applicants' evidence that could allow this Honourable Court to intervene in the panel's decision and respectfully asks this Court to dismiss the applicants' application for judicial review.

[57] The issue is whether the panel's finding that the applicant has an internal flight alternative in Mexico is unreasonable based on the evidence.

[58] As the Honourable Justice Pinard stated at paragraph 3 of *Varela Soto v. Minister of Citizenship and Immigration*, 2009 FC 92, the appropriate standard of review is reasonableness:

> The standard of review that applies to an RPD decision concerning the existence of an IFA is reasonableness (*Franklyn v. Minister of Citizenship and Immigration*, 2005 FC 1249, at paragraph 18). Thus, the role of this Court in this case is to inquire into "the qualities that make a decision reasonable" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 47).

[59] The determinative reason for the panel's decision was that the applicants had an internal flight alternative in another city in Mexico.

[60] As the applicants stated, where the panel raises the IFA issue, they must prove on a balance of probabilities that there is a serious possibility they will be persecuted in the part of the country to which the panel finds an IFA and that the conditions in the part of the country where the IFA exists are such that it would not be unreasonable for the applicants to seek refuge there, under all the circumstances, including those that are particular to the applicants (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

[61] The applicants dispute the panel's assessment of the evidence about the voter registration card and the transcript of the televised newscast, claiming that the agents of persecution can find them anywhere in Mexico.

[62] As for the applicants' argument that the panel failed to analyze the evidence, referring to the transcript of a video excerpt taken from YouTube, paragraph 22 of the decision in *Xocopa Martell v. Canada (Citizenship and Immigration),* 2008 FC 1029 states that the panel is deemed to have considered all the evidence and that there is absolutely no requirement to refer to all the documents that were submitted. Furthermore, the source is suspect, which affects the weight assigned to this evidence.

[63] Regarding the applicants' argument that the agents of persecution could find them through their voter registration cards, there is an article, more recent than the applicants', that states the opposite. This article is from the Immigration and Refugee Board of Canada and is entitled *Responses to Information Requests (RIR)* dated June 2, 2006:

> Regarding whether the police, government authorities or individuals can use the Voter Registration Card to access information in the official computer system in order to locate an individual within Mexico, the IEEM official noted that, according to Article 135 of the Federal Code of Institutions and Electoral Procedures, documents, data and information provided by Mexican citizens to the Federal Registry of Voters is strictly confidential and cannot be divulged to anyone except authorized users within the organization (Mexico 12 May 2006). No reports of police, government authorities or individuals using the Voter Registration Card to access the information in the official computer system in order to locate an individual within Mexico could be found among the sources consulted by the Research Directorate.

[64] It was therefore reasonable for the panel to find that this factor could not affect the first prong of the IFA determination.

[65] Last, even though the applicants are disappointed with the panel's analysis, that does not justify the intervention of this Court, as Mr. Justice Shore stated at paragraph 28 of *Nijjar v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 829:

> 28 The Court may intervene only if Mr. Nijjar demonstrates that the Board erred in law or in fact in its decision. The Court cannot intervene simply because it (or the applicant) disagrees with the Board's decision. In *Nxumalo v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 413, [2003] F.C.J. No. 573 (QL), at paragraph 7, Mr. Justice Simon Noël said:
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> With regard to the applicant's credibility, I believe that the applicant is trying to get the Court to substitute its opinion to the one of the Board. As Justice Blanchard held in *Hosseini v. Canada (M.C.I.)*, [2002] F.C.J. No. 509 (F.C.T.D.):
>
> > The assessment of the value of the applicant's explanations, like that of the other facts, is entirely within the jurisdiction of the Refugee Division, which also has recognized expertise in weighing the merits of testimony on the situation in various countries. This being so, I agree with the respondent's arguments, namely that the applicant could not simply repeat on judicial review an explanation already given to the specialized tribunal and dismissed by it. In *Muthuthevar v. M.C.I.*, [1996] F.C.J. No. 207, on line: QL, Cullen J. was entirely of this opinion at para. 7 of his reasons:
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> > While the applicant seeks to "explain away" testimony that the Board found implausible, it must not be forgotten that these same explanations were

> before the Board and were not accepted as credible. The applicant has not directed to this Court evidence that was ignored or misconstrued, and in the absence of such a finding, the Board's conclusions on credibility must stand.

[66] The fact that the applicants are disappointed and disagree with the decision does not warrant the intervention of this Court.

[67] For the foregoing reasons, I am satisfied that the panel's decision is reasonable.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

The parties did not submit a question of general importance for certification.

"Max M. Teitelbaum"
Deputy Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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