

Federal Court



Cour fédérale

Date: 20100401

Docket: IMM-4004-09

Citation: 2010 FC 360

Ottawa, Ontario, April 01, 2010

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

MERCEDES ROSALES UTRERA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This concerns an application brought pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, ("the Act") by Mercedes Rosales Utrera (the "Applicant") whereby she is seeking the judicial review of a decision of a panel of the Refugee Protection Division of the Immigration and Refugee Board (the "Panel") dated July 20, 2009 and bearing file number TA8-06636, rejecting the Applicants' refugee protection claims under section 96 and subsection 97(1) of the Act.

[2] This application is dismissed for the reasons set out below. In a nutshell, the Panel's decision was based on findings of fact, including an assessment of the Applicant's credibility. The Panel did not believe important aspects of the Applicant's testimony concerning her abusive common-law partner, largely in view of the fact that she had given a number of different versions of her story in the past. In addition, the Panel found that the Applicant had an internal flight alternative within Mexico. These findings were well articulated and fell within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Background

[3] The Applicant is a citizen of Mexico who entered into a common-law relationship with a university physics teacher in 2005. The couple resided in Veracruz. He became abusive and his aggressive behaviour culminated in an assault on the Applicant which occurred on January 2, 2007. Though the Applicant did report to the police this incident, she did not feel safe in Mexico and decided to leave for Canada on May 31, 2007 in order to seek protection.

Analysis

[4] The standard of review of decisions of the Refugee Protection Division of the Immigration and Refugee Board based on issues of witness credibility and the assessment of evidence is that of reasonableness: *Aguebor v. Canada (Minister of Employment and Immigration)*, (1993) 160 N.R. 315, [1993] F.C.J. No. 732 (QL) at para. 4; *Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427, [2008] F.C.J. No. 515 (QL) at para. 15; *Sierra v. Canada (Minister of*

Citizenship and Immigration), 2009 FC 1048, [2009] F.C.J. 1289 (QL) at para. 20; *Focil v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 50, [2010] F.C.J. No. 49 (QL) at para. 25. I will accordingly apply that standard in this judicial review. Consequently, my analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision making process” and “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (QL) at para. 47).

[5] The Panel was troubled by the fact that the Applicant had submitted different versions of her story. She was interviewed by immigration authorities on June 1, 2007, her personal information form was completed with the assistance of legal counsel in June 2007, and she amended her personal information form in October 2008. Yet, she failed to mention on each of these occasions that she had been abducted in Mexico City in November 2006 and forcibly returned to her common-law husband by men acting on his behalf. This last event was raised by the Applicant for the first time on April 2, 2009 only, a short time prior to her hearing before the Panel.

[6] The Applicant explained this important omission as the result of the psychological trauma she suffered following her abuse, and she submitted a report from a psychologist which noted that she suffered from Post Traumatic Stress Disorder. The Panel accepted that diagnosis, but found nothing in the psychological report which would explain any memory loss, particularly in regard to an event as important as being forcibly abducted. The Panel noted that the Applicant did not appear

to have any difficulties remembering the sexual abuse she had suffered as a child, and thus found it was not credible that the Applicant would have simply forgotten about being abducted as an adult.

[7] When asked to explain how her common-law husband could have found her in Mexico City in order to abduct her, she testified before the Panel that he was a drug trafficker, an allegation which did not appear in any of her previous statements and which was first raised at the hearing.

[8] In its decision, the Panel accepted that the Applicant had suffered an abusive relationship with her common-law partner, but did not believe that the Applicant had been abducted or that her husband was a drug trafficker. The Panel further concluded that little evidence had been submitted showing that her former common-law partner still had an interest in pursuing her. The Panel noted that since the Applicant's departure from Mexico, her former partner's interest in her had faded out; since then he had merely made the occasional telephone call to her mother. These findings of fact are all reasonable in the circumstances of this case.

[9] The Panel thus reasonably found that the Applicant had no more than a mere possibility of being persecuted by her former common-law partner should she return to Mexico.

[10] In any event, the Panel also found that the Applicant had an available internal flight alternative in Mexico, namely Monterrey, where she could safely live free from serious harm from her former common-law partner. The Applicant did not submit that the Panel applied the wrong legal test for finding that an internal flight alternative was available to her. Rather it was argued that this finding was erroneous in view of the fact that her former common-law husband was a drug

dealer who could thus seek out the Applicant anywhere in Mexico. Since that submission was not accepted by the Panel, and since this finding of fact was itself reasonable, the overall finding that the Applicant had an internal flight alternative in Mexico is also reasonable.

[11] At the hearing before this Court, the Applicant's counsel challenged at length the Panel's findings on the availability of state protection. Those attacks on the Panel's findings on state protection are all based on facts which were reasonably rejected by the Panel. In any event, since the Panel reasonably found that the Applicant did not face more than a mere possibility of persecution on the part of her former common-law partner should she return to Mexico, and that she also had an available internal flight alternative in Mexico, I need not delve any further on the findings pertaining to the issue of state protection.

[12] This case turns essentially on questions of fact, in particular, the credibility of the Applicant. As I have already noted, the findings of fact and those regarding credibility were well articulated by the Panel and fell within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[13] In recent years, the Supreme Court of Canada has clearly stated that, in reviewing a decision of an administrative tribunal, a superior court should avoid substituting its own assessment of the evidence for that of the tribunal. This applies particularly where the administrative tribunal, as in this case, has had the opportunity of hearing the testimony *viva voce* and is thus in a much better position to assess the credibility of witnesses. The role of this Court is to ascertain that the Panel has

carried out its mandate in accordance with the legal framework set out by its constitutive legislation and with due regard to the rules of fairness and of fundamental justice. As long as the Panel has acted within this legal framework and has adhered to the rules of fundamental justice, a reviewing court should not interfere unless the decision is unreasonable. The findings of the Panel in this case are not unreasonable.

[14] This case raises no important question warranting certification under paragraph 74(d) of the *Immigration and Refugee Protection Act*. Therefore, no such question shall be certified.

JUDGMENT

THIS COURT ORDERS AND DECIDES that the application for judicial review is dismissed.

"Robert M. Mainville"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4004-09

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Mainville J.

DATED: April 01, 2010

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