Federal Court  Cour fédérale

Date: 20100427

Docket: IMM-4845-09

Citation: 2010 FC 462

Ottawa, Ontario, April 27, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

MARIA DOLORES CANTO RODRIGUEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for the judicial review of the decision (the decision) of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated August 19, 2009. The Board determined that the Applicant is neither a convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S. 2001, c. 27.

[2] For the reasons set out below the application is dismissed.

I. Background

[3] The Applicant is a 26 year old citizen of Mexico who claims to have a well founded fear of her former boyfriend and to be a person in need of protection. The Applicant began dating her boyfriend in 2001. By October 2003 the boyfriend became violent. The Applicant states that she attempted to leave her boyfriend several times but he either convinced her to return, or in 2007, held her against her will, assaulted and threatened her. After this incident, the Applicant states she fled to Cancun and then to Canada.

[4] This is the second time the Applicant has brought an application for the judicial review of a Board decision. Justice James Russell reviewed the Applicant's first hearing in *M.D.C.R. v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 262; 79 Imm. L.R. (3d) 272. Justice Russell allowed the application, finding that the Board had not considered the full evidentiary record.

[5] At her *de novo* hearing, the decision under review in this matter, the Board found that the Applicant was not a Convention refugee nor a person in need to protection. The Board stated that the Applicant never sought state protection and failed to rebut the presumption of state protection, that she had a viable Internal Flight Alternative (IFA) to Mexico City, and that her story about reporting her boyfriend to the police was not credible due to a number of omissions and contradictions.

II. Issues and Standard of Review

[6] The Applicant raises several issues which can be summarized as follows:

(a) Did the Board err by failing to address the adequacy of state protection, selectively using the country condition documentation, and failing to consider the Applicant's evidence on efforts to obtain state protection in the past?

(b) Did the Board err in its IFA analysis by not directly considering a psychosocial report, considering whether protective measures available in Mexico City are adequate, and disregarded evidence pertaining to the ability of the Applicant to live anonymously in Mexico City?

(c) Did the Board ignore highly relevant documentation that contradicted its findings and by not giving weight to documentation supporting the Applicant without justification?

[7] The issues raised in this matter relate to the factual findings of the Board and will be assessed on a standard of reasonableness (see *Dunsmuir v. New Brunswick*, 2008 SCC 9; [2008] 1 S.C.R. 190; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12; [2009] 1 S.C.R. 339; *M.D.C.R.*, above). In applying this standard, the Court cannot substitute its own appreciation of the appropriate solution to that of the tribunal.

[8] I also note that the Court is to demonstrate significant deference to Board decisions with regard to issues of credibility and the assessment of evidence (see *Camara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 362; [2008] F.C.J. No. 442 at paragraph 12).

III. Analysis

[9] The Applicant relies heavily on the previous decision of Justice Russell in *M.D.C.R.*, above. However, that decision and reasons are in relation to the judicial review of a different Board decision and set of reasons and are not determinative in this matter.

A. *State Protection*

[10] The Applicant argues that the Board used documentation selectively, failed to address the adequacy of the protection measures, and disregarded evidence of past efforts to seek protection.

[11] The Board found that the Applicant had not sought state protection in Mexico and that Mexico, while not providing perfect protection, is a functioning democracy that is making serious efforts to protect its citizens.

[12] A claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence which satisfies the trier of fact, on a balance of probabilities, that state protection is inadequate (*Carillo v. Canada (Minister of Citizenship and Immigration)*,

2008 FCA 94; 69 Imm. L.R. (3d) 309 at paragraph 30). The Board is not required to make reference to each item of documentary evidence or summarize all the documentary evidence introduced (see *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.)) and the reasons of administrative agencies are not to be read hypercritically (see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 35; 1998 CanLII 8667 (F.C.T.D.)).

[13] The Board considered the documentary evidence presented to it, but did not find that it provided clear and convincing confirmation that Mexico was unable to protect its citizens. The evidence presented to the Board did not constitute conflicting evidence to the level that it would need to be specifically addressed by the Board (see *Cepeda-Gutierrez*, above).

[14] Refugee protection is meant to be a form of surrogate protection to be invoked only in those situations where the refugee claimant has unsuccessfully sought the protection of their home state (see *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689; [1993] S.C.J. No. 74; *Hinzman v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 584; 2007 FCA 171). In *Szucs v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1614; 100 A.C.W.S. (3d) 650, the Applicant claimed he did not report the two incidents of persecution to the police because he did not think it would help his situation. In his reasons, Justice Pierre Blais held the Board may examine all reasonable steps that the Applicant has taken to seek state protection.

[15] In this case, the Board determined that the Applicant had not attempted to avail herself of state protection. Based on the credibility findings, as discussed below, this was reasonable.

B. *IFA*

[16] The Applicant argues that the Board erred in its IFA analysis as it failed to consider a psychosocial report, failed to consider whether protective measures available in Mexico City are adequate, and disregarded evidence pertaining to the ability of the Applicant to live anonymously in Mexico City

[17] In its reasons, the Board set out its analysis of why the Applicant had an IFA to Mexico City or the Federal District. The Board considered the submissions of the Applicant, the geography, culture, population and possible support available to the Applicant. The decision was reasonable, as set out in *Dunsmuir and Khosa*, above, and the Court will not substitute its opinion for that of the Board.

[18] The Board also found that the Applicant had failed to provide corroborative evidence to support her allegation that her boyfriend had power and influence in Mexico and could find her in Mexico City. It was within the Board's prerogative to draw an adverse inference from the Applicant’s failure to produce such evidence and in these circumstances I cannot find the Board’s dissatisfaction with the Applicant’s evidence to be unreasonable.

(1) Psychological Report

[19] The Applicant argues that the Board erred by not directly addressing a psychological report by Dr. Pilowsky, who conducted a psychological assessment of the Applicant.

[20] I agree with the Applicant that a psychological report can be an important piece of evidence and can be important in considering if an IFA is reasonable (see *Cepeda-Gutierrez*, above, and *Javaid v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 233; [1998] F.C.J. No. 1730).

[21] However, the fact that the Board did not specifically set out that it considered the psychological report, and how it affected the decision, is not determinative. In *Vildoza v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1575; 92 A.C.W.S. (3d) 497, Justice Allan Lutfy found that it would be inappropriate to set aside a decision on the basis of the Board not referencing a medical report by Dr. Pilowsky that was not put to the Board when addressing the issue of an IFA. At paragraph 18, Justice Lutfy wrote:

> 18 I am satisfied that the tribunal considered Dr. Pilowsky's report in this case, to the extent that it was relied upon by the applicants to support Ms. Vildoza's claim of gender-related persecution. The report itself does not specifically address the chances of her psychological condition worsening if she were to return to a place in Argentina other than Mendoza, such as Buenos Aires where she has family and she has previously lived. The applicants' then counsel did not refer to Dr. Pilowsky's report when she was asked by the tribunal to address the internal flight alternative issue. It would be inappropriate, in my view, to set aside this decision because its reasons do not refer to a report, which is itself at best equivocal concerning the internal flight alternative and which was

> not relied before the tribunal on this issue. In Taher and Cepeda-Gutierrez, the treatment of the psychologist's report before the panel enabled my colleagues to characterize that evidence as "important" for the internal flight alternative analysis. I cannot do so in this case.

[22] In *V.P.A.Z. v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 82; [2009] F.C.J. No. 124, Justice Michael Kelen held that the fact that the Board did not discuss the effect of the psychological report was not sufficient to disturb the Board's reasonable findings. At paragraph 23, Justice Kelen wrote:

> 23 I agree with the applicant that the Board's statement that it considered the psychological report does not suffice where the contents of the reports provide evidence which is highly relevant to credibility or some issue raised by the applicant. However, the Board's finding on state protection was reasonable, and the psychological evidence does not establish otherwise. The applicant made no submission before the Board under section 108(4) of IRPA that the applicant's psychological condition provides a "compelling reason" not to return her to Mexico. The applicant's psychological condition could also be the basis for an H&C application. It is not, however, sufficient to disturb the Board's reasonable finding on state protection or IFA.

[23] In this case, the Applicant's counsel was the same at her refugee hearing and before this Court. There was no evidence in her Application Record that the letter from Dr. Pilowsky was specifically put to the Board on the issue of an IFA to Mexico City or the Federal District. On reviewing the hearing transcript it does not appear that either the Applicant or Counsel specifically put this evidence to the Board when addressing the issue at the hearing.

[24] The Applicant argues that the Board was alive to the issue of the psychological report as related to the issue of an IFA as it was identified by Justice Russell in the judicial review of the Applicant's first hearing. As set out above, the decision by Justice Russell is a review of a separate set of reasons and is not determinative of the judicial review of this decision on a reasonableness standard. In addition, it is up to the Applicant to set out her case. It would not be reasonable for her to rely on statements made by the Court in a separate matter.

[25] In this matter the Board's reasons on the issue of an IFA were reasonable and the psychological report did not establish otherwise. Therefore, following the reasoning of Justices Lutfy and Kelen, it would be inappropriate to set aside the decision because the Board did not specifically refer to the report in its reasons.

C. *Credibility*

[26] The Applicant argues that the Board ignored highly relevant documentation that contradicted its findings and did not justify why it did not give weight to documentation supporting the Applicant.

[27] The Board found that the Applicant gave a number of different accounts as to whether the police were or were not called with regard to the abusive boyfriend, and various reasons why this was or was not done.

[28] While it is open to the Applicant to provide explanations for any inconsistencies, contradictions and omissions, it remains open to the Board to consider the response and determine whether it was sufficient (see *Sinan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 87; [2004] F.C.J. No. 188 at paragraph 10). It is common for the Board to assess credibility by comparing the Applicant's evidence at different interviews, their personal information form, and the oral evidence provided at the hearing (see *Eustace v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1553; [2005] F.C.J. No. 1929 at paragraph 6).

[29] The Applicant provided several reasons for the inconsistencies, contradictions and omissions, such as her lawyer did not complete her documents correctly, that she had been told what to say, that she had no proof, or that she was nervous. In this case, it was open to the Board to not find the Applicant's explanations acceptable and make a negative credibility finding.

[30] As an expert tribunal, it was also open to the Board to give some documents more weight than others. Given the Board's findings with regard to credibility, the Board's decision to give some documents that supported the Applicant less or no weight was reasonable. The Board stated that it gave a denunciation document no weight as it was not disclosed at the first hearing, while available, and that the claimant did not know if the denunciation had been followed up on, even though it was a year and a half later.

[31] The parties did not raise an issue for certification and none arose.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. this application is dismissed; and

2. there is no order as to costs.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-4845-09**
STYLE OF CAUSE:	**RODRIGUEZ v. MCI**
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APPEARANCES:

Pamila Bhardwaj	FOR THE APPLICANT
Veronica Cham	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pamila Bhardwaj Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General Canada	FOR THE RESPONDENT