

Federal Court



Cour fédérale

Date: 20100722

Docket: IMM-5550-09

Citation: 2010 FC 771

Ottawa, Ontario, July 22, 2010

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

**MARTHA ELENA CORZAS MONJARAS and
JOSE LUIS ROMAN CORZAS, LUSIA FERNANDA
ROMAN CORZAS by their litigation guardian
MARTHA ELENA CORZAS MONJARAS**

Applicants

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the RPD) dated October 15, 2009 concluding that the applicants are not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27 because of the availability of state protection.

FACTS

Background

[2] The applicants are citizens of Mexico. Ms. Martha Elena Corzas Monjaras is the applicant mother. She has two children who are also applicants in this matter, thirteen (13) year old Ms. Luisa Fernanda Roman Corzas and seven (7) year old Jose Luis Roman Corzas.

[3] The applicants entered Canada on August 16, 2006 together with Mr. Gustavo Roman, the applicant mother's husband since 1996. They applied for refugee protection on the basis of Mr. Roman's fear from members of Mexico's organized crime gangs. The RPD dismissed this claim on February 28, 2008. Judicial review of that decision was not sought but a Pre removal Risk Assessment (PRRA) was filed on October 28, 2008 on behalf of the family.

[4] Mr. Roman verbally and emotionally abused the applicant mother when they lived in Mexico. After they entered Canada, the applicant mother began to experience violent physical and sexual abuse at the hands of Mr. Roman. The applicant mother attempted to separate from Mr. Roman by moving out of their shared bedroom in the same apartment but the abuse only intensified. The police became involved on at least one occasion which led to criminal charges being laid against Mr. Roman. Shortly after Mr. Roman filed his PRRA, the applicants fled to a shelter and submitted their own PRRA on different grounds. The applicants' PRRA was dismissed on January 16, 2009 and an application for leave and judicial review of that decision was filed on April 8, 2009.

[5] The applicants and Mr. Roman are presently without status in Canada and subject to potential deportation to Mexico. The applicants fear Mr. Roman will locate them in Mexico after they are all deported and renew the abuse. Accordingly, this claim is premised on anticipated abuse if the applicants are deported and if Mr. Roman is deported.

[6] The applicants applied to re-open their refugee claim on February 5, 2009 and advance a gender related domestic abuse claim against Mr. Roman. The RPD allowed the applicants to reopen their refugee claim on April 7, 2009 and the applicants withdrew their application to judicially review their negative PRRA. The RPD heard the new claim on September 14, 2009.

Decision under review

[7] On October 15, 2009 the RPD dismissed the applicants' gender based claim. The RPD determined that the applicants could avail themselves of Mexico's state protection in the event Mr. Roman located them in Mexico and resumed his abuse.

[8] The applicant mother testified that she never sought state protection in Mexico because Mr. Roman's abuse was not as violent as it was in Canada and because they were living with her parents. The applicant stated at page 17 of the transcript that the police protection in Mexico will not be forthcoming in the event Mr. Roman resumed the abuse:

Q: If you went back to the police in Mexico if you have to go back and you said, "Gustavo was abusing me", what do you think would happen?

[...]

A: I imagine they would ask me for evidence, evidence that he beat me or drew blood.

Q: What if they did charge him do you think they could protect you?

A: No.

[...]

A: You can't compare the police here to the police in Mexico, because here there are restraining orders. Gustavo is living with his brother here, and his brother is now his guardian. In Mexico if he were to go to jail he would get out and go back home, and there wouldn't be any kind of order stating that he couldn't see me or be with me.

[9] The RPD considered the gender guidelines and determined that the main issue was whether the applicants have rebutted the presumption of the availability of state protection. The RPD surveyed this Court's leading jurisprudence on state protection and determined that the test requires that the applicant provide clear and convincing evidence of the inadequacy of Mexico's ability to protect the applicants. The RPD cited *Flores v. Canada (MCI)*, 2008 FC 723, per Justice Mosley, for the proposition that the effectiveness of state protection in Mexico is a relevant, but not a determinative consideration in the assessment of state protection. The RPD noted that the applicant has formed her own opinions of state protection based on the experience of similarly situated persons and her own personal circumstances which consisted of:

1. state protection in Mexico is not the same as state protection in Canada;
2. the applicant mother's aunt and friend communicated to her their negative experiences with domestic abuse and inability to avail themselves of state protection;
3. the applicant mother has on previous occasions avoided reporting Mr. Roman's abuse to the police in favour of reconciliation; and

4. Mr. Roman's father has political connections which could thwart the applicant mother's attempts to access state protection.

[10] The RPD determined that the country condition documentation supported some aspects of the applicant mother's testimony but held at paragraph 17 of the decision that the applicant could not rebut the presumption of state protection in the specific facts of her claim:

¶17 ...In Puebla where the claimants lived there is a law to prevent, handle and punish domestic violence and a law to protect crime victims, and that these laws have provisions to deal with violence against women. The Puebla Institute for Women has a telephone help line and distributes brochures about the help line and the services it provides, which include legal and psychological assistance and crisis intervention, and provides women who are victims of domestic violence with information on the various services offered by agencies that work with those women. The Puebla Network of Family Development Agencies (DIF Puebla) and the state's Office of the Attorney General (PGJ) offer the most complete range of care and services. DIF Puebla operated programs at 24 violence prevention and victim assistance clinics (10 in the city of Puebla and 14 in the rest of the state). The centres handled 3,543 reported cases by providing legal as well as medical and psychological assistance to women and children. The number of interventions conducted by these clinics increased from 26,233 in 2005 to 29,501 in 2006. DIF Puebla also offers assistance and education through traveling aid units. In 2006, 15,541 people participated in activities offered by the traveling aid units (conferences, workshops, etc).

The RPD further found that there were seven state managed shelters for abused women in the applicants' state and ongoing training and awareness on the issue of domestic abuse. In addition, there are three shelters managed by civil organizations. For these reasons the RPD determined that adequate state protection exists in Mexico and dismissed the claim for refugee status.

LEGISLATION

[11] Section 96 of IRPA grants protection to Convention refugees:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[12] Section 97 of IRPA grants protection to certain categories of persons:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire,

torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

ISSUE

[13] The applicants raise the following issue:

1. Did the RPD err in its assessment of whether state protection is available to the applicants?

STANDARD OF REVIEW

[14] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, 372 N.R. 1, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to “ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question”: see also *Khosa v. Canada (MCI)*, 2009 SCC 12, per Justice Binnie at para. 53.

[15] It is clear that as a result of *Dunsmuir* and *Khosa* that the RPD’s determinations with respect to state protection are to be reviewed on a standard of reasonableness: see my decisions in *Perez v. Canada (MCI)*, 2009 FC 1029, at para. 25; *Velasquez v. Canada (MCI)*, 2009 FC 109, per Justice de Montigny at para. 13; *Eler v. Canada (MCI)*, 2008 FC 334, per Justice Dawson at para. 6; *Pacasum v. Canada (MCI)*, 2008 FC 822, per Justice de Montigny at para. 18.

[16] In reviewing the Board's decision using a standard of reasonableness, the Court will consider "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, supra*, at paragraph 47; *Khosa, supra*, at para. 59.

ANALYSIS

Issue: **Did the RPD err in its assessment of whether state protection is available to the applicants?**

[17] The applicants submit that the RPD erred in its state protection analysis by failing to refer to objective country condition documentation which contradicted the decision.

[18] In *Flores, supra*, Justice Mosley held at paragraph 10 that the RPD is not required to assess whether state protection is minimally effective and succinctly set out the onus on the applicant to rebut the presumption of state protection in Mexico:

¶10 While this is an attractive argument, it does not convey the current state of the law in Canada in my view. As noted by the Federal Court of Appeal in *Carillo*, the decision of the Supreme Court in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 stressed that refugee protection is a surrogate for the protection of a claimant's own state. When that state is a democratic society, such as Mexico, albeit one facing significant challenges with corruption and other criminality, the quality of the evidence necessary to rebut the presumption will be higher. It is not enough for a claimant merely to show that his government has not always been effective at protecting persons in his particular situation: *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

[19] The Federal Court of Appeal recently clarified the presumption of state protection in *Carillo v. Canada (MCI)*, 2008 FCA 94, 69 Imm. L.R. (3d) 309, per Justice Létourneau. The Court engaged in a detailed discussion at paragraphs 16-30 on the distinctions between “*burden of proof, standard of proof and quality of evidence*”. The Court reviewed the reasonableness of the RPD’s assessment of Mexico’s state protection in the context of spousal abuse at paragraphs 33-35:

¶33 The Board found that the respondent had failed to make determined efforts to seek protection. She reported to police only once during more than four years of alleged abuse...

¶34 In addition, the Board concluded based on the evidence before it that the respondent did not make additional effort to seek protection from the authorities when the local police officers allegedly did not provide the protection she was seeking... She could have sought redress through National or State Human Rights Commissions, the Secretariat of Public Administration, the Program Against Impunity, the General Comptroller's Assistance Directorate and the complaints procedure at the office of the Federal Attorney General...

¶35 Finally, the Board noted the respondent's omission to make a complaint about the involvement of the abuser's brother, who allegedly is a federal judicial police officer, when the evidence indicates that substantial, meaningful and often successful efforts have been made at the federal level to combat crime and corruption...

The Court held that it was reasonably open to the RPD to determine that adequate state protection was available in Mexico on the facts before it.

[20] It is trite law that the reasons given by the RPD are not to be read hypercritically by a court and nor is it required to refer to every piece of evidence that it received that is contrary to its finding, and to explain how it dealt with it: *Cepeda-Gutierrez v. Canada (MCI)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 (F.C.T.D.), per Justice Evans (as he then was) at paragraph 16. The RPD is presumed to have considered all the evidence, however, the more important the evidence that is not mentioned specifically and analyzed in the RPD's reasons, the more willing a court may be to infer from the silence that the RPD reached its decision without regard to the evidence: *Cepeda-Gutierrez, supra*, at para. 17.

[21] The applicant has cited a number of recent decisions of this Court where the RPD's determinations on state protection were overturned because the RPD selectively analyzed or failed to deal with compelling evidence of a state's inadequate provision of protection: *Gilvaja v. Canada (MCI)*, 2009 FC 598, per Justice O'Keefe at para. 38; *Mendoza v. Canada (MCI)*, 2008 FC 387, per Justice Dawson at para. 15; *Mejia v. Canada (MCI)*, 2010 FC 530, per Justice Near at para. 17; *Villicana v. Canada (MCI)*, 2009 FC 1205, per Justice Russell at paras. 70-71. In all of the above cases, the RPD failed to explain why it preferred certain documentary evidence over significant and reputable documentary and testimonial evidence which indicated that state protection was inadequate.

[22] In this case, the RPD acknowledged at paragraph 14 of the decision that violence against women was a serious problem in Mexico and that enforcement action against male abusers is sorely lacking:

¶14 Counsel's well-crafted submissions point to a number of failings of the Mexican authorities in dealing with gender violence including a culture of acceptance of the practice even among those who are to enforce the laws against it, a culture of impunity for the abusers and obstacles to protection such as corruption, financial resources available to women, judges discretion in deciding what measures to grant, and practical matters such as orders not being effective until they are served on the abuser. Certainly, documentary evidence indicates that Mexico is having an ongoing battle with violence against women, crime and corruption. While the documentary evidence does support some of what the female claimant fears, it is also mixed with information on current efforts Mexico is taking to combat crime, corruption and violence against women,

There is no basis in view of the above excerpt to hold that the RPD ignored contrary evidence. The RPD may not have referred to specific documentation but it is clear from the reasons that the RPD read and considered the applicants' written submissions and the documentary references which they cited.

[23] The RPD assessed the legislative framework which governs Mexico's official approach to domestic abuse and its evolving enforcement of the existing laws against the perpetrators of domestic abuse and against those who facilitate it through corruption. In this case, the RPD specifically analyzed the adequacy of state protection in Puebla, and considered the applicant mother's testimony in coming to a conclusion. Since the applicants have never attempted to avail themselves of Mexico's state protection, the RPD had to compare the applicant mother's testimonial assessment of the state protection in Puebla against the specific documentary evidence which discussed state protection in Puebla. This approach was eminently reasonable in the present facts and in my view it is not selective.

[24] The RPD found that the documentary evidence indicates that awareness with respect to domestic abuse is comparatively higher in Puebla and that authorities have allocated significant resources towards shelters, training for police officers, and medical and mental health care services for abused women. State protection in Puebla may not reach the standard in Canada but this Court has held on multiple occasions that state protection need only be adequate, not perfect. A claimant cannot become a refugee in Canada because the police in Canada are more effective than in Mexico. It was reasonably open to the RPD to determine based on the evidence before it that the applicants

could avail themselves of Mexico's state protection if Mr. Roman were to locate them in Mexico and resume his pattern of domestic abuse. This ground of review must therefore be dismissed.

CERTIFIED QUESTION

[25] Both parties advised the Court that this case does not raise a serious question of general importance which ought to be certified for an appeal. The Court agrees.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

The application for judicial review is dismissed.

“Michael A. Kelen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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