

Federal Court



Cour fédérale

Date: 20101217

Docket: IMM-1803-10

Citation: 2010 FC 1280

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 17, 2010

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

EMILIO GONZALEZ CHAVEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (panel), dated March 4, 2010, that the applicant is not a Convention refugee or a person in need of protection under the Act.

The facts

[2] The applicant is a citizen of Mexico and a member of the National Action Party (PAN). He is alleging that he fears persecution for political reasons at the hands of members of the National Peasant Confederation (CNC), more specifically, one of its directors, Jose Luis Gomez Luna, who is also a member of the Institutional Revolutionary Party (PRI).

[3] The applicant was an auditor for the Agrarian Reform Secretariat in Mexico City. On October 15, 2007, Mr. Luna threatened the applicant for refusing to resign and for the disciplinary measures allegedly imposed on Mr. Luna's predecessor further to the auditor's report prepared by the applicant.

[4] In the evening of November 24, 2007, as the applicant was getting into his vehicle, his assailants, armed with bats, uttered death threats against him for refusing to resign from his auditor position and for belonging to the PAN.

[5] Shaken by this incident, he filed a complaint with the Office of the Attorney General of Justice in Mexico City that night and was purportedly told that they would act on it within 48 hours.

[6] On November 26, he contacted the National Human Rights Commission. A clerk he knows well advised him to leave the country given his membership in the PAN.

[7] On December 5, 2007, ten days after his complaint to the Office of the Attorney General, he left the country and went to Montréal without following up with this organization.

[8] The applicant filed a refugee claim upon his arrival in Canada on December 5, 2007.

The impugned decision

[9] The panel first acknowledged that the applicant is credible, but rejected his refugee claim on the grounds that he had not used all the necessary means, or made serious efforts, to obtain state protection. According to the panel, he had not exhausted all avenues of recourse available to him.

[10] Furthermore, the applicant had apparently not submitted clear and convincing evidence establishing that the Mexican state was unable to ensure his protection.

Issue

[11] The following issue arises in this application for judicial review:

Did the panel err in finding that the applicant had not exhausted all avenues of recourse to avail himself of the protection of the Mexican state?

Standard of review

[12] 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 has been reasonableness.

[13] The applicable standard of review for state protection decisions is reasonableness (*Dunsmuir*, above, at paragraphs 47, 55, 57, 62 and 64; *Hinzman v. Canada (Minister of Citizenship*

and Immigration), 2007 FCA 171, 282 D.L.R. (4th) 413 at paragraph 38; *Huerta v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 586, 167 A.C.W.S. (3d) 968 at paragraph 14; and *Capitaine v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 98 at paragraph 10).

Analysis

[14] The applicant maintains that he is the subject of threats and persecution because of his political opinion. The Supreme Court in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, cites, at paragraph 81, the work of Atle Grahl-Madsen, *The Status of Refugees in International Law*, Netherlands, A.W. Sijthoff-Leyden, 1966, and states the following:

Political opinion as a basis for a well-founded fear of persecution has been defined quite simply as persecution of persons on the ground “that they are alleged or known to hold opinions contrary to or critical of the policies of the government or ruling party”

[15] In the same paragraph, the Court continues by stating that “it is possible that a claimant may be seen as a threat by a group unrelated, and perhaps even opposed, to the government because of his or her political viewpoint, perceived or real”.

[16] In the case before us, the panel found the applicant to be credible with respect to his persecution. He therefore meets the first test of whether he had reason to believe he was being persecuted because of his political opinion.

[17] The applicant is therefore criticizing the panel for not taking his complaint seriously as it allegedly concluded without foundation that a period of nine days was not sufficient for the police to act on the applicant’s complaint.

[18] Furthermore, the applicant relies on *Avila v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, 295 F.T.R. 35, to argue that the panel erred in stating that he had not exhausted all of the avenues of recourse available to him in Mexico before seeking protection in another state.

[19] According to the applicant, the ability of the Mexican state to protect its nationals, particularly those who fear for their safety because of their political opinion, must be decided in light of the specific facts and circumstances of each claim.

[20] At the hearing, the applicant's counsel, after reiterating the importance of the IFA on the Mexican political scene, maintained that the panel erred by not considering the documentary evidence submitted by the applicant regarding the degree of impunity that exists in Mexico. Furthermore, it should have considered the degree of corruption that exists in the country, which correspondingly diminishes its degree of democracy.

[21] Counsel noted, among other things, the Amnesty International assessments submitted into evidence by the applicant and criticized the panel for failing to consider this evidence in its decision.

[22] However, the respondent objects to this on the grounds that the applicant had not discharged his burden of proof because he was not able to establish, to the panel's satisfaction, that all available steps and avenues of recourse had truly been exhausted before leaving Mexico. He raises, among others, *Kadenko v. Canada (Minister of Citizenship and Immigration)*, (1996), 143 D.L.R. (4th)

532, 206 N.R. 272 (F.C.A.), to argue that it was not enough for the applicant to make a simple complaint to rebut the presumption of state protection and that he should have at least followed up with the competent authorities.

[23] Relying on, among others, *Castaneda v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 393, the respondent argues the full importance of exhausting all avenues of recourse, which the applicant purportedly did not do in this case.

[24] Several of this Court's decisions have addressed the ability of the Mexican state to protect its citizens and the resulting presumption of state protection (*Luna v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1132, 2008 F.C.J. No. 1501 (QL) at paragraph 14; *Canseco v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 73, [2007] F.C.J. No. 115 (QL) at paragraph 14; and *Alfaro v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 460, [2006] F.C.J. No. 569 (QL) at paragraph 18).

[25] In the decision under review in the present application, the panel considered the applicant's allegations that he reported the threats he received and referred directly to them, while considering the documentary evidence submitted by the applicant.

[26] The documentary evidence filed in the record also addresses the services available to citizens in order to end the corruption in the public service and the measures taken by the Mexican authorities further to complaints received.

[27] The applicant claims that the Mexican state cannot ensure his protection because he submitted a complaint further to the threats he received as a result of his membership in the PAN and nothing happened in the nine days that followed.

[28] The panel acknowledged that the applicant is credible, that he was persecuted for his membership in the PAN and that he had filed a complaint with the Mexican authorities. However, the panel found that there was insufficient evidence in the record to corroborate his position that he had exhausted the avenues of recourse offered by the Mexican state for his protection.

[29] When considering the panel's decision, it appears to us that all of the evidence was indeed considered and that the panel identified other avenues of recourse available to the applicant in this case.

[30] Under these circumstances, it was reasonable for the panel to find that the applicant had failed to discharge his burden of proof with respect to the inability of the Mexican state to ensure his protection (see *Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636).

[31] For these reasons, the application for judicial review is dismissed. Neither party proposed a question for certification and this matter does not contain any.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

- The application for judicial review is dismissed.
- No question is certified.

“Andre F. J. Scott”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1803-10

STYLE OF CAUSE: EMILIO GONZALEZ CHAVEZ v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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REASONS FOR JUDGMENT: SCOTT J.

DATED: December 20, 2010

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