

Federal Court



Cour fédérale

Date: 20110310

Docket: IMM-3025-10

Citation: 2011 FC 294

Ottawa, Ontario, March 10, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

LUCIA RIVERA MESINAS

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is a citizen of Mexico seeking protection from her father, her former boyfriend as well as her former boyfriend's associates. Her claim was denied by the Immigration and Refugee Board (the "IRB"), by way of a written decision dated May 4, 2010. In this decision, the Applicant was deemed to benefit from sufficient state protection in Mexico, and thus, was not a Convention refugee or a person in need of protection under the regime of section 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 ("IRPA"). Leave was granted on December 3, 2010.

[2] The IRB's decision focused on the sufficiency of state protection in Mexico against gender-based violence against women, and state protection at large. The IRB noted that it had considered the *Gender Guidelines* in making its determination. In essence, despite the contrary documentary evidence, the IRB ruled that protection would be reasonably forthcoming should the Applicant seek it. Also, the fact that the Applicant's former boyfriend had been arrested on drug charges was indicative of the state's wilfulness to pursue such matters. Having stated the applicable law on state protection, the IRB noted that the Applicant had only once approached authorities to denounce her then-boyfriend, and never had done so to denounce her father. As such, the Applicant had not rebutted the presumption of state protection with clear and convincing evidence.

[3] The Applicant argues that the IRB had misconstrued the evidence before it and had ignored key elements of the evidence to base its findings. Furthermore, it is argued that the IRB failed to assess the proper test for state protection. More precisely, the Applicant argues that had the IRB properly considered the evidence before it, it would have come to the determination that her reluctance to engage authorities absolved her of approaching them for protection before seeking asylum.

[4] The Respondent contends that the decision was reasonable and had considered all the relevant evidence. Hence, the Applicant simply had not rebutted the presumption of state protection with clear and convincing evidence.

[5] The determinative issue in this case is that of the IRB's assessment of the sufficiency of state protection. This is a mixed question of fact and law that is to be reviewed on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491; *Vigueras Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359). As such, the Court cannot substitute its decision to that of the IRB. Instead, the Court is assessing whether the decision falls within the range of outcomes defensible in fact and law.

[6] In this case, the IRB's assessment of the sufficiency of state protection in Mexico is adequate. The key elements of the presumption of state protection were addressed, particularly in regards to case law's requirements for rebutting the presumption of state protection (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689; *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171). There was no error in law committed by the IRB.

[7] The Court does not agree with the Applicant's submissions that the IRB had fatally omitted to mention and consider the fact that the Applicant's sister had been murdered. This was said to influence the Applicant's attitude towards the police. The Court notes that the sister's murder was indeed detailed in the PIF. However, no argument was made on the impact this may have had. Also, counsel was provided with ample chance to highlight this fact, but did not do so at any point (despite the hearing being adjourned on two occasions). If the Applicant does not address facts important to the case during her testimony or during submissions, it is therefore not expected that the IRB should attribute much importance, if any, to these facts. Therefore, it cannot constitute grounds for judicial review.

[8] The Applicant is correct in stating that it was unreasonable to not have approached authorities about her father's abuse when she suffered it as a teenager. Indeed, the *Gender Guidelines*, and common sense, support the contention that the Applicant would rely on her mother's dealings with the authorities to address this matter. However, the Court believes that this finding is not determinative of the outcome of the case. What is at issue is not how the Applicant reacted to the abuse she suffered at a young age, but rather, how she dealt with her father's return into her life. In this perspective, it is clear that she did not approach the authorities about her father's note and ransacking of her residence.

[9] The IRB provided a detailed analysis of state protection in Mexico. There is nothing to indicate that this assessment was generic or omitted important elements. Indeed, the IRB recognized there were contradictory elements of evidence, but it was not required to comment every single piece of evidence, so long as the rationale for the decision was clear and that important elements were not omitted (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, (1998) 157 FTR 35; *Flores Campos v Canada (Citizenship and Immigration)*, 2010 FC 842). In this case, the Court cannot state that the reasons and rationale were deficient.

[10] The IRB did analyze the relevant factual elements of the evidence as it relates to the Applicant. It did consider the fact that the Applicant had addressed a complaint against her then-boyfriend, which was summarily dismissed. However, there were other recourses and the local failure of one law enforcement officer does not amount to inadequate state protection (*Kadenko et al. v Canada (Attorney General)*, (1996) 206 NR 272 (FCA); *Sanchez Rovirosa v Canada*

(*Citizenship and Immigration*), 2011 FC 48). Although fearing many persecutors, the Applicant only took action against one and even then, did not refer her complaint to another officer or instance. This is not consistent with case law's requirements of meaningfully seeking protection before applying for the surrogate form of protection that is asylum law, as illustrated in *Ward*, above.

[11] Also, the IRB properly assessed the factual elements of the case, not least of which was the Applicant's former boyfriend's arrest. The IRB rightly noted that this was indicative of sufficient state protection. The newspaper article that was filed describes Ivan's arrest in late September 2008. It also indicates that the police were also looking for the Applicant, who left in early October 2008. In regards to the threats from presumed associates of Ivan, the IRB appropriately assessed this evidence and indicated that it was a very serious threat, and that the Applicant did not make any efforts to report it to the authorities.

[12] Hence, it was reasonable for the IRB to conclude that the evidence provided did not amount to "clear and convincing" evidence to rebut the presumption of state protection.

[13] Consequently, the IRB's decision falls within the range of acceptable outcomes defensible in fact and law. It assessed the documentary evidence, explained its conclusions and did not ignore facts that were validly placed before it. The application for judicial review is denied.

[14] No question was suggested and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is denied. No question is certified.

“Simon Noël”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3025-10

STYLE OF CAUSE: LUCIA RIVERA MESINAS
V
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 3, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** NOËL S. J.

DATED: March 10, 2011

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