Federal Court  Cour fédérale

Date: 20110310

Docket: IMM-4263-10

Citation: 2011 FC 298

Ottawa, Ontario, March 10, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

RANFERY ALBERTO MIRANDA RAMOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, a citizen of Mexico, was denied asylum by the Immigration and Refugee Board (IRB), by way of a written decision dated June 17, 2010. The Applicant was not found to be a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). Leave was granted on December 2, 2010.

[2] In its decision, the IRB related the main facts of the case and stated the applicable law. It was determined that the sufficiency of state protection was the determinative question in the

application. The IRB ruled that the Applicant had not provided clear and convincing evidence that the state of Mexico could provide adequate protection. The IRB took issue with certain omissions and facts of the case in order to conclude that it did not believe that one of the claimant's abductors was part of a police force and that his brother-in-law had paid his ransom. Also, the IRB recognized the Applicant's psychiatric report to the effect that he had Post Traumatic Stress Disorder, but noted that he could receive treatment in Mexico. Finally, articles that were deemed poorly translated were not given much weight.

[3] The Applicant contests the IRB's decision on the grounds of a faulty analysis of state protection requiring the intervention of this Court. The Applicant indicated that the presence of a typo was an indication that the Applicant's case had not been duly analyzed (a "she" was used in the IRB's decision, with reference to the male applicant). Also, pursuant to case law, only in situations where state protection is reasonably forthcoming should the Applicant be required to approach the state. It is alleged that the IRB failed to properly assess the evidence before it, including the current country conditions in Mexico in respect to impunity and corruption.

[4] The Respondent contends that the IRB's decision was reasonable and that, pursuant to the principles of judicial review, the Court should not intervene. The IRB's assessment of the evidence was reasonable. Also, the Respondent argues that credibility findings were made, and that these should not be reviewed by the Court.

I. Standard of Review

[5] The Court agrees with the Respondent when it is noted that the IRB made credibility findings. These findings were implicit in the IRB's refusal to consider the Applicant's evidence and to deem it not to be "persuasive".

[6] These are reviewable on the standard of reasonableness (*Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982; *Vega Zarza c Canada (Citoyenneté et Immigration)*, 2011 CF 139; *Ranu v Canada (Citizenship and Immigration)*, 2011 FC 87). The question of the IRB's assessment of the evidence is a mixed question of fact and law to be reviewed on the reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Garcia Bautista v Canada (Citizenship and Immigration)*, 2010 FC 126; *Flores Campos v Canada (Citizenship and Immigration)*, 2010 FC 842). The Court is thus asked to consider whether the decision falls within the range of acceptable outcomes defensible in fact and law.

II. Analysis

[7] The impugned decision is not reasonable. The underlying credibility assessment is flawed, as it ignores the evidence put before the IRB. The Court's intervention is warranted as the credibility finding was made without regard to the evidence (*Kengkarasa v Canada (Citizenship and Immigration)*, 2007 FC 714).

[8] As noted, the IRB made a credibility finding when it noted that it did not believe that the Applicant's abductors were police officers. One core element of this finding was that there "is no indication in the claimant's original or amended Personal Information Form that one of his abductors was the police commander of Acapulco or that any of his abductors were police officers".

In fact, the PIF clearly indicates that “the kidnappers work for the police”. This was further detailed at the hearing. Furthermore, the Applicant’s narrative alludes to the fact that he was held captive in a police station. It just may be that the IRB did not find the Applicant credible on all accounts. But to do so, the IRB has the obligation to address the evidence on the file, in this case, the Applicant’s PIF. It is clear that credibility findings are not to be based on an erroneous interpretation of the evidence (*Aguebor v Canada (Minister of Employment and Immigration)*, (1993) 160 NR 315 (FCA); *Osawaru v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1270).

[9] The IRB’s conclusion in regards to the payment of a ransom by the Applicant’s brother-in-law is also unreasonable. The IRB noted that it was not “persuaded that a ransom was paid for the claimant’s release”. In fact, the Applicant noted that at the very least, his abductors had kept his vehicle as part of the ransom (p 23 of the Transcript, at line 45). Also, the Applicant’s brother-in-law’s role in the negotiation of the ransom was detailed and dealt with during the hearing. As such, the IRB’s conclusion is unreasonable, as it does not address a key component of the evidence, or at the very least, does not explain why the evidence was not considered (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, (1998) 157 FTR 35 (FCTD)).

[10] Thus, it can be said that the IRB’s credibility findings were unreasonable as they did not meaningfully address elements of the evidence and were made on false premises. As mentioned earlier, the credibility finding, at least in the way that it was rationalized by the IRB, was not supported by the evidence. It is thus logical that findings that stem from this credibility finding be found unreasonable as well. As I have indicated previously, and as dictated by common sense, credibility findings are at the core of the IRB’s work and are determinative issues (*Umubyeyi v*

Canada (Citizenship and Immigration), 2011 FC 69; *Ortez Villalta v Canada (Citizenship and Immigration)*, 2010 FC 1126). Surely, if the IRB does not find an Applicant credible, the rest follows as a matter of course. In *Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262, at para 25, Justice Shore noted that "the negative credibility finding is determinative *per se*, and the failure to prove that it is unreasonable is sufficient to defeat this application". In the case at bar, the Applicant has shown that the credibility finding is unreasonable and thus, the application is allowed.

[11] The Court notes the important comments made by the Court in *Cepeda-Gutirriez*, above, when it was said that:

> On the other hand, the reasons given by administrative agencies are not to be read hypercritically by a court (*Medina v. Canada (Minister of Employment and Immigration)* (1990), 12 Imm. L.R. (2d) 33 (F.C.A.)), nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it (see, for example, *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (F.C.A.) (…) However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)*, (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[12] Evidently, the Court must be mindful of the applicable standard of review, that of reasonableness. This does call for deference, and the comments in *Cepeda-Gutierrez* warn against hypocritical analysis of the IRB's decisions. However, when the reasons clearly make findings that run counter to the evidence (perhaps the most important in this respect is the finding in regards to the PIF), the Court's intervention is warranted.

[13] It is clearly within the IRB's jurisdiction to make credibility findings. In fact, it is trite to state the IRB's privileged role to do so. However, these findings must be justified and explained in the reasons. This is required not only by procedural fairness, but also by the reasonableness standard of review, whereby reasons are to be scrutinized just the same as outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

[14] As such, the matter is to be sent for redetermination by a newly constituted panel of the IRB.

[15] No question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed. The matter is to be sent for redetermination by a newly constituted panel of the IRB. No question is certified.

"Simon Noël"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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