

Federal Court



Cour fédérale

Date: 20110321

Docket: IMM-3451-10

Citation: 2011 FC 343

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 21, 2011

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

**VIRGINIA REZA GOROSTIETA
JOSE JUAN VELAZQUEZ REZA
JONATHAN VELAZQUEZ REZA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of the Immigration and Refugee Board's Refugee Protection Division (hereinafter the panel), dated May 26, 2010, which found that the applicants were neither Convention refugees nor persons in need of protection.

Factual background

[2] The principal applicant, Virginia Reza Gorostieta, a citizen of Mexico, is seeking protection as a Convention refugee because she fears being persecuted by reason of her membership in a particular social group, namely, [TRANSLATION] “women victims of domestic violence.”

[3] The applicant’s minor children, Jose Juan Velazquez Reza and Jonathan Velazquez Reza, base their refugee protection claims on that of their mother and on their membership in the social group of [TRANSLATION] “family members.”

[4] The applicant lived with Ramon Velasquez Rosales, her common-law spouse, for twelve years from 1992 to 2004.

[5] Mr. Rosales worked as a janitor and gardener. However, the applicant alleges that he also worked as a drug dealer. She claims Mr. Rosales was violent and that he would often harass and beat her.

[6] In 2004 the applicant left Mr. Rosales.

[7] Since 2004, the applicant has allegedly been threatened by him on several occasions. He is also alleged to have raped her and threatened her with a firearm.

[8] The applicant arrived alone in Canada on May 5, 2008. She claimed refugee protection on the same day. Her sons arrived in Canada on October 4, 2008.

Impugned decision

[9] The panel began by stating that it had taken into account the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*, given that the applicant claimed to be a woman who is a victim of domestic violence and who cannot rely on state protection.

[10] The panel determined, however, that the applicant was not credible and that her behaviour was not that of a person who has a genuine fear of persecution. The panel noted the inconsistency between her narrative and her testimony, and her delay in seeking refugee protection in Canada, in spite of the alleged threats dating back to February 2004. The panel also noted that the applicant's narrative contained few details or dates.

[11] When she was asked why she was alleging that Mr. Rosales is a powerful drug dealer, the applicant replied that people had suspicions and told her that someone who worked as a janitor and gardener could not possibly make that much money. The panel therefore found that this answer negatively affected the credibility of the alleged facts.

[12] Among the inconsistencies that were noted are the reasons given by the applicant as to why she did not move and why she kept working at the same job. The applicant testified that she did not want to lose her job. The panel found that the applicant's behaviour was inconsistent with the alleged fear of persecution, given that she continued to go about her business in spite of the threats to her life and the lives of her children.

[13] To support this line of reasoning, the panel cited *Munoz v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1273, [2006] F.C.J. No. 1591, at para. 21, in which Justice Shore found that the RPD may, in assessing the well-foundedness of an applicant's fear, take into consideration their behaviour and the fact that they did not take serious measures to protect themselves.

[14] Moreover, when it inquired as to how the children were able to fly to Canada without being accompanied by an adult, the panel learned that the applicant's brother-in-law had managed to obtain a signed authorization from Mr. Rosales in 2008. The panel therefore found that this behaviour was inconsistent with the applicant's description of him as: "a dangerous criminal, who threatened and harassed her for four years" (panel's decision, at para. 20).

[15] The panel also noted that this alleged story was not credible because, rather than give his permission for the children to join their mother, Mr. Rosales could just as easily have prevented them from leaving and used them in order to blackmail her into returning.

[16] Thus, the panel rejected the applicant's claim for refugee protection on the ground that she had failed to discharge her burden of establishing that there was a serious possibility that they would be persecuted on one of the Convention grounds. According to the panel, she had also failed to demonstrate that they would be personally subjected to a danger of torture or to a risk to their lives or to a risk of cruel and unusual treatment or punishment if they were to return to Mexico.

Relevant statutory provisions

[17] The following provisions of the *Immigration and Refugee Protection Act* are relevant in this case:

Convention refugee

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.

Person in need of protection

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 torture within the meaning of Article 1 of the Convention

Définition de « réfugié »

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.

Personne à protéger

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, d'être soumise à la torture au sens de l'article premier de la

Against Torture; or

Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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,

(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(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) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Issue

[18] In the present application for judicial review, the issue is the following:

Did the panel make findings as to credibility and a lack of subjective fear that were unreasonable and not in accordance with the evidence before it?

Standard of review

[19] According to the Supreme Court of Canada, at paragraph 53 of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, when a tribunal is reviewing legal and factual issues that cannot be readily separated, the reviewing court will show deference to the tribunal.

[20] In the case at bar, the panel's decision is based on the lack of credibility of the applicant's narrative. It is well established that the assessment of the credibility of the testimony of a witness is a matter within the jurisdiction of the panel and that the panel has the necessary expertise to analyze and assess questions of fact, enabling it to assess the credibility as well as the subjective fear of persecution of a refugee claimant (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425, 157 F.T.R. 35, at para. 14).

[21] The case law is consistent that issues of credibility are reviewable on a standard of reasonableness (see *Malveda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 447, [2008] F.C.J. No. 527; *Aguirre v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] F.C.J. No. 732; *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449, [2008] F.C.J. No. 571; and *Tovar v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 600, [2009] F.C.J. No. 785).

Analysis

[22] In the case at bar, the applicant submits that the panel erred in its analysis when it claimed that the contradictions, omissions and implausibilities in her testimony involved elements that went to the very heart of her claim. According to the applicant, the elements in question that were identified by the panel were neither essential nor important to her claim for refugee protection:

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- i. That the narrative includes few details or dates (para 10);
- ii. That the claimant did not mention in her PIF the 12-year period during which she lived as a common-law partner with Ramon (para. 10);
- iii. That she had no document establishing that she lived with Ramon as a common-law partner for 12 years (paras. 10-11);
- iv. Their first child's date of birth (para. 11);
- v. That her testimony was unreliable (para. 11);
- vi. The explanation provided by the claimant with regard to the question about Ramon's drug-dealing and that people said that Ramon was a drug dealer because he could not make that much money as a janitor and gardener (para. 12);
- vii. The claimant's explanation with regard to Ramon's brother persuading Ramon to agree to let the children leave, which was not credible (paras. 19-20).

[23] While it is recognized that panel members should not display excessive zeal in attempting to find contradictions in a claimant's testimony (see *Attakora v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1989] F.C.J. No. 444, 99 N.R. 168), the Court is of the view that the reasons relied upon by the panel were reasonable and that the member did not make an improper and overly zealous effort to find instances of contradiction in the applicant's testimony.

[24] It was in fact reasonable for, and open to, the member to question the applicant about the length of time she claimed to have lived with her former spouse since her relationship with him is at the heart of her claim. As the respondent's counsel rightly noted, a lack of evidence corroborating

important aspects of a claim may undermine an applicant's credibility (see *Singh v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 453, [2008] F.C.J. No. 574, at para. 15).

[25] It is clear from the evidence that the member's assessment of the applicant's credibility was reasonable. In fact, the applicant's testimony was confusing and it was reasonable for the member to have found it unreliable.

[26] In this case, when she was asked about her children, the applicant indicated that she and Mr. Rosales had had only one child together, Jose Juan. Then, the member asked the applicant how long they had been living together when Jose was born. The applicant indicated that it had been one year. Given the discrepancy between the dates, the member then asked the applicant to clarify the dates. She asked the applicant what year Jose was born. The applicant replied that she did not know his date of birth.

[27] It would appear that she mixed up the dates of birth of her two sons. The first seems to have been born in the first year they had lived together, and the second five years later. However, this does not explain why she indicated that she had had only one child with Mr. Rosales. While this confusion might have been attributable to the applicant's nervousness at the hearing, the Court is of the view that the negative finding with respect to the applicant's credibility was made in light of all of the evidence. The Court finds it difficult to see how the member, in her decision, allegedly misapplied the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*. As the respondent submitted, even if the applicant was in a fragile state, this does not explain the discrepancies in her testimony with regard to important dates in her life.

[28] As for the explanation given by the applicant regarding the allegation that Mr. Rosales was a drug dealer, it was reasonable for the member to find that this was based solely on speculation by other people. Moreover, this finding is but one among others that render the applicant's testimony non-credible.

[29] Finally, the applicant alleges that the member erred by not assigning more credibility to the explanation provided with regard to the authorization allegedly signed by Mr. Rosales allowing the children to leave that had been obtained by her brother-in-law. Contrary to what the applicant alleges, the negative inference regarding credibility on this point is not based on the fact that the applicant was incapable of explaining why, other than by conjecture or hearsay, Mr. Rosales gave his permission, but because it was implausible that Mr. Rosales would allow his children to leave Mexico, given the allegations about his dangerous and violent behaviour. Here again, the Court is of the view that the member did not err in reaching this finding.

[30] With respect to the member's findings regarding the applicant's behaviour, the Court is of the view that the member committed no error. In analyzing the fact that the applicant never moved and/or changed jobs, the member revealed that the applicant's behaviour was inconsistent with the alleged fear of persecution. In light of the evidence, it was up to the panel to determine whether the applicant had a genuine and reasonable fear of being persecuted. As the respondent rightly noted, the case law of this Court has established that there are many ways to make determinations in matters of credibility. In this regard, a claimant's blatantly inconsistent conduct may, in itself, be

enough to deny a refugee claim (see *Biachi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 589, [2006] F.C.J. No. 777, at para. 8).

[31] In this case, the applicant submits that the member committed an error by citing *Munoz*, above, because the facts in that case are completely different. Even if the Court understands that the facts in that case are different, the principle set out in the decision nevertheless applies. In fact, the applicant's behaviour was taken into consideration, as in *Munoz*, because she did not take serious measures to protect herself from Mr. Rosales.

[32] Lastly, the applicant complains that the member did not conduct a separate analysis under section 97 of the Act. As this Court recently held in *Mejia v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 410, [2010] F.C.J. No. 479, at para. 20, "[a] negative credibility finding in relation to section 96 will often obviate the need to consider section 97 ...". In this case, given that the member had validly determined that the applicant was not credible, this settles the issue of whether, under the circumstances, she and her children are persons in need of protection within the meaning of subsection 97(1) of the Act.

[33] In conclusion, the Court is of the view that the panel conducted a complete analysis of the evidence. The panel's decision is reasonable and the Court's intervention is not warranted. The application for judicial review is therefore dismissed.

[34] No question was proposed for certification and this matter does not contain any.

JUDGMENT

THE COURT ADJUDGES that this application for judicial review is dismissed. No question is certified.

“Richard Boivin”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
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