Federal Court  Cour fédérale

Date: 20110711

Docket: IMM-6457-10

Citation: 2011 FC 864

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 11, 2011

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

CHRISTIAN ESTEBAN ROMERO QUIROZ
CLAUDIA ELIZABETH HERRERA CALDERON
CLAUDIA ESTEPHANIA ROMERO HERRERA
BRUNO ALEJANDRO ROMERO HERRERA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are challenging the lawfulness of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board (panel), dated October 6, 2010, rejecting their refugee claim on the basis that they are not Convention refugees or persons in need of

protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act).

[2] The applicants are Mexican citizens. The principal applicant, Christian Esteban Romero Quiroz, is alleging that Rafael Herrera Ascencio and his brother, Carlos Herrera Ascencio, an officer with the Office of the Public Prosecutor of Cuautitlan, Mexico State (Herrera Ascencio brothers), want to kill him because he told the authorities that they were trafficking drugs with youths in the neighbourhood where the applicants previously lived.

[3] Having excluded the application of section 96 of the Act, and even though questions were raised about the principal applicant's credibility and the efforts he made to seek state protection, the panel rejected the refugee claim in accordance with section 97 of the Act, first and foremost because of an internal flight alternative (IFA) in Mexico City, Puebla and Guadalajara.

[4] On the one hand, the panel found that the applicants had not established that the Herrera Ascencio brothers were willing to look for them throughout Mexico and, in particular, in Mexico City, Puebla and Guadalajara. According to the panel, the fact that one of the Herrera Ascencio brothers is an officer with the Office of the Public Prosecutor of Cuautitlan does not make it possible to determine that this official has the capacity to find the applicants anywhere in Mexico. In this respect, the panel noted that, under Mexican law, the public does not have access to the voter registry database of the *Instituto Federal Electoral* (Federal Electoral Institute) and that federal officers can consult it only if they present a court order and written permission from the Office of the Public Prosecutor.

[5] On the other hand, the panel noted that it asked the principal applicant if there was any reason why it would be too harsh or unreasonable to expect him and his family to go to Mexico City, Puebla or Guadalajara. The principal applicant's reply was "I don't know" and "They're no place to give my children a future". The panel therefore found that the principal applicant indicated nothing other than his fear of the Herrera Ascencio brothers as to why it would be objectively unreasonable for him and his family to live in Mexico City, Puebla or Guadalajara.

[6] The applicants are not challenging the lawfulness of the panel's finding that there is no nexus between their refugee claim and any of the five Convention grounds set out in section 96 of the Act. However, they submit that the rest of the panel's decision is reviewable. Given that the issues are credibility and the determination of an IFA, the standard of reasonableness applies here. The respondent agrees that if the panel's IFA finding is not an acceptable outcome, the overall finding must suffer the same fate given the determinative nature of the existence of an IFA in the case under review.

[7] It must be remembered that assessing an IFA in the country of origin has two components: first, the panel must assess whether there is no serious possibility of the refugee claimant being persecuted in the proposed IFA locations and second, the panel must determine whether, given the circumstances, it would not be unreasonable for the applicant to seek refuge there (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589; *Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358 au paragraph 19).

[8] At first glance, the reasons provided by the panel seem to support the finding of an IFA in the cities mentioned in the decision. However, those reasons do not withstand scrutiny.

[9] First, according to the uncontradicted evidence in the tribunal record, the applicants had already moved to another state in Mexico (Monterrey) and, despite everything, were found by their agents of persecution. The credibility of the applicants' account on these crucial elements does not seem to be directly challenged in the reasons of the impugned decision. These facts therefore undo the panel's finding, for which no other reasons were given, with respect to the existence of an IFA in other states in Mexico.

[10] Second, it was up to the panel to verify whether Mexican law, which restricts access to the voter registry database, is actually complied with, especially in cases where an agent of persecution is, as in this case, an officer of the Mexican state involved in drug trafficking. It follows that the issue of Mexican state protection became a determinative factual element, especially since there is no clear and articulated finding that the applicants are not credible.

[11] Third, the lack of a proper analysis of the questions of fact with respect to, namely, state protection in situations similar to that of the applicants means that the panel's overall finding—that the applicants failed to discharge the burden of demonstrating that they would likely be subject to a risk to their life or a risk of cruel and unusual treatment or punishment or a danger of torture if they were to return to their country—cannot constitute one of the possible, acceptable outcomes which are defensible in respect of the facts and law (*Flores Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paragraphs 14-15; *Cobian Flores v. Canada (Minister of Citizenship*

and Immigration), 2010 FC 503 at paragraph 49; *Pikulin v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 979 at paragraphs 27-29; *Cho v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1299 at paragraph 30).

[12] For these reasons, the application for judicial review will be allowed. Counsel agree that this application raises no serious question of general importance.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed;
2. The panel's decision dated October 6, 2010, is set aside and the matter is referred back for investigation and examination by another panel;
3. No question is certified.

"Luc Martineau"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6457-10
STYLE OF CAUSE:	**CHRISTIAN ESTEBAN ROMERO QUIROZ CLAUDIA ELIZABETH HERRERA CALDERON CLAUDIA ESTEPHANIA ROMERO HERRERA BRUNO ALEJANDRO ROMERO HERRERA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	June 20, 2011
REASONS FOR JUDGMENT:	MARTINEAU J.
DATED:	July 11, 2011

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