

Federal Court



Cour fédérale

Date: 20110630

Docket: IMM-7058-10

Citation: 2011 FC 792

Ottawa, Ontario, June 30, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

BACILIA NUNEZ (MERCADO)

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Court is asked to rule upon the legality of a decision made by the Refugee Protection Division of the Immigration and Refugee Board of Canada (IRB), which denied the Applicant the quality of Convention refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, LC 2001, c 27.

[2] The Applicant is a citizen of the Dominican Republic. She alleges being the victim of domestic abuse at the hands of her ex-husband, with whom she maintained a relationship after their divorce. Having arrived in Canada in July 2005, she made her claim for asylum in September 2008.

[3] The determinative issue in the RPD's decision was the fact that the Applicant had an internal flight alternative (IFA) in Santo Domingo, the capital, and that the Dominican Republic's inability to protect her had not been established. These findings established that she could not benefit from the surrogate protection of Canada.

[4] The Applicant's testimony and documentation state that she is afraid of returning to the Dominican Republic, even in the capital, as she alleges that her ex-husband is still motivated to cause her harm. The IRB noted that there was insufficient evidence that the Applicant's ex-husband was still motivated to harm her, and that he has continued to threaten her. A letter from one of the Applicant's daughters referred to ongoing threats on the Applicant and her daughters, none of which had been carried out. Also, the IRB did not consider probative the fact that the Applicant states her daughter saw a gun in her ex-husband's possession.

[5] Also, the Applicant had not taken any steps to find help from authorities in the Dominican Republic, despite the fact that there were witnesses to at least one of the alleged assaults. The IRB made a negative inference from this omission to seek protection from the authorities. Thus, after assessing that there was sufficient state protection in the Dominican Republic and in Santo Domingo, the IRB denied the Applicant's claim for asylum.

Analysis

[6] The Court is asked to review the IRB's assessment of the existence of an IFA and the sufficiency of state protection. It is well established that these findings are to be reviewed on the standard of reasonableness (*Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99; *Myle v Canada (Citizenship and Immigration)*, 2006 FC 871). As such, the Court will preoccupy itself with the decision's justifications, consideration of evidence and similar issues: the Court will not substitute its decision to that of the IRB, as the principles of administrative law recognize (*Dunsmuir v New Brunswick*, 2008 SCC 9).

[7] The IRB's findings in regards to the finding of an IFA for the Applicant are reasonable. Firstly, the IRB stated and relied upon the correct legal test for the existence of an IFA, set out by the cases of *Thirunavukkarasu v Canada (Employment and Immigration)*, [1994] 1 FC 589 (FCA), *Canada (Citizenship and Immigration) v Ranganathan*, [2001] 2 FC 164 (FCA) and *Rasaratnam v Canada (Employment and Immigration)*, [1992] 1 FC 706 (FCA). Thus, the case at bar is not about whether the right test was applied by the IRB, but whether the IRB's assessment of the evidence in the case was within this legal framework was reasonable.

[8] The ongoing nature of the Applicant's ex-husband's threats were supported by a letter from the Applicant's daughter and the Applicant's testimony as to the threats. However, the IRB held that the ex-husband had never materialized his threats against his daughters, despite the fact that the eldest daughter eloped and later returned to live with her father and the fact that the youngest was pregnant at the age of fifteen. The IRB then found that the threats and risks of persecution were not established on a balance of probabilities. This weighing of the evidence is reasonable: no important

elements were forgone in the analysis and the Court cannot reweigh the evidence as the Applicant submits it should.

[9] More importantly, even if the threats were found to be existent, the IRB's findings in regards to state protection and IFA are determinative. Firstly, the Applicant never took steps to report her abuse to authorities. Secondly, while the IRB conceded that the Dominican Republic did not offer perfect protection, it analyzed how the laws and steps taken by authorities had been implemented. Evidently, much remains to be done in the Dominican Republic for the protection of battered women. However, the IRB considered the evidence as it related to the IFA, Santo Domingo. In doing so, the IRB found that resources were made available to victims of domestic abuse, including psychological counselling and legal help.

[10] The IRB was not to assess the hardship that could arise from removal, as is suggested by the Applicant's arguments pertaining to the psychological report. Rather, the proper assessment was made by the IRB: that of the objective risk arising from removal and the availability of state protection in facing this risk. In this respect, the IRB properly relied upon the presumption of state protection arising from the case of *Canada (Attorney General) v Ward*, [1993] 2 SCR 689. In respect to the IFA, the IRB properly identified that Santo Domingo was a reasonable alternative where state protection would be available. In doing so, the IRB addressed the important elements of the evidence and relied upon the proper principles of law.

[11] As for the application of the Gender Guidelines, the IRB's decision does not run counter to the principles expressed in the Guidelines. It is not the case of whether credibility was impugned, or

if the IRB erred in not truly appreciating the Applicant's background. That is not to say that the Guidelines apply only to those situations. However, in reading the transcript of the hearing and the decision itself, it is clear that the particular nature of the gender-based violence arising from the case was considered. Moreover, it cannot be said that the psychological report submitted was ignored, as the decision and hearing addressed its essential aspects.

[12] More precisely, the IRB did indeed consider the particulars of the Applicant's situation, such as her lengthy employment history and studies. In doing so, the IRB properly addressed the harshness of seeking alternate refuge within the Dominican Republic. This assessment, while not beneficial to the Applicant, is nonetheless reasonable. The Applicant did not meet her burden of establishing that on a balance of probabilities, there is a serious possibility of being persecuted in the proposed IFA area, or that in all the circumstances, it would be objectively unreasonable for the claimants to seek refuge there (*Thirunavukkarasu*, above).

[13] The other arguments submitted by the Applicant seek to have the Court re-weigh the evidence before the IRB, something excluded by the framework of judicial review on a standard of reasonableness (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125; *Molina v Canada (Citizenship and Immigration)*, 2007 FC 289; *Bolanos v Canada (Citizenship and Immigration)*, 2011 FC 388).

[14] The decision is reasonable. The application for judicial review is denied. No question for certification arises and none was suggested by the parties.

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-7058-10

STYLE OF CAUSE: BACILIA NUNEZ (MERCADO) v MCI

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REASONS FOR JUDGMENT: NOËL S. J.

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