Federal Court  Cour fédérale

Date: 20110620

Docket: IMM-7006-10

Citation: 2011 FC 701

Ottawa, Ontario, June 20, 2011

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

ADRIAN RUBEN DILLANES DAVILA AND OCTAVIO GALVAN VERGARA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section72 of the *Immigration and Refugee Protection Act, S.C. 2001, c. 27* (IRPA) of the decision of the Immigration and Refugee Board (the Board) made on October 28, 2010 where it determined that the applicants are not Convention refugees and are not persons in need of protection.

[2] For the reasons outlined below, this application shall be dismissed.

[3] Adrian Ruben Dillanes Davila and Octavio Galvan Vergara (the applicants) are friends and neighbours and are both citizen of Mexico. Both applicants rely on the same facts and allege that they are unable to return to Mexico because they fear that they will be killed by Christian Hernandez (Christian), a well-known member of a drug trafficking organization, Los Zetas.

[4] The applicants came to Canada on September 14, 2008 and made their claims for protection on January 1, 2009.

[5] The Board found that the applicants testified in a straightforward manner, and, there were no material inconsistencies or contradictions in their testimony. It also accepted their explanations for the delay in making their claims.

[6] The Board examined whether or not there was a nexus to a Convention ground and determined that the harm feared by the applicants (criminality) does not fall within one of the grounds enumerated in the Convention refugee definition.

[7] The Board then went on to consider whether they could obtain protection under section 97 of the Act and found that the applicants did not rebut the presumption that Mexico is capable of protecting them. The Board noted that the applicants did not provide "clear and convincing" evidence that protection would not be forthcoming and referred to (*Canada* (*Minister of Citizenship and Immigration) v Kadenko, Ninal* (FCA, no A-388-95), 1996 143 DLR (4^{th}) 532 (FCA)) for the

proposition that state protection is directly proportional to the level of democracy in the state in question.

[8] Both parties agree that the standard of review for questions of facts should be reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47). The Court agrees, and as such, will only intervene if the Board's decision is found to be outside of the range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir*, at para 47).

[9] The applicants submit that the Board erred in law when it said that "as long as the government is taking serious steps to provide or increase protection for individuals, the individual must seek state protection". The applicants state that simply because a government is taking serious steps to provide or increase protection for individuals, it does not necessarily mean that a particular refugee claimant must seek state protection. For that error, the standard of correctness should apply. The applicants underscore that an applicant is only required to approach his or her state for protection in situations in which protection might be reasonably forthcoming (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 724). State protection must be adequate and effective and an analysis of the personal situation of the applicants must be conducted (*Gjoka v Canada (Minister of Citizenship and Immigration)*, 2010 FC 426, paras 24-25).

[10] The applicants do not agree with the Board's determination that Mexico is a "well established democracy, they cite *Diaz De Leon v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1307 to argue that such is not the case.

[11] The applicants maintain that in the case at bar, it is pure speculation by the Board to find that Christian's release from prison and his exoneration 1.5 years after his initial arrest was due to the applicants' departure from the country one week after his arrest. Furthermore, the applicants state that the Board made a reviewable error when it implied that the Witness Protection Program in Mexico would provide adequate protection for them. The applicants submit that the Board did not review the country condition documents or conduct any assessment into either the adequacy or effectiveness of the Witness Protection Program. They refer to the Response to Information Request (RIR) in the National Documentation Package Exhibit F of the certified tribunal record (Applicants' Memorandum of Argument para 27, pages 163-165), which they submit clearly outlines some of the deficiencies with the Witness Protection Program in Mexico.

[12] The Court is of the opinion that the decision cannot be qualified as being unreasonable. The Board mentioned contradictory evidence on country conditions in Mexico and explained why it chose the one that show that the government of Mexico had taken serious steps to increase protection. It also gave details of why it was not satisfied that the applicants had not rebutted the presumption of state protection.

[13] The Court agrees that the last sentence of paragraph 16 of the decision "… Consequently, as long as the government is taking serious steps to provide or increase protection for individuals, then the claimants must seek state protection" is troublesome if taken in isolation. But, the Board explained further on in its decision what it meant by state protection in Mexico.

[14] It analyzed the particular circumstances of the applicants in the case at bar (see paras 17-28) and was not persuaded that Mexico would not be reasonably forthcoming with state protection if the applicants had sought it. It is not the role of this Court to re-weigh the facts unless it is not supported by the evidence.

[15] In regards to the Witness Protection Program in Mexico, even if the Court assumes without deciding that the Board made an error in not mentioning the deficiencies in that program, since that determination is not central to the decision (decision, para 14), the Court is not ready to disturb the Board's conclusion that the applicants are not persons in need of protection if returned to their country.

[16] Finally, the Court finds that the inference made by the Board that Christian's release from prison and his exoneration may have been the consequence of the applicants' departure from Mexico was logical and open to the Board based on the facts it had before it. The Board at paras 17 to 20 gave cogent reasons why it came to such a conclusion. Again, no reviewable error can be detected.

[17] The Court's intervention is not warranted.

[18] The parties did not submit questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that:

1. The application for judicial review be dismissed.

2. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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