

Federal Court



Cour fédérale

Date: 20111004

Docket: IMM-485-11

Citation: 2011 FC 1132

Montréal, Quebec, October 4, 2011

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

**VERONICA GOMEZ GONZALEZ
JOSE LUIS MANDUJANO GOMEZ
ALEX DANIEL MANDUJANO GOMEZ
JOSE LUIS MANDUJANO CHAVEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division (“RPD”) dated December 30, 2010, in which the member rejected the Applicants’ claim for protection, finding that the four Applicants were not Convention refugees nor persons in need of

protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] Counsel for the Applicants could not show up for the hearing, and asked that this matter be decided on the basis of the written submissions of the parties. Counsel for the Respondent agreed with this request.

[3] For the reasons that follow, I have concluded that this application for judicial review ought to be dismissed. The Board's decision was predicated upon the conclusion that the Applicants were not credible, and alternatively, that they did not rebut the presumption of state protection. Counsel for the Applicants did not make any arguments with respect to the credibility finding and focused her submissions exclusively on the Board's alternative finding that the Applicants failed to establish with clear and convincing evidence that adequate and effective state protection was unavailable. Accordingly, the decision of the RPD must be left undisturbed.

Facts

[4] The Applicants, citizens of Mexico, claim to be persons in need of protection and to have a well-founded fear of persecution on the grounds that they fear an acquaintance with whom they entered into a business transaction. It is alleged that in July 2006, the principal Applicant's spouse, Jose Luis, entered into a verbal contract with a Julio César Gonzalez ("Julio") for the purchase of a bus. Jose Luis was to give 20,000 pesos as a down payment, and a monthly fixed payment of 3,000 pesos. It was agreed that the bus would be completely paid for by July 2007.

[5] The principal Applicant and her spouse proceeded with the payments as agreed. On June 2, 2007, the principal Applicant and her spouse left home for the market. Upon their return, the bus that was parked in front of their home was no longer there. They immediately suspected Julio because the bus had a complex system which was only known to Jose Luis and Julio.

[6] On June 3, 2007, the Applicants filed a complaint regarding the theft of the bus to the police. The same day, they received a phone call from Julio protesting against the police complaint and admitting to selling the bus because he needed the money, despite the fact that the bus was almost totally paid for.

[7] On July 18, 2007, the police found the bus and returned it to the Applicants; the bus, however, was completely stripped for parts.

[8] From then on, Julio began to harass and threaten the Applicants. Julio allegedly physically assaulted the principal claimant's son Jose Luis on a couple of occasions. On June 9, 2008, the Applicants received another threat from Julio in which he instructed them to withdraw the police complaint or he would kill the family. Shortly thereafter, the principal Applicant claimed that Julio almost drove his bus into her car as she was driving to work.

[9] At that point, the principal Applicant and her sons decided to leave for Canada. They left Mexico on September 7, 2008, and filed for refugee protection on September 10, 2008. The principal Applicant's spouse remained in hiding on a ranch and travelled to Canada on February 26, 2009, after having obtained his passport on February 9, 2009.

The impugned decision

[10] After having considered and weighed the Applicants' testimony, as well as all of the evidence adduced, the RPD member determined that they did not provide credible or trustworthy evidence in support of their allegations of fear and risk. Alternatively, the tribunal also found that Mexico provides adequate state protection.

[11] Regarding the issue of credibility, the member found a number of contradictions, inconsistencies, omissions and additions of information in the Applicants' testimony.

[12] First of all, the Applicants could not provide anything to prove the existence of Julio. By the Applicants' own testimony, Julio received more than 90% of the sums due for the purchase of the bus. The bus was destroyed, allegedly because Julio took it back and stripped it down for parts. Julio was never reprimanded, never arrested and apparently continues to work as a bus driver. The Applicants failed to provide any explanation as to why Julio would be in pursuit of any of them.

[13] Second, the Applicants did not take civil legal action to pursue Julio to recoup their funds. Other than reporting to the police that Julio took the bus and identifying a few other minor incidents, the Applicants did little and continued to work and/or attend school, continued to live in the same location, and behaved in much the same way as before entering into the sales transaction.

[14] Third, the principal Applicant maintained that Julio threatened her twice over the phone (on August 10 and 11, 2008) and once in person (on June 19, 2008). However, she does not provide any explanation as to why Julio would utter threats ten months after the initial police complaint in Mexico. In addition, no response was provided as to why Julio would start harassing the family in 2008, or why Julio would continue to pursue them in 2010. Furthermore, the principal Applicant admitted that she did not report the June 2008 incident to the police and did not change her phone number following the phone threats, because her family regularly used that number to call her. The RPD member found that this inconvenience would not outweigh the risk of receiving additional threats.

[15] Fourth, the Applicants did not identify Julio by his full name when the initial complaint to the police was filed, in spite of the fact that the principal Applicant's spouse has known Julio for approximately fifteen years.

[16] Fifth, the principal Applicant's son Jose Luis was allegedly threatened by Julio twice. On the first occasion, on June 9, 2008, Julio threatened to kill the family if the police complaint was not withdrawn. On the second occasion, on July 13, 2008, Jose Luis claimed to have been punched and kicked by Julio and an accomplice. The member noted that neither incident was reported to the police, and that the Applicants did not provide any satisfactory explanation on the matter. The member found that the failure to report this incident to the police impacted negatively on the Applicants' credibility, as such a report would have supported and bolstered the initial allegation made against Julio, with respect to the theft of the bus. Moreover, the tribunal did not believe that two years after the alleged theft of the bus and within a span of a week, the Applicants' son would

have been assaulted by Julio and an accomplice, while no action was taken against him following the initial police report.

[17] Sixth, the principal Applicant submitted an attestation letter from her sister-in-law in which she claimed that a violent man came to her house asking questions and requesting the Applicants' telephone number. This alleged incident occurred more than fifteen months after the Applicants left Mexico. The Applicants even admitted that there is no evidence to suggest that this man was, in fact, Julio. The member found that the Applicants did not explain in a credible fashion how this document came to be.

[18] In the end, the RPD concluded that each of the credibility matters may not have been detrimental to the Applicants' claim when considered individually, but were fatal when looked at cumulatively.

[19] As for state protection, the RPD found that the exhibits purporting to be reports tied to the theft of the bus and the alleged threats received were confusing. They did not include all pertinent information and the dates did not correspond to the dates identified in the Applicants' Personal Information Forms ("PIF"). Moreover, the Applicants testified that Julio was never arrested because he bribed the authorities, and they claimed that Julio's brother was a police officer. Yet, the Applicants could not provide any documentation in support of those allegations, they could not confirm the existence of Julio's brother, nor could they prove that he was gainfully employed as a police officer anywhere in Mexico. None of this information appeared in the port of entry materials

or in their PIFs. Since the Applicants had no explanation for these omissions, the Board did not believe that Julio had a brother or that he was a police officer.

[20] Moreover, the RPD member determined from the documentation provided that the police were investigating the claim and followed up on it. The Applicants admitted that they left the country without providing the police with their new addresses, and did not make any calls to update their information or inquire about their case, nor did they report incidents that would have bolstered their complaint. Accordingly, the member found that the Applicants did not provide clear and convincing evidence that the state could not provide adequate protection, and was not satisfied on a balance of probabilities that state protection was inadequate.

Issues

[21] Did the Tribunal err in finding that the Applicants are not credible?

Analysis

[22] In their written representations, the Applicants only challenge the Board's alternative finding on state protection. The only reference made to the Board's credibility finding is the following paragraph:

With regards to credibility, the Applicants submit that the negative credibility findings are not substantial and do not go to the heart of their claim. Thus, the negative credibility finding constitutes an error.

Applicants' Record, p 81, para 3.

[23] I agree with the Respondent that this is insufficient to invalidate the Board's reasons. Simply stating that the Board's credibility findings are wrong without offering any details or legal argument as to why this is so, falls short of what is required on judicial review to justify this Court's intervention. In *Chowdhury v Canada (MCI)*, [1995] FCJ no 1591 (FC), 59 ACWS (3d) 949, Nadon J., as he then was, emphasized the need to be specific in order to succeed in an application for leave:

[8] It is obviously not sufficient, in order to obtain leave and to succeed on the merits, to simply assert that, for example, the Board erred in fact and in law. It is necessary for an applicant to demonstrate in what way the Board erred. In order to do so, an applicant must deal with the evidence presented before the Board and attempt to persuade the Court that the Board committed an error in rendering its decision.

[24] As a result, the Board's credibility findings must be deemed to be admitted and true, since they have not been meaningfully challenged by the Applicants. This is fatal to this application for judicial review. Even if the Applicants were successful in challenging the Board's finding with respect to state protection, it would be immaterial given that the unchallenged findings are, in and of themselves, dispositive of the Applicants' claim for asylum.

[25] In other words, there is no basis for the Court's intervention since the availability of state protection is predicated on a favourable finding of credibility. The jurisprudence of this Court provides that when it is clear that no different result could be reached on a rehearing, the appropriate course of action is to refuse an order requiring that such be done (*Zambo v Canada (MCI)*, 2002 FCT 414, [2002] FCJ no 539; *Popov v Canada (MCI)*, 75 FTR 90 (FC), [1994] FCJ no 489).

[26] In any event, I would also agree with the Respondent that the RPD's determination on the existence of state protection meets the standard of reasonableness. The Applicants only made a vague complaint about the theft of the bus, and did not make a report regarding the physical assaults and threats that they would have experienced. Such reports could have demonstrated to the police that the Applicants were the victims of a criminal, and bolstered the seriousness of their allegations with respect to the theft. Moreover, it is not reasonable to expect the police to seek out and capture the Applicants' alleged aggressor when they were not able to provide his identity or any leads that could have helped the police to arrest him. As stated by this Court on a number of occasions, it is difficult to criticize the state authorities for their failure to act when the Applicants do not give them a reasonable opportunity to protect them (*Del Real v Canada (MCI)*, 2008 FC 140 at para 44, [2008] FCJ no 170; *Villasenor v Canada (MCI)*, 2006 FC 1080 at para 19, [2006] FCJ no 1359).

[27] For all of the foregoing reasons, this application for judicial review is dismissed. The parties did not propose any question for the purpose of certification, and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified.

“Yves de Montigny”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: VERONICA GOMEZ GONZALEZ ET AL.
and MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 3, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** de MONTIGNY J.

DATED: October 4, 2011

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