

Federal Court



Cour fédérale

Date: 20111018

Docket: IMM-507-11

Citation: 2011 FC 1153

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 18, 2011

PRESENT: The Acting Chief Justice

BETWEEN:

SAMUEL GUERRERO ORTEGA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), requesting judicial review of a decision of the Refugee Protection Division (RPD) dated January 20, 2011. The RPD rejected the refugee protection claim and found that the applicant was not a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA.

[2] For the reasons that follow, this application is dismissed.

I. Facts alleged by the applicant

[3] The applicant, Samuel Ortega, is a citizen of Mexico whose refugee claim relies on allegations of death threats from criminals. On October 15, 2008, the applicant found himself alone in an empty classroom when a well-dressed man wearing jewelry approached him to speak to him. The man allegedly encouraged him to get involved in drug trafficking, promising him thousands of dollars and offering him an expensive cell phone. The applicant refused and the man criticized him and insulted him before leaving the room.

[4] On October 18, 2008, three men accosted the applicant, mistreated him, insulted him and threatened him with death. One of the men allegedly also took approximately 60 pesos from the applicant's wallet and his social insurance card, on which his cell phone number was written. The applicant had allegedly telephoned the police several times, but no one came to investigate.

[5] On October 20, 2008, the applicant apparently received a first threatening phone call on his cell phone. He then went to file a written complaint to the municipal office of the Attorney General, where he dictated his complaint to an employee before re-reading and signing it. The applicant did not receive a copy of his denunciation and apparently has not asked for one since.

[6] On October 30, 2008, after he received two more death threats by phone, the applicant apparently changed his cell phone number. Five days later, the applicant received another threatening phone call, this time at his residence where he lived with his parents. After other calls, his parents changed their telephone number, but did not ask for a private number. The calls

allegedly continued afterward, on an average of three calls per week, over two years, until the hearing day on January 12, 2011, and even after the applicant had left the country on January 17, 2009, and made his refugee claim to Canada.

II. Impugned decision

[7] After reviewing the applicant's evidence and testimony, the RPD identified several contradictions, omissions and implausibilities that led it to find that neither the applicant nor his story was credible. The panel also found that the applicant had not rebutted the presumption of state protection and did not take sufficient steps to obtain this protection. Finally, the panel found that the internal flight alternative (IFA) would be a reasonable option in the specific circumstances of this case.

III. Positions of the parties

[8] The applicant defends himself against any contradictions by explaining that they were due to his nervousness and that these were superficial errors and were insufficient to cast doubt on his allegations. He stated that the panel erred in basing itself solely on secondary considerations and not on the key element of his claim: the death threats uttered against him. In respect to state protection, the applicant stated that the panel did not consider that Mexico [TRANSLATION] "is a country where there are no guarantees and where even the authorities need protection. In this case, in a country such as Mexico, [the applicant] could do nothing" (applicant's record, page 85, at para. 31). Finally, the applicant stated that, in his opinion, it is inconceivable that there would be an IFA in this country that is considered to be the most dangerous in the world, where the army has been unable to prevent the actions of drug traffickers.

[9] The respondent argues that the three findings of the RPD—the lack of credibility, the existence of state protection and the IFA—were reasonable and each is sufficient in itself to reject the refugee claim. The defendant points out that the applicant is not attacking the ample evidence found by the RPD, is not showing any reviewable error and is only reiterating the explanations and arguments submitted at the hearing. On the subject of state protection and the IFA, the applicant only reiterates his general allegations as to the danger in Mexico without discussing his particular situation.

IV. Issues

[10] The following issues arise in this matter:

1. Did the RPD err in its assessment of the applicant's credibility?
2. Did the RPD err in its assessment of the existence of state protection?
3. Did the RPD err in deciding that the applicant had an IFA in Mexico?

V. Applicable standard of review

[11] The standard of review applicable to issues of credibility, state protection and the IFA is reasonableness (*Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1320, [2010] F.C.J. 1638). Therefore, the Court cannot substitute its judgment for that of the RPD and will not intervene so long as the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. Nouveau-Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

VI. Analysis

[12] With respect to credibility, the panel considered five of the contradictions, omissions and implausibilities in the testimony that it deemed to be most important. Many of these findings arise from the fact that in response to question 31 of the applicant's Personal Information Form (PIF), which requests that all significant events and reasons that led him to claim refugee protection be provided, the applicant only provided a very brief account of four paragraphs, in addition to one other piece of evidence at the start of the hearing. The applicant then made new allegations that were not in his PIF. For example, the applicant only mentioned a single threatening phone call in his PIF. However, he described at the hearing that he received eight while he was in Mexico and that his parents have continued to receive approximately three threatening calls per week since he left. The applicant also testified that he filed a written complaint with the police, but did not mention it in his PIF and did not attempt to obtain a copy for the purposes of the hearing. When questioned about these omissions, the applicant could not provide a satisfactory explanation.

[13] Neither could the applicant explain why his parents had changed the telephone number after the initial threatening phone calls, but did not request a private number. Further, the parents did not change the number afterward, even though they constantly received calls for more than two years. The applicant's parents had apparently also complained to the police, but the applicant failed to include this fact in his PIF and did not obtain a copy of this complaint or even a letter from his parents to corroborate his testimony. Finally, the applicant contradicted himself during his testimony regarding follow-ups that he made after his complaint. He first testified that he had not followed up, then afterward said that he asked a few questions and made other calls, but had not mentioned them in his PIF.

[14] The applicant tried to justify these contradictions by his nervousness during the hearing. However, he did not clarify these contradictions and did not explain his omissions any further. Rather, he submitted that the panel focused on secondary considerations and that it ignored the key element of his claim, i.e. the death threats made against him. The Court does not share that view. The panel rightly pointed out omissions and implausibilities regarding the nature and number of threats received. It also considered other elements that go to the heart of the matter of fear, such as the reactions of the applicant and his family in response to the telephone threats and their follow-ups with police. Faced with an implausible account and lack of evidence to corroborate these allegations, it was reasonable for the RPD to draw negative conclusions with respect to the applicant's credibility (*Singh v. Canada (Minister of Employment and Immigration)*, 2007 FC 62, [2007] F.C.J. 97). The Court should only intervene if the RPD based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), F.C.A. 732, 160 N.R. 315 (CA)). The same cannot be said in this case.

[15] The RPD's findings with respect to the adequacy of state protection and the IFA are just as reasonable. First, the RPD analyzed the issue of state protection in Mexico in detail and did not omit any important elements. The panel noted the few newspaper articles submitted by the applicant describing the horrors committed by certain criminal groups. However, the panel pointed out as a counterpoint the continued efforts of the Mexican government and the progress described in the National Document Package on Mexico. The RPD found that the applicant had not presented clear and convincing evidence that the state was unable to protect the applicant (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74).

[16] Thus, the panel considered the steps taken by the applicant to obtain this protection. The applicant testified that he called the police but that it did not come and that he filed a written complaint without following up. He said that he was afraid and did not take any other steps because he believed that he would have to pay a bribe to get help. The panel pointed out that neither the applicant's subjective fear nor the possible inaction of certain local police officers are sufficient in this case to explain the few steps taken by the applicant (*Martinez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1050, [2005] F.C.J. 1297; *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, [2008] F.C.J. 182). The panel considered the particular situation in Mexico, the few measures taken by the applicant and his exchanges with the police, but found that the applicant did not take all reasonable steps in the circumstances to seek state protection. The Court cannot criticize the RPD's finding.

[17] With respect to an IFA, the applicant's general allegations as to the risks in Mexico are insufficient to meet his burden of proving that he could not have had an IFA in this country (*Rasaratnam v. Canada (Minister of Citizenship and Immigration)*, [1991] F.C.J. 1256, [1992] 1 FC 706 (CA); *Thirunavukkarasu v. Canada (Minister of Citizenship and Immigration)*, [1993] F.C.J. 1172, [1994] 1 FC 589 (CA)). Thus, the panel found that it was reasonable for the applicant to move to another city in Mexico to escape the few individuals whose names and identity he did not know and against whom he has no tangible evidence to incriminate them or testify against them. The Court accepts this reasonable finding.

[18] Accordingly, the RPD's decision is justified in fact and in law. It appreciated the documentary evidence, explained its findings and did not ignore the facts that had been brought to its attention. For these reasons, the application for judicial review is dismissed.

[19] No question will be certified.

JUDGMENT

THE COURT DISMISSES the application for judicial review. No question was proposed and none is certified.

“Simon Noël”

Acting Chief Administrator

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-507-11

STYLE OF CAUSE: SAMUEL GUERRERO ORTEGA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 5, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** Acting Chief Administrator Noël

DATED: October 18, 2011

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