Federal Court  Cour fédérale

Date: 20120213

Docket: IMM-5522-11

Citation: 2012 FC 195

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, February 13, 2012

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

MA DE LOS ANGEL GARCIA GUEVARA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review based on section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision dated July 6, 2011, by the Refugee Protection Division of the Immigration and Refugee Board (the panel) refusing to grant the applicant refugee status on the ground that she is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the IRPA.

[2] For the following reasons, the Court is of the view that this application should be dismissed. Although the merits of the panel's decision regarding state protection can be called into question, the same is not true of its findings on the availability of an internal flight alternative.

Facts

[3] The applicant, Maria De Los Angel Garcia Guevara, is 40 years old and is from Ciudad Juarez in Mexico.

[4] She married Octavio Eduardo Gonzalez Perez when she was 17. A child was born of this union. Unfortunately, her husband was extremely violent throughout the entire marriage. The applicant was subjected to physical, psychological and sexual abuse on a number of occasions, and her husband even tried to kill her.

[5] The applicant finally asked for a divorce and obtained one on October 10, 2003. However, that did not end her problems with her ex-husband, who continued to harass her.

[6] On August 10 and December 26, 2004, she filed a complaint against her ex-husband with the police. However, no action was taken on these complaints apparently because her ex-husband's brother worked at the police station where she filed the complaints. Her problems nonetheless diminished for a while because her ex-husband was hospitalized for a mental disorder.

[7] During this period, the applicant began a new relationship with one Carlos Rojo Chavez. In 2006, a child was born of this relationship.

[8] In 2008, the applicant's life was turned upside down again when her ex-husband was released from hospital. She tried to move, but her ex-husband always managed to find her.

[9] Finally, one of the applicant's brothers gave her enough money to flee the city of Ciudad Juarez. The applicant arrived in Canada on April 12, 2009, and claimed refugee status by reason of her membership in a particular social group, i.e. women.

Impugned decision

[10] The panel did not question the applicant's credibility or her account. However, it rejected her refugee claim because she had not made sufficient efforts to avail herself of state protection. The panel also believed that an internal flight alternative existed in Mexico City.

[11] With respect to state protection, the panel commented that the applicant had gone to the same police station to file her two complaints against her ex-husband, knowing full well the second time that her complaint would not be taken seriously. In the panel's view, the applicant should have taken other steps to seek state protection and therefore had not exhausted all her recourses.

[12] Regarding an internal flight alternative, the panel stated that the applicant could have moved to Mexico City. It did not accept the applicant's argument that she did not want to move there because she knew no one there even though she came to Canada seeking its protection, a country where the language and culture are different from hers. In addition, the panel did not believe the applicant when she stated that her brothers, who live in the Ciudad Juarez area, were unable to help her deal with her ex-husband's threats and attacks.

Issues

[13] This application for judicial review raises two issues:

a. Did the panel err by finding that state protection was adequate?

b. Did the panel err by finding that an internal flight alternative existed?

Analysis

[14] Both issues are questions of mixed fact and law that fall within the panel's expertise. Accordingly, they are both subject to the reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Huerta v Canada (Minister of Citizenship and Immigration)*, 2008 FC 586, 167 ACWS (3d) 968).

(a) Did the panel err by finding that state protection was adequate?

[15] The applicant submitted that the panel erred by imposing an excessive burden on her in relation to rebutting the presumption in favour of adequate state protection. In particular, she contends that it is absurd to ask her to exhaust all her recourses when the documentary evidence describes Ciudad Juarez as the city with the highest murder rate in the world and where a large number of women have been killed in recent years. The requirement to exhaust all recourses can only apply, she argues, in fully democratic countries, not in an emerging democracy.

[16] This argument cannot succeed. In this regard, it is appropriate to review the principles of state protection. First, there is a presumption that a state is capable of protecting its nationals unless there is a breakdown of the state apparatus (*Canada (Minister of Employment and Immigration) v Villafranca* (1992), 150 NR 232, 37 ACWS (3d) 1259). However, this presumption may be rebutted

by clear and convincing proof (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 (available on CanLII)). As a result, the onus is on the refugee claimant to adduce evidence and to convince the panel that the protection of his or her state of origin is inadequate in order to justify seeking international protection. The applicant must discharge this burden on a balance of probabilities (*Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paragraph 30, [2008] 4 FCR 636 [*Carrillo*]). In *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 362 NR 1, the Federal Court of Appeal wrote (at paragraph 57):

> . . . a claimant coming from a democratic country will have a heavy burden when attempting to show that he should not have been required to exhaust all of the recourses available to him domestically before claiming refugee status.

[17] These words are not intended to alter in any way the standard applicable in these matters. In fact, the Federal Court of Appeal stated in *Carillo*, *supra* (at paragraph 26):

> . . . I think our colleague, as did La Forest J. in the *Ward* case, referred to the quality of the evidence that needs to be adduced to convince the trier of fact of the inadequate state protection. In other words, it is more difficult in some cases than others to rebut the presumption. But this in no way alters the standard of proof.

[18] In this case, the applicant is suggesting that there is a variable standard of proof based on the degree of democracy that exists in the refugee claimant's country: a higher standard of proof where the refugee claimant comes from a country in which democracy has been established for a long time and a less rigorous standard of proof for countries whose democratic institutions are still fragile. The applicant is misunderstanding the standard of proof that applies in state protection matters. In all cases, the standard of proof is that of a balance of probabilities. Consequently, I cannot agree with the theory that the panel erred with respect to the applicable standard of proof.

[19] Having regard to that standard, was it reasonable to require the applicant to do more to seek protection from the Mexican state? It is true, as the panel noted, that filing two complaints at the same police station, despite the fact that her spouse's brother worked there and that the first complaint was not acted on, does not perhaps attest to a major effort to obtain protection from the authorities. No doubt the applicant could have, at the very least, gone to another police station, even to another state level. On the other hand, there is ample documentary evidence that the city of Ciudad Juarez is extremely violent, to such a degree that perhaps it is unrealistic to expect any protection at all. The panel appears to have completely ignored this fact and does not discuss it at all in its reasons. For this reason, I am ready to consider that this first branch of the decision does not meet the reasonableness standard.

[20] On the other hand, I am of the view that the panel could consider the possibility of an internal flight alternative for the applicant in Mexico City. It is settled law that the onus is on refugee claimants to establish that they cannot find refuge in their country of origin. For the purposes of this analysis, it is important to apply the two-stage test developed by the Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706. The applicant therefore had the burden of proving, on a balance of probabilities, that she faced persecution everywhere in Mexico and that it was objectively unreasonable for her to avail herself of an internal flight alternative.

[21] In this case, the panel noted that the applicant had always lived in the same city and that it would not be unreasonable for her to relocate to a large city like Mexico City. On the other hand, the panel found that there was nothing to indicate that she could not establish herself there; it is true

that she has no family there, but she does not have any in Canada either. In this respect, it should be reiterated that it is important to adduce concrete evidence showing that it would be unreasonable to seek refuge in her own country:

> We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions.
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> *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at paragraph 15.

[22] The applicant dealt at some length with her subjective fear of being tracked down by her ex-husband but provided no evidence that he could in fact locate her in a city other than Ciudad Juarez. In the absence of actual solid evidence of a serious risk of persecution preventing her from settling elsewhere in Mexico, the panel was correct in finding that the applicant had not discharged her burden of proof and had not demonstrated that there was no internal flight alternative.

[23] In light of the foregoing reasons, the application for judicial review is dismissed. No question is certified.

JUDGMENT

THE COURT RULES that the application for judicial review is dismissed. No question is certified.

"Yves de Montigny"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	MA DE LOS ANGEL GARCIA GUEVARA and MCI
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