

Federal Court



Cour fédérale

Date: 20140226

Docket: IMM-3514-13

Citation: 2014 FC 183

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario February 26, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MARIA GENOVEVA ACUNA ENRIQUEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] How many times must a person flee and hide – and be tracked down again before an internal flight alternative is no longer considered to be a viable option? Does that person have to be killed in order to drive the point home?

[2] Ms. Acuna Enriquez fled to Canada to escape her violent husband. It was not the first time she had left her husband. He had already been imprisoned in Mexico for domestic violence. She fled to various different parts of Mexico, but her husband always managed to find her, apparently with the help of the police.

[3] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada found the applicant to be credible and determined that if she were to return to Mexico, it was possible that her husband would once again attempt to locate her. However, the RPD concluded that Ms. Acuna Enriquez did not need Canada's protection because there was an internal flight alternative available to her in her country of origin, Mexico, more specifically in the federal district of Mexico (Mexico City) or in Guadalajara. This is the judicial review of that decision.

I. Facts

[4] Ms. Acuna Enriquez is a citizen of Mexico. She met her husband, Elias Hernandez Garcia, in 1980. They married four years later. They had two children together, who are 21 and 24 years old today. She has been a victim of domestic violence since January 1988.

[5] Her husband became an alcoholic and became increasingly violent. The applicant left the family home and went to live with her mother for two years. When her mother passed away in 1993, he came to persuade her to go back and live with him. He promised her he would change; but alas, it was a promise that would not be kept. Every time he was drunk, he would hit her. He would beat her in front of their children.

[6] She went to the authorities to report him. As a result, he was held in police custody for about an hour. When he returned home, he beat her – [TRANSLATION] “bragging that he had bribed the police and that they were now on his side...”

[7] In January 2009, the applicant decided to leave her husband. She moved to her mother’s village of San Sébastian in the state of Oaxaca. He was able to find her with the help of the police and beat her once again. She then fled to her brother’s in San Joaquin in the state of Mexico. Once again her husband found her a week later with the help of the police. She returned with her children to live with him.

[8] Her children advised her to leave the country, as he was threatening to mutilate or kill her. He was threatening to kill the children if she did not submit to him. Shortly thereafter the applicant arrived in Montréal in March 2009.

II. Panel’s decision

[9] The RPD found that Maria Genoveva Acuna Enriquez had not established that there was a serious possibility of persecution on one of the Convention grounds or that, on a balance of probabilities, she would be personally subject to a danger of torture or to a risk to her life or a risk of cruel and unusual treatment or punishment if she were to return to her country.

[10] The RPD essentially found the applicant to be credible – a victim of domestic violence. However, it claimed the victim had failed to discharge her burden of establishing the lack of an internal flight alternative (IFA).

[11] According to the RPD, the victim had not demonstrated that she could not move to and settle in another city in Mexico. Having taken into consideration the husband's interest in finding her, and his ability to do so, and the fact that the couple had been together for over 20 years and had now been separated for over four years, the RPD was not satisfied that the applicant's husband would have the ability to track her down if she moved to one of the proposed cities, Guadalajara or Mexico City— two large cities with a population of over eight million in Mexico City and over one million in Guadalajara.

[12] The RPD further noted that the applicant had not persuaded it that internal flight alternatives in Guadalajara or Mexico City would be unreasonable. An IFA does not become unreasonable by the fact that moving would be difficult or because there would be financial hardship. The RPD noted that there are a number of domestic violence prevention and assistance services in addition to legal, psychological and medical assistance in Mexico City.

[13] However, at paragraph 12 of its decision, the RPD added:

The panel notes that the claimant was with her husband for more than 20 years; they were together for a considerable period of time. Therefore, it is possible that he is still interested in finding her, even after nearly four years apart.

Furthermore, in her affidavit the applicant indicated that her husband is friends with the police. He was able to locate her on numerous occasions with the help of the police.

III. Analysis

[14] It is settled law that the applicable standard of review is that of reasonableness.

[15] An internal flight alternative reflects the possibility that the applicant has a reasonable fear of persecution in the part of the country in which she lives, but that she would not be in danger in another part of the country. The onus is on the applicant to show, on a balance of probabilities, that she would be at serious risk of being persecuted in her country and throughout the entire country. *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, [1993] FCJ No 1172 (QL/Lexis)).

[16] In this case, the Minister argues that Ms. Acuna Enriquez sought refuge in obvious places such as her mother's hometown or the homes of family members. But even if this were true, she was able to be located quickly because her husband, a trucker who travels throughout Mexico, has contacts within the police all over the country.

[17] This fact was completely disregarded by the RPD. Moreover, the documentary evidence shows that it is easy for one person to locate another in Mexico if they wish to. Given that the RPD acknowledges that the husband is likely to want to continue pursuing the applicant and considering that Ms. Acuna Enriquez is credible, in my view the analysis is insufficient and unreasonable. There was documentary evidence in the record that supports the proposition that Ms. Acuna Enriquez can be located in Mexico. Therefore, the decision maker had a duty to explain this information (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ No 1425 (QL)).

ORDER

THE COURT ORDERS that:

1. The application for judicial review is allowed;
2. The decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB), dated April 19, 2013, is set aside.
3. The matter is referred back to the RPD for rehearing before a differently constituted panel.
4. The matter raises no serious question of general importance for certification.

“Sean Harrington”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3514-13

STYLE OF CAUSE: MARIA GENOVEVA ACUNA ENRIQUEZ v MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 6, 2014

REASONS FOR ORDER AND ORDER: HARRINGTON J.

DATED: FEBRUARY 26, 2014

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