Federal Court  Cour fédérale

Date: 20191119

Docket: IMM-2363-19

Citation: 2019 FC 1446

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, November 19, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ISRAEL PENALOZA PINEDA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Israel Penaloza Pineda, is seeking judicial review of a decision rendered on March 28, 2019, by the Refugee Appeal Division [RAD]. In its decision, the RAD upholds the decision of the Refugee Protection Division [RPD] to the effect that the claimant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The applicant is a Mexican citizen. In support of his claim for refugee protection filed in April 2017, the applicant alleges that he fears members of a criminal organization that targets taxi drivers and steals cars.

[3] On July 13, 2017, the RPD rejected the claim on the basis that the applicant's actions were at odds with the harm he allegedly feared.

[4] The applicant appealed the decision to the RAD. In support of his appeal, the applicant filed three documents as additional evidence: a news article, an attestation of death and a written statement. He also requested a hearing. The RAD sent the applicant a notice inviting him to make written submissions on the subject of an internal flight alternative [IFA] elsewhere in Mexico. The applicant took this opportunity to argue that he had no IFA in Mexico.

[5] The RAD dismissed the applicant's appeal. In its decision, it began by considering the new evidence filed by the applicant. It accepted only the attestation of the applicant's brother's death. It rejected the news article because its source was unknown, it was undated and it provided no details about the applicant's brother's death. It also rejected the applicant's statement on the basis that it was neither signed nor dated.

[6] It then found that the RPD had erred in its decision with respect to the applicant's credibility. According to the RAD, the omissions, contradictions and inconsistencies raised by the RPD were not sufficiently serious to affect the applicant's credibility. However, it did not

consider it necessary to provide more extensive reasons because it was of the view that the determinative issue was the IFA.

[7] In its analysis of an IFA elsewhere in Mexico, the RAD found that the evidence filed did not establish that the criminals would have an interest in locating the applicant in the safe haven. It was also of the view that it would not be unreasonable for the applicant to establish himself in the safe haven given his age and work experience in taxi driving and landscaping acquired in Mexico and the United States, where he lived for a number of years.

[8] The applicant submits that it was unreasonable of the SAR not to admit his evidence because the attestation of death corroborated the authenticity of the documents as well as their content. He also argues that the RAD's finding regarding the IFA was unreasonable and contrary to the evidence.

[9] Like the RAD, the Court is of the view that the determinative issue in this case is whether there is an IFA in the safe haven.

[10] The standard of review applicable to a decision involving the existence of an IFA is reasonableness (*Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 19 [*Jean Baptiste*]; *Brahim v Canada (Citizenship and Immigration)*, 2019 FC 503 at para 13; *Verma v Canada (Citizenship and Immigration)*, 2016 FC 404 at para 14).

[11] When the applicable standard of review is reasonableness, the Court's role is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law". As long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility", it is not open to this Court to substitute its own view of the preferable outcome (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SSC 12 at para 59 [*Khosa*]).

[12] The determination of an IFA in the refugee claimant's country of origin involves a two-step analysis. The first question is whether "the circumstances in the part of the country to which the claimant could have fled are sufficiently secure to ensure that the appellant would be able to enjoy the basic and fundamental human rights". Next, one must consider whether "conditions in that part of the country [are] such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there" (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at p 709 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*]; *Jean Baptiste* at para 20).

[13] The applicant argues that the criminals' interest in locating him in the safe haven follows from the evidence. In particular, he states that after being threatened by armed individuals in his taxi in October and November 2016 in his hometown, he saw the same individuals again later in another town, where he had taken refuge in his father's home. He saw them yet again when he moved in with his sister in a third town. The applicant submits that the RAD's finding that these

sightings were a coincidence or arose because the criminals knew members of the applicant's family was unreasonable. The applicant argues that his brothers were targeted by criminals and that there is indeed a connection between his risk of persecution or mistreatment and the disappearance of one of his brothers and the death of another.

[14] Having reviewed the file, the Court cannot accept the applicant's argument. The applicant's fear of persecution or mistreatment in the safe haven must have an objective basis, and it is the applicant who has the onus of demonstrating that the IFA is unreasonable (*Jean Baptiste* at para 21). In this case, the applicant has not satisfactorily shown that the criminals had any interest whatsoever in locating him in the safe haven or that he was targeted for reasons other than the use of his taxi. On the contrary, the evidence demonstrates that even if the applicant had spotted the same criminals in the places where he had taken refuge with his father and sister, those individuals never approached his sister or anyone in his father's village in an effort to find him. In the circumstances, it was reasonable for the RAD to find that this other Mexican town constituted an IFA for the applicant. The evidence in the record was also a sufficient basis for the RAD's finding that the applicant had failed to establish a connection between his personal circumstances, the death of one of his brothers and the safe haven.

[15] The applicant also criticizes the RAD for finding that he would be able to work in the safe haven on the basis of the fact that he had been able to work when he was in the United States. He also considers it unreasonable to be asked to continue working as a taxi driver when this was the work that had allegedly put his life in danger. He is of the view that the RAD should instead have taken into account his age, his limited education and his lack of training.

[16] The Court is not persuaded by the applicant's argument. Taking into consideration the applicant's specific circumstances, the RAD noted his testimony to the effect that he could not establish himself in the safe haven because he knew nobody there and lacked the financial means to live there. It found these explanations to be unreasonable. It is well established that the grounds presented by the applicant are insufficient to conclude that it would be unreasonable for him to seek refuge in the safe haven (*Thirunavukkarasu* at pp 598–599; *Jean Baptiste* at para 28).

[17] In short, the applicant had the burden of demonstrating that he would be subjected to a danger of persecution or torture, a risk to his life or a risk of cruel and unusual treatment or punishment in the proposed safe haven. It was also incumbent on the applicant to demonstrate that establishing himself there was not reasonable. He did neither. While the applicant may not agree with the RAD's findings, it is not open to this Court to reassess and reweigh the evidence to reach a conclusion that is favourable to the applicant (*Khosa* at para 59).

[18] For these reasons, the Court is of the view that the RAD's decision is reasonable because it falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" and is justified in a way that meets the criteria of transparency and intelligibility within the decision-making process (*Dunsmuir* at para 47).

[19] The application for judicial review is dismissed. No question of general importance is certified.

JUDGMENT in IMM-2363-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
This 26th day of November, 2019.

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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