

Date: 20080523

Docket: IMM-5107-07

Citation: 2008 FC 648

Ottawa, Ontario, May 23, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**ANALLEELY CORTEZ MUNOZ
DANIEL CORTEZ MUNOZ**

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 Refugee Protection Division of the Immigration and Refugee Board (the Board), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), in which the Board found that the applicants, Ms. Analleely Cortez Munoz and her son, are not Convention refugees nor persons in need of protection.

ISSUES

[1] The present application raises the following issue: did the Board err in refusing to grant the adjournment requested by the applicant to adduce additional documentary evidence?

[2] The application for judicial review shall be dismissed for the following reasons.

FACTUAL BACKGROUND

[3] The principal applicant (the applicant) is a 22 year old national of Mexico. She came to Canada on February 11, 2006 with her son, and claimed protection on the ground that she fears the father of her child, as well as his family. The applicant alleged that she had a knife held to her throat and was threatened that her son would be taken by force if necessary. The applicant stated at the hearing that this occurred while she was living in Mexico City, approximately three months after the birth of her son.

[4] The applicant alleged that since her arrival in Canada, her parents and brother returned to Mexico, where her brother was hit by a car and killed. She claims that his death was a murder perpetrated by persons attempting to extort money from her parents, and that she would risk the same fate if she were returned.

DECISION UNDER REVIEW

[5] The Board determined that certain elements of the applicant's original claim were not credible.

- a) The Board noted that the applicant omitted from her Personal Information Form (PIF) any mention of the knife threat, and any attempt to seek help from the police in Mexico City. The applicant explained that the knife was mentioned in the Spanish version of her narrative; however, this version was never provided to the Board. The applicant explained that she failed to indicate that she reported the incident to the police in her PIF because the police refused to take a report. The Board did not accept her explanation.
- b) The Board also noted that an incident with a knife was mentioned in the applicant's report to the Municipal Police Department which occurred at her parent's home in Tlaxco, Tlaxcala. This is in contradiction to her oral testimony in which she claimed the incident occurred in Mexico City. The Board further noted that the applicant told an Immigration Officer that her problems began when the child was four months old, at which time the applicant was living with her parents and not in Mexico City.

[6] The Board was satisfied on the aforementioned grounds that no incident had occurred involving the knife and the father of the applicant's son. However, the Board's determinative ground for refusing the claim was the availability of state protection. This conclusion was based on the following reasons:

- a) The Board examined the legislative framework in place to protect women who fear violence as a result of their gender, and was satisfied that it provided recourse through the rule of law, at least in the federal district.

- b) The Board noted significant differences between the states in how the federal initiatives were implemented, but determined that the initiatives were implemented in the federal district, and therefore narrowed the analysis to that area. The Board reviewed a number of documents providing evidence to this effect.
- c) The Board noted that a lack of reliable data made it difficult to evaluate the effectiveness of the recent initiatives in assisting women who fear violence as a result of their gender. The Board reviewed what information there was and found that in the federal district, there was adequate, but not perfect, protection.
- d) The Board examined the applicant's fear on the ground that her family members had been extorted, and possibly murdered. The Board found that none of the attempts to extort the applicant's family had affected her directly, and she had lived in Mexico City without incident even after her family had fled to Canada.
- e) The Board reviewed the documentary evidence and determined that state protection would be available to the applicant, at least in the federal district, should she seek it with regard to her alleged fear of extortion.

[7] The Board noted counsel's objection to proceeding with the hearing without allowing the applicant to provide evidence of the problems faced by her family. However, the Board concluded that any additional evidence would not advance the applicant's claim, because it was denied on the ground that state protection was available to the applicant, and not only on the ground of credibility. The Board rejected counsel's oral application for an adjournment.

RELEVANT LEGISLATION

[8] *Refugee Protection Division Rules*, SOR/2002-228.

48. (1) A party may make an application to the Division to change the date or time of a proceeding.

...

(4) In deciding the application, the Division must consider any relevant factors, including

(a) in the case of a date and time that was fixed after the Division consulted or tried to consult the party, any exceptional circumstances for allowing the application;

(b) when the party made the application;

(c) the time the party has had to prepare for the proceeding;

(d) the efforts made by the party to be ready to start or continue the proceeding;

(e) in the case of a party who wants more time to obtain information in support of the party's arguments, the ability of the Division to proceed in the absence of that information without causing an injustice;

(f) whether the party has

48. (1) Toute partie peut demander à la Section de changer la date ou l'heure d'une procédure.

...

(4) Pour statuer sur la demande, la Section prend en considération tout élément pertinent. Elle examine notamment :

a) dans le cas où elle a fixé la date et l'heure de la procédure après avoir consulté ou tenté de consulter la partie, toute circonstance exceptionnelle qui justifie le changement;

b) le moment auquel la demande a été faite;

c) le temps dont la partie a disposé pour se préparer;

d) les efforts qu'elle a faits pour être prête à commencer ou à poursuivre la procédure;

e) dans le cas où la partie a besoin d'un délai supplémentaire pour obtenir des renseignements appuyant ses arguments, la possibilité d'aller de l'avant en l'absence de ces renseignements sans causer une injustice;

f) si la partie est représentée;

counsel;

(g) the knowledge and experience of any counsel who represents the party;

g) dans le cas où la partie est représentée, les connaissances et l'expérience de son conseil;

(h) any previous delays and the reasons for them;

h) tout report antérieur et sa justification;

(i) whether the date and time fixed were peremptory;

i) si la date et l'heure qui avaient été fixées étaient péremptoires;

(j) whether allowing the application would unreasonably delay the proceedings or likely cause an injustice; and

j) si le fait d'accueillir la demande ralentirait l'affaire de manière déraisonnable ou causerait vraisemblablement une injustice;

(k) the nature and complexity of the matter to be heard.

k) la nature et la complexité de l'affaire.

ANALYSIS

Standard of Review

[9] It is trite law that a breach of the rules of procedural fairness is not owed any deference, and will be reviewable on the standard of correctness.

[10] Though the applicant does not directly argue that the Board erred in its finding of state protection, I intend to address the question briefly. I find that reasonableness is the standard applicable to a decision determining the adequacy of state protection (*Wong v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 534, at paragraph 5, [2008] F.C.J. No. 679; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 at paragraphs 57, 62, and 64).

[11] For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process. The decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above at paragraph 47).

Did the Board err in refusing to grant the adjournment requested by the applicant to adduce additional documentary evidence?

[12] The applicant submits that the Board erred in refusing to grant the adjournment requested by the applicant, who wished to adduce additional evidence which would corroborate her account of her brother's murder. The applicant suggests that the Board ignored her submission that she would have to live with her family, and not in Mexico City, should she return to Mexico.

[13] The applicant further submits that the Board must consider the factors established in subsection 48(4) of the *Refugee Protection Division Rules* when making a determination of whether or not to grant an adjournment.

[14] The respondent replies that the applicant failed to address the reason provided for the Board for refusing the adjournment; any additional evidence the applicant might provide would have no consequence on the outcome of her refugee claim, since the determinative ground for refusing the claim was the availability of adequate state protection.

[15] I am of the opinion that it was open to the Board to refuse the adjournment on the ground that any further information provided by the applicant would have been inconsequential. The

Board's finding that state protection was available continues to apply even if the Board accepts that the applicant's brother was extorted and murdered.

[16] It is noteworthy that paragraph 48(4)e) of the *Refugee Protection Division Rules* expressly provides that the ability of the Board to proceed in the absence of information without causing an injustice, is a factor which should be considered in determining whether to grant an adjournment. In the case at bar, the fact that the claim would ultimately be determined on other grounds, regardless of the availability of additional information, is precisely the type of scenario envisioned by this provision.

[17] While the applicant does not directly challenge the Board's finding of state protection, it is clear on the face of the reasons that the Board conducted a thorough analysis of the relevant documentary evidence, including that which addressed the effectiveness of the protective measures and initiatives in place. I therefore conclude that the Board's finding is reasonable.

[18] For the foregoing reasons, I find that the Board did not err or breach the rules of procedural fairness in refusing to grant an adjournment. Because the finding with regard to state protection is determinative, I also decline to deal with the issues raised by the applicant regarding alleged errors made by the Board in its assessment of the credibility of the claim.

[19] No questions were submitted for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5107-07

STYLE OF CAUSE: **ANALLEELY CORTEZ MUNOZ and
DANIEL CORTEZ MUNOZ
and THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 22, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry J.

DATED: May 23, 2008

APPEARANCES:

Thore Ralf Lederer, ESQ. FOR APPLICANT

Stephen H. Gold FOR RESPONDENT

SOLICITORS OF RECORD:

Thore Ralf Lederer, ESQ. FOR APPLICANT
Toronto, Ontario

John H. Sims, Q.C. FOR RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario