Date: 20081007

Docket: IMM-1178-08

Citation: 2008 FC 1131

OTTAWA, Ontario, October 7, 2008

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

ANA ISELA AHUMADA HERNANDEZ
MARELYNE THAMARA CHACON AHUMADA
a.k.a. MARELYNE THAMAR CHACON AHUMADA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are a mother and daughter, both citizens of Mexico. They seek judicial review of a decision of the Refugee Protection Division (RPD), dated January 28, 2008, that they are neither Convention refugees nor persons in need of protection because an internal flight alternative (IFA) existed for them in Mexico City.

[2] The applicants founded their claim for refugee protection on the fear of Ms. Hernandez' estranged common-law partner, a judicial police officer who subjected her to physical and sexual abuse and mistreated her daughter.

[3] Ms. Hernandez, the principal applicant, claims that she and her daughter fled to two different towns in Chihuahua state but that her former common-law partner Chester found them both times. She asserts that she was too afraid to ask the authorities for assistance because Chester was an officer. In December 2006, on the advice of her brother, she and her daughter fled to Canada and sought refugee protection.

[4] The RPD Panel member found that the applicants had a viable IFA in Mexico City. She found inadequate the explanation of the principal applicant that a lack of funds was the reason she had not moved with her daughter to Mexico City, as such a move would have been far less expensive than fleeing to Canada. She found insufficient evidence to substantiate the fact that Ms. Hernandez' common-law spouse was still interested in her and that it would not be difficult for him to track her through her social security number or electoral card, as she claimed. Finally, she found that it would not be unduly harsh to expect the applicants to relocate within Mexico, noting that seeking the protection of another country is a measure of last resort.

[5] The applicant raises numerous issues, which can all be recast under the single question: Did the RPD Panel member err in her conclusion that Mexico City was a viable IFA for the applicants?

[6] A finding of a viable internal flight alternative is one of fact, reviewable on a standard of reasonableness. The question is two-pronged: is there a location in the country of origin where there is not a serious possibility of persecution, torture or cruel or unusual treatment and would it be

unduly harsh to expect the claimant to relocate to that territory before seeking the protection of a third country? Inherent in the first prong is the notion that the state would be willing and reasonably able to protect the claimant should persecution or the like occur.

[7] The Panel member held that Chester was no longer interested in them because he had only been to Ms. Hernandez' brother's home once to look for her in the year between the time she fled to Canada and the hearing. The applicants submit that this is an erroneous conclusion because it is speculative. The respondent counters that it was reasonably open to the Panel member to find as she did based on the evidence before her.

[8] While the standard of patent unreasonableness has been subsumed within the new standard of reasonableness, following *Dunsmuir v. New Brunswick*, 2008 SCC 9, it is still the case that the existence of a reasonable alternate line of reasoning on the facts is insufficient to overturn the findings of a tribunal. To be unreasonable, the decision of the RPD must be outside the spectrum of possible reasonable decisions available on the evidence. I agree with the respondent that the finding of the Panel member on this point was available to her and was not unreasonable.

[9] The applicants next assert that the Panel member erred in finding that it was unlikely that Chester would be able to locate them in Mexico City by using her social security number or electoral card because the databases containing such information were confidential. They submit that the evidence cited by the RPD relates to civilian citizens, unlike Chester's position as an undercover agent with Mexico's judicial police, and ignores the corruption within the police forces.

Further, they point to documentary evidence which, they claim, the Panel member erred by making no reference to, as it contradicts her decision.

[10] The respondent counters that the RPD was clearly aware that Chester was a judicial police officer, but found that this factor did not heighten the risk faced by the applicants in Mexico City. The preponderance of the evidence shows that it would be unlikely that an aggressor would be able to locate a victim of domestic violence by means of government databases and registries. The incidents highlighted by the applicants as indicia of the Panel member's error are isolated incidents which cannot stand for the general risk faced by women in similar situations in Mexico.

[11] It is trite law that a decision-maker is presumed, in the absence of evidence to the contrary, to have considered all the evidence before her and that she need not refer to each individual piece. While the applicants have pointed to documents which they feel affirm their position that the Panel member misread or ignored relevant evidence, her decision rests on the entirety of the evidence and the individual sentences cited by the applicant are insufficient to overcome the reasonableness of her decision. The applicants assert that the RPD "selectively drew" from the evidence. In order to back up this claim, they draw far more selectively than the Panel member.

[12] The applicants then argue that the decision of the RPD on state protection for abused women in Mexico is erroneous as it failed to consider that the evidence shows that procedures to ensure protection are not being correctly applied. They submit that the procedures exist on paper but are not uniformly applied and relevant institutions are not participating sufficiently. They assert that

legislative initiatives to protect women cannot constitute state protection unless there is evidence to indicate that they are actually rendering protection. On this basis, they cite Professor Hathaway for the idea that such changes must be durable, effective and meaningful, which, they submit, are not. The applicants further argue that state protection cannot be said to be reasonably available to them and that the RPD erred in finding otherwise.

[13] The respondent notes that the documentary evidence so heavily relied upon by the applicants was expressly referred to by the Panel member and therefore was obviously given due consideration by her. However, another report, equally relevant to the situation of domestic violence in Mexico and dated four years after the first, contained other information on significant measures aimed at combating this social problem. The applicants seek merely to have the Court reweigh the evidence, asserts the respondent, which is not the function of a reviewing court.

[14] Despite the reliance of the applicants on Professor Hathaway, it must be noted that refugee and immigration laws and policies in Canada are the jurisdiction of Parliament, subject to reasonable interpretation by the Federal Court. Parliament has delegated its decision making authority onto the Immigration and Refugee Board and from that delegation comes the significant deference owed by the Court to the Board.

[15] In spite of the able submissions by the applicants, I cannot see that there is anything in the impugned decision which calls for the intervention of the Court. The decision will stand.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed. No questions were proposed for certification and none arise on the facts.

"Louis S. Tannenbaum"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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