

Date: 20090127

Docket: IMM-3356-08

Citation: 2009 FC 82

Ottawa, Ontario, January 27, 2009

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

**VERONICA PATRICIA AGUILAR ZAMORANO
(a.k.a. VERONICA PATRIC AGILAR ZAMORANO)
ANA YURITZY AYALA AGUILAR
KAREN DENISSE AYALA AGUILAR**

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 the Refugee Protection Division of the Immigration and Refugee Board dated June 27, 2008, denying the applicants' refugee claim.

FACTS

[2] The primary applicant, Veronica Patricia Aguilar Zamorano, and the minor applicants, her children, Ana Yuritzy Ayala Aguilar and Karen Denisse Ayala Aguilar, are citizens of Mexico.

[3] The primary applicant was the office manager of Telisis S.A. de C.U., a telecommunications company. Her responsibilities included keeping the company accounts, and depositing monies for the company.

[4] On August 15, 2007, the applicant was kidnapped by two men after making a deposit of 25,000 pesos in a bank in Mexico City. The kidnappers called the applicant's mother and demanded 500,000 pesos. After the applicant informed the kidnappers that they did not have the money, she was raped. She was held in captivity for three days and escaped when her kidnappers fell asleep after drinking.

[5] After returning to her mother's home, the applicant made a police report. The police sent the applicant for a medical examination at a special clinic for rape victims.

[6] The applicant states that the day after she escaped and made the police report, her mother received a call from her kidnappers warning her not to go to the police and threatening to harm her if she did so. The applicant's mother cancelled her home phone line immediately. The phone call was not reported to the police.

[7] A week later, the police recovered the applicant's vehicle. The applicant states that the police told her she had not provided them with enough information to find the kidnappers because she was unable to identify her kidnappers, provide a location where she had been taken, or give any other information they could use to track down her kidnappers. The applicant states that she was afraid because of the threatening phone call her mother had received, and decided to flee to Canada. She arrived in Canada on September 14, 2007. Her children continued to reside with her mother in Mexico, and joined the applicant in Canada on June 3, 2008.

Decision under review

[8] The panel did not make any finding as to the applicant's credibility. The determinative issues in the decision were state protection and the existence of an internal flight alternative.

[9] On the issue of state protection, the Board found that the applicant had not made adequate efforts to avail herself of state protection. The applicant stated in her testimony that she did not fear anyone in Mexico other than the two individuals who had assaulted her. The Board found that after making the initial police report, neither the applicant nor her mother had made any attempt to follow up with the police, including failing to report the threatening phone call that the applicant's mother had received. The Board stated:

The claimant testified that neither she nor her mother made any subsequent attempts to follow-up on the reports they made at the Attorney-General's office. It was the police who, after investigating her claim, called to tell her that they were able to recover her vehicle that was used by her kidnappers to kidnap her. The panel does not believe that the police did not perform any forensic tests on the claimant's vehicle as alleged since the claimant and her mother never followed-up on their reports or met with the authorities. Therefore, it

is not plausible that they knew what tests the police carried out before they released it to the claimant.

Based on the evidence adduced, the panel finds that the Mexican authorities made serious efforts to recover her vehicle as well as sending her to be medically examined by a forensic doctor; all this happened within a week of her filing the denunciation. It is not reasonable to expect the police to seek out and capture the claimant's kidnappers when she was not able to provide their identities or any leads for the police. The claimant did not stay in Mexico long enough to see the outcome of the police investigations based on what she provided them. The claimant left for Canada in less than a month after filing her denunciations.

[10] The panel found that although the applicant testified that she was dissatisfied with the police action, she did not seek any redress, either by filing a complaint or by following up on her initial report, including informing the police of the subsequent threat, at any time.

[11] The panel then found that the applicant had a viable Internal Flight Alternative (IFA) in Monterrey. The panel stated that the applicant, as a certified accountant, would not have difficulties finding employment and schools for her children in Monterrey. The panel found that the applicant's kidnappers have not, since the August 19, 2007 phone call to her mother, attempted to find her. Her mother has continued to live in the same house, a location the applicant states the kidnappers were aware of. Given that their threat to the applicant was not to go to the police, the panel found that the kidnappers did not know the applicant had already filed a police report and therefore are not in cahoots with the police. Thus, the panel concluded the kidnappers would not be able to find the applicant in Monterrey or elsewhere.

ISSUES

[12] The applicant raises the following issues in its submissions:

- a. that the panel erred in failing to examine the adequacy of state protection, made selective use of documentary evidence in relation to state protection;
- b. that the panel did not consider, or properly consider, the psychological report in its IFA analysis; and
- c. that the panel did not rely on any evidence, and ignored evidence, in its IFA analysis.

STANDARD OF REVIEW

[13] The Board's determination of the refugee claim was a question of mixed fact and law and is subject to a standard of review of reasonableness. *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 362 N.R. 1. The Court will therefore review the Board's findings with an eye to "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir* at paragraph 47).

ANALYSIS

Issue No. 1: Did the panel err in its findings on state protection?

[14] The applicant submits that the panel ignored relevant evidence in reaching its conclusions on state protection. The panel found that the police were making serious efforts to investigate her

case and that if she was dissatisfied with the police action, she had an obligation to pursue the available recourses given that Mexico is a democracy. The panel found evidence that she could have sought assistance from several organizations, and that public officials are punished in Mexico for misconduct.

[15] According to the applicant, these findings ignored contradictory documentary evidence that was before the panel. The applicant points to numerous statements in the evidence that the panel purportedly ignored, relating to corruption in the police force; problems relating to the witness protection programs; and the minimal success that the police have had in dealing with small, amateur kidnapping rings. The applicant submits that all this evidence contradicts the panel's findings that the police in the D.F. are relatively "clean" and effective.

[16] The respondent submits that it was open to the Board to find that the applicant had failed to rebut the presumption of state protection as she had only approached the police once, failed to report the subsequent threat she had received, and had left Mexico less than a month later without following up on the police investigation. The applicant also did not contact any of the state agencies that are able to provide assistance to victims of kidnapping and sexual abuse.

[17] The applicant further submits that the fact that all the documentary evidence is not mentioned does not indicate that the panel failed to consider it. The Board acknowledged the mixed evidence on the issue of state protection, but found that the applicant had failed to make reasonable efforts to avail herself of state protection. Thus, the respondent submits, the applicant cannot rebut

the presumption of state protection simply by pointing to evidence of flaws in the justice system.

The respondent relies on *Palomares v. Canada (MCI)*, (June 7, 2006) Doc. No. IMM-5447-05

(FCTD) wherein Madam Justice Heneghan stated:

The problem with this position is that it ignores the uncontradicted evidence that the Principal Applicant did not seek state protection at any time during the period of cohabitation with her spouse in Mexico. The Board heard her evidence. It is mandated to weigh the evidence. It is not enough for the Principal Applicant to refer to documentary evidence that, admittedly, paints a mixed picture about the state response to domestic violence and say that the Board committed a reviewable error in her case.

See also: *Cortes v. Canada (MCI)*, 2006 FC 1487, 154 A.C.W.S. (3d) 450 at paragraph 9.

[18] I agree with the respondent that this reasoning is applicable in this case. The applicant in this case did go to the police and the evidence on the record indicates that her complaint was taken seriously. The contradictory evidence relating to the efficacy of some of the state agencies mentioned by the panel, and the evidence relating to corruption in the police force, are not of such direct relevance and importance that the failure to specifically mention them is a reviewable error, in light of the fact that the applicant did not attempt to avail herself of protection from these agencies and the fact that her police complaint had been taken seriously and was being investigated by the police. There was no evidence that the police in her case were corrupt, and in fact, the call from her kidnappers indicated that they were not aware that the police report had been filed and therefore were not working in concert with or receiving protection from the police. The Board reviewed the documentary evidence in depth and there was ample support for the Board's finding.

Issue No. 2: Did the panel err in failing to consider the psychological report in its IFA analysis?

[19] The applicant submits that the psychological report is relevant in determining whether an IFA is reasonable, and that the Board erred in failing to adequately consider it. The Board made one reference to the psychological report under its state protection analysis, stating:

The panel considered the psychological report, which indicates the claimant's present psychological condition. Since the claimant obtained psychological help prior to leaving Mexico, it would not be unreasonable for her to continue with therapy should she return to Mexico.

[20] The applicant further submits that this reasoning demonstrates a factual error, as there was no evidence on the record that the applicant received any psychological help in Mexico.

[21] The Board clearly made a factual error in stating that the applicant received psychological help in Mexico, as there is no evidence to that effect on the record. However, this is not a material error. The respondent submits that the Board was under no obligation to consider the report specifically under the IFA analysis.

[22] In this case, the psychological report indicated that the applicant is suffering from depression and post-traumatic stress disorder, and has had suicidal feelings. The report further states at page 111 of the Applicant's Record:

Ms. Aguilar has had suicidal ideation, and one attempt in the past, and being deported to Mexico will only heighten this sense of hopelessness that sustains her depression. Her love for her daughters provides a buffer, but the patient needs to rebuild her own sense of being cared for and living in a protected environment.

As well, Posttraumatic Stress Disorder is a condition highly sensitive to environment cues that remind the patient of the context of the

trauma. Deportation to Mexico would result, most assuredly, in an intensification of her symptoms in this regard.

[23] I agree with the applicant that the Board's statement that it considered the psychological report does not suffice where the contents of the reports provide evidence which is highly relevant to credibility or some issue raised by the applicant. However, the Board's finding on state protection was reasonable, and the psychological evidence does not establish otherwise. The applicant made no submission before the Board under section 108(4) of IRPA that the applicant's psychological condition provides a "compelling reason" not to return her to Mexico. The applicant's psychological condition could also be the basis for an H&C application. It is not, however, sufficient to disturb the Board's reasonable finding on state protection or IFA.

Issue No. 3: Did the Board err by ignoring evidence, or failing to rely on evidence, in its IFA finding?

[24] The applicant submits the panel failed to address the applicant's oral evidence wherein she provided an explanation as to why her mother was not targeted by the kidnappers although she continued to reside in the same location. The applicant testified that she herself went to live with a friend in Marisol until she left the country, and that the kidnappers did not target her mother because the applicant was the one at risk, as she was the one the kidnappers feared could identify her. The applicant also submits that the kidnappers could not call her mother again because the applicant's mother had disconnected her phone line.

[25] However, the applicant testified that the kidnappers had her identity documents and thus were aware of her mother's address. The panel's finding was that the kidnappers never attempted to

contact her mother and that if they were searching for the applicant, they would have approached her mother for information about her whereabouts. The fact that neither the applicant nor her mother never heard from the kidnappers after the August 19, 2007 phone call, was found by the panel to establish that the kidnappers were no longer interested in locating her or were unable to locate her. This finding was reasonably open to the panel in my view.

[26] The applicant further submitted that the Board had failed to consider evidence that if she was returned to Mexico, she could be tracked down using the Infonavit system which allows anyone to go onto the internet and locate a person's name and date of birth. The Board specifically considered this information, but found that based on the totality of the evidence, the kidnappers were no longer trying to find the applicant.

[27] I find that the Board's finding that the applicant did not make adequate attempts to avail herself of state protection was reasonable. Additionally, the applicant has not established that she would not have an IFA in Monterrey or elsewhere.

[28] For these reasons, this application for judicial review is dismissed.

[29] Both parties advised the Court that they do not consider that this case raises a serious question which ought to be certified for an appeal. The Court agrees.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

This application for judicial review is dismissed.

“Michael A. Kelen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3356-08

STYLE OF CAUSE: VERONICA PATRICIA AGUILAR ZAMORANO
(a.k.a. VERONICA PATRIC GILAR ZAMORANO),
ANA YURITZY AYALA AGUILAR, KAREN
DENISSE AYALA AGUILAR

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 15, 2009

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

DATED: January 27, 2008

APPEARANCES:

Pamila Bhardwaj FOR THE APPLICANTS

Sharon Stewart-Guthrie FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pamila Bhardwaj FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

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