Date: 20090320

Docket: IMM-2329-08

Citation: 2009 FC 288

Ottawa, Ontario, March 20, 2009

PRESENT: The Honourable Mr. Justice Orville Frenette

BETWEEN:

Rodrigo CASAS PADIERNA,
Roxana CASAS XOCHICALE,
Diego CASAS XOCHICALE

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (hereinafter the panel) dated April 29, 2008, refusing the applicants' refugee claims.

Facts

[2] The principal applicant, Rodrigo Casas Padierna, a Mexican citizen, arrived in Canada with his wife and their two children on August 6, 2007, and claimed refugee protection. The applicant alleged that he hired a babysitter named Maria in 2002 to take care of the children. This babysitter worked for them for four years before she had to leave. Subsequently, the applicant received threats and was afraid that one Nicolas Castro Juares would kidnap his children. The applicant then decided to seek asylum in Canada.

Impugned decision

[3] On April 29, 2008, the panel issued its decision refusing the applicants' refugee claim based primarily on a lack of credibility. The principal applicant is a young industrial engineer. In his testimony before the panel, [TRANSLATION] "he does not know whether Nicolas Castro Juares is really the person he fears", i.e., the person he had identified when he began testifying.

[4] He did not seek state protection or try to relocate elsewhere in Mexico. He admitted that he could have moved elsewhere in Mexico. The panel found that the principal applicant was not credible and had not seriously sought state protection or an internal flight alternative; he was, therefore, not a refugee within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

Motion for an extension of time

[5] The principal applicant filed an application for leave and judicial review of the decision issued on April 29, 2008. The applicant had 15 days to serve the parties (paragraph 72(2)(*c*) of the Act). It

was not until June 19, 2008, two months and 13 days later, that he served the application. The principal applicant simply indicated that he did not serve the application on the respondent because he was distracted, without any other explanation or justification and without leave of the Court. The respondent requests that this proceeding be dismissed because of this significant procedural defect (*Traore v. Minister of Citizenship and Immigration*, 2002 FCT 909; *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (C.A.); *Semenduev v. Canada (M.C.I.)*, [1997] F.C.J. No. 70 (QL)).

[6] The respondent requests that these applications be dismissed because the two essential conditions have not been met: first, serious reasons justifying the delay and second, evidence to show an arguable case on the merits (*Valyenegro v. Canada (Secretary of State)*, [1994] F.C.J. No. 1917 (QL), 88 F.T.R. 196).

[7] The principal applicant responds that he has satisfied both conditions. The credibility decision was erroneous and even if that were not the case, the panel should have addressed the merits of the fears according to *Attakora v. Canada (M.E.I.)* (1989), 99 N.R. 168, where Mr. Justice Hugessen wrote:

> . . . Whether or not the applicant was a credible witness, and I have already indicated that the Board's reasons for finding him not credible are based in error, that does not prevent him from being a refugee if his political opinions and activities are likely to lead to his arrest and punishment. In those circumstances, the only conclusion that was open to the Board was to find that the applicant was indeed a Convention refugee.

[8] However, in this case, the situation is very different from that in *Attakora*; accordingly, the lesson learned from that case does not apply here. Furthermore, other decisions state that the

decision-maker has the right to disregard evidence if he or she is convinced that the applicant is not trustworthy (*Allouche v. Canada (M.C.I.)*, [2000] F.C.J. No. 339 (QL); *Riveros v. Minister of Citizenship and Immigration*, 2001 FCT 1009; *Sheikh v. Canada (M.C.I.)*, [1990] 3 F.C. 238; *Bengabo v. Minister of Citizenship and Immigration*, 2009 FC 186, at paragraphs 27 and 28). The application must be dismissed based on the procedural defect, but I will briefly analyze the merits of the application.

Standard of judicial review

[9] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the Supreme Court of Canada decided that the standard of review in administrative law with respect to questions of fact or mixed questions of fact and law is reasonableness. On a question of law, the standard is correctness. In *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, the Supreme Court added that decisions of administrative tribunals are entitled to deference.

[10] The case before me concerns a decision based on facts, and therefore the reasonableness standard applies.

Issues

[11] The respondent contends that the panel was correct in concluding that the applicants had not attempted to obtain state protection. Nor had they rebutted the presumption of an internal flight alternative. The applicants did not dispute this conclusion (*McLean v. Minister of Citizenship and Immigration*, 2005 FC 1007, at paragraph 12; *Navarro v. Minister of Citizenship and Immigration*, 2008 FC 358, at paragraph 19). These objections are, therefore, well founded.

[12] I have already determined that the panel's finding on the applicant's lack of credibility was well founded. This finding is based on the evidence, and accordingly this Court cannot intervene.

[13] Counsel for the applicants raised what he describes as a breach of procedural fairness during the hearing before the panel on April 14, 2008. The principal applicant referred to a complaint that he had made to the Mexican police and showed a copy of it. The panel asked him why he had not submitted it in evidence; he replied [TRANSLATION] "that someone suggested to him that he should not do so because it was illegible". The panel obtained the document and had it translated by a competent translator. In this complaint, the principal applicant stated that he was not sure who was threatening him, whereas he told the panel that it was Nicolas Castro Juares. The panel invoked this contradiction (with other indicia) to determine that the applicant was not credible. In my view, this incident is not a breach of procedural fairness since it was the applicant himself that showed it to the panel. This complaint must therefore be dismissed.

[14] In light of the foregoing, the application is not well founded in fact and in law. For these reasons, the Court orders that the applicants' application for judicial review be dismissed.

JUDGMENT

The application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board dated April 29, 2008, is dismissed.

No question will be certified.

"Orville Frenette"
Deputy Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2329-08
STYLE OF CAUSE:	Rodrigo CASAS PADIERNA, Roxana CASAS XOCHICALE, Diego CASAS XOCHICALE v. MINISTER OF CITIZENSHIP AND IMMIGRATION
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