Date: 20090408

Docket: IMM-3639-08

Citation: 2009 FC 354

Ottawa, Ontario, April 8, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

RUTH ARELY DURAN MEJIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (Act) for judicial review of a decision of a Board of the Refugee Protection Division of the Immigration Refugee Board (Board), dated July 21, 2008 (Decision) refusing the Applicant's application to be deemed a Convention refugee or person in need of protection under section 96 and section 97 of the Act.

BACKGROUND

[2] The Applicant is a 23-year-old citizen of Mexico, who resided in San Juan del Rio, Querentaro, Mexico. She is a university graduate with a degree in marketing.

[3] The Applicant worked for her uncle (her mother's brother-in law), Jaime Rico Venegas, for eight months starting in November 2005 at R.R. Real Estate in San Juan del Rio, Querentaro. Between May 2006 and July 2006, she says her uncle made sexual advances and tried to rape her three times. However, he was unsuccessful. The Applicant alleges that this abuse occurred both at work and at her home.

[4] The Applicant sought help from the Family Development Institute (DIF) after the first incident with her uncle and she received psychological help from the DIF until July 2006. In July 2006, the Applicant resigned from her job and then left Mexico in September 2007.

[5] The Applicant alleges that she discovered that her uncle had engaged in fraudulent real estate transactions. He threatened that, if she ever revealed anything about this discovery, her family would be harmed.

[6] The Applicant claimed refugee protection on the grounds that she would suffer persecution at the hands of her uncle.

DECISION UNDER REVIEW

[7] The Board concluded that the Applicant was not a Convention refugee or person in need of protection.

State Protection

[8] The Board considered the Applicant's oral and written testimony, the *Woman Refugee Claimants Fearing Gender-Related Persecution: Update* (Gender Guidelines), the representations of counsel and all of the evidence provided. The Board also examined the documentary evidence pertaining to violence against women, corruption and criminality, as well as evidence about the police, the availability of mechanisms for lodging complaints and the general level of democracy in Mexico.

[9] The Board found that state protection existed for individuals like the Applicant in Mexico. The Board also found that the Applicant had not met the burden of establishing "clear and convincing" proof of a lack of state protection for individuals like her in Mexico.

[10] The Applicant testified that she feared her uncle and nobody else. She indicated that she worked as a receptionist for R.R. Real Estate, which belonged to her uncle. The Board found that the Applicant had not provided any documentary evidence to corroborate her allegations that she worked for her uncle at R.R. Real Estate. Since her problems stemmed from her employment at

R.R. Real Estate, documentary evidence to corroborate her employment (such as payslips or bank statements) would be central and material to her claim. Her psychological report also did not indicate where the Applicant worked or why she needed psychological help. The Board found that the Applicant had had ample time to obtain documents relating to her employment. Question 31 of her Personal Information Form (PIF) instructed her to do so. The onus was on the Applicant to establish her claim. The Board was not persuaded that the Applicant had worked for her uncle.

[11] In relation to the sexual abuse, since the psychologist's report did not indicate anything about sexual abuse and the perpetrator of the abuse, the Board did not believe that the Applicant was sexually abused by her uncle at R.R. Real Estate as she alleged. The Board found that the Applicant had fabricated the story for the purposes of her refugee claim. Therefore, the Applicant did not have an objectively well-founded fear of persecution at the hands of her uncle should she return to Mexico.

[12] The Board further held that, even if it were to believe the Applicant's story that her uncle sexually assaulted her, there was adequate state protection for individuals like her in Mexico.

[13] The Applicant had sought and received help from the DIF. She had not sought medical help from a physician, nor made any effort to report her uncle to the police or other state institutions that deal with sexual abuse. The Applicant testified that she did not seek medical help because she did not wish any physician to touch her. She also claimed that she did not seek help from the police and

other state institutions because her uncle had contacts within state institutions. She said that help from the police would not be forthcoming.

[14] The Board did not accept the uncle's contacts within state institutions because he had once been jailed for not paying alimony to his ex-wife. He had been released from jail only after signing and paying a bond to the authorities. This indicated that the authorities had taken action against him.

[15] The Applicant knew that the General Law on Women's Access to a Life Free of Violence was in force while she was in Mexico. She did not seek legal action against her uncle because she said she lacked the financial resources to do so. The Board found that the Applicant's explanation of a lack of finances was not reasonable since she earned 1,000 pesos per week from her job and lived with her parents. She had the financial resources to seek legal help. She could have used the money she used to come to Canada to retain a lawyer.

[16] The Applicant also knew about the existence of the National Institute for Women and the 24-hour telephone assistance provided for females. It was through the National Institute for Women that she had sought help from the DIF and she could have retuned to the National Institute for Women to seek additional help, but she had not done so.

[17] The Board also found that the Applicant had not sought help from state authorities to deal with the corruption she suspected between the police and her uncle. The Applicant testified that she did not seek help from the Federal Agency of Investigations (FAI) because she did not have

sufficient evidence against her uncle. However, the Board considered this explanation unreasonable because she had a psychological report from the DIF that she could have relied upon to obtain help from the FAI.

[18] The Applicant also had knowledge of the Secretariat of Public Administration, where complaints regarding misconduct and corruption of Federal employees are reported. She said she had not sought help from this source because she felt her uncle had contacts with the authorities. The Applicant had further knowledge of the existence of the Human Rights Commissions that deal with complaints about police misconduct and situations where citizen's rights are violated. She said she had not sought their help because she did not wish her aunt, who was having difficulties in her pregnancy at that time, to lose her baby.

[19] The Board also found that the Applicant had the ability to, but had not elected to, seek out and avail herself of state protection from state agencies other than the police in Mexico. The Board found that the Applicant lived in a democracy, that she had not reasonably exhausted all courses of action open to her in obtaining state protection in Mexico, and that she had not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect her.

[20] The Board concluded that the documentary evidence contrasted with the Applicant's allegations of a lack of state protection for persons like her in Mexico. The Board gave more weight to the documentary evidence than the evidence of the Applicant. The Board did not disagree that crime against women, including rape, corruption, kidnapping, drug trafficking, and impunity

continue to be problems in Mexico. However, based on the totality of the evidence, the Board was not persuaded that the Applicant would not receive state protection against her uncle if she returned to Mexico.

Internal Flight Alternative (IFA)

[21] The Board also found that the Applicant had a viable IFA in Mexico City and that there was no persuasive evidence before the Board that the Applicant's uncle had been looking for her after she left Mexico or that he had any interest in harming her. Therefore, there was not a serious possibility that the Applicant would face persecution, risk to her life, a danger of torture, or a risk of cruel and unusual treatment or punishment should she return to Mexico.

ISSUES

[22] The Applicant raises the following issues on this application:

1) Whether the Board erred in law by placing too much emphasis on the lack of corroborating evidence;
2) Whether the Board erred in its assessment of credibility and state protection by not considering the gender-specific dimension of the abuse suffered, and how an abused woman would react in such circumstances;
3) Whether the Board erred in law by making an inference, which was not substantiated by the evidence before it;

4) Whether the Board erred in law by failing to consider evidence before it, dealing with the issue of state protection, which applied to the Applicant's specific situation;

5) Whether the Board erred by treating the same piece of evidence in contradictory ways;

6) Whether the Board erred by failing to consider that the agent of prosecution was a family member when concluding that the Applicant had an available IFA.

STATUTORY PROVISIONS

[23] The following provisions of the Act are applicable in this proceeding:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut

unable or, by reason of that fear, unwilling to return to that country.

ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents

	à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	**Personne à protéger**
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	**(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[24] Pre-*Dunsmuir*, the standard of patent unreasonableness has been applied to issues of credibility: *Perera v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1069 (*Perera*). As long as the inferences drawn are not so unreasonable as to warrant the intervention of the court, such findings are not open to judicial review: *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (*Aguebor).*

[25] On the issue of state protection, the Federal Court of Appeal has determined that the standard of review is reasonableness: *Carillo v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 399 at paragraph 36.

[26] In relation to the standard of review for an IFA, the Court in *Diaz v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1543 (F.C.) summarized the case law at paragraph 24 as follows:

> …*Ortiz* v. *Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1716, summarizes the features of IFA determinations in judicial review, "[Justice Richard] held at paragraph 26 that Board determinations with respect to an IFA deserve deference because the question falls squarely within the special expertise of the Board. The determination involves both an evaluation of the circumstances of the applicants, as related by them in their testimony, and an expert understanding of the country conditions" from *Sivasamboo v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 2018. In light of these issues, this Court has found the standard of review to be patent unreasonableness pre-*Dunsmuir* above. See for instance: *Nwokomah v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1889, *Chorny v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1263, *Nakhuda v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J No. 882. As Justice de Montigny stated in *Ako v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 836 at paragraph 20:
>
> > It is trite law that questions of fact falling within a tribunal's area of expertise are generally reviewed against a standard of patent unreasonableness. More particularly, this Court has consistently found that this is the proper standard to apply with respect to the existence of a viable internal flight alternative [...]
>
> Thus, it was well-settled that this Court should not disturb the Board's finding of a viable IFA unless that finding was patently unreasonable. The standard of review, therefore, is reasonableness as a result of *Dunsmuir* above.

[27] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically

different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review”: *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of “reasonableness” review.

[28] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[29] Thus, in light of the Supreme Court of Canada’s decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the issues of credibility, state protection and an IFA to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] 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. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[30] Any procedural fairness issues will be considered under a standard of correctness: *Lecaliaj v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 150 (FC) at paragraph 32; *Thomas v. Canada (Minister of Citizenship and Immigration*, [2007] F.C.J. No. 1114 at paragraph 14 and *Adu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 at paragraph 9.

[31] Errors of law will also be considered under a standard of correctness: *Singh v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 798 (F.C.T.D.) at paragraph 22.

ARGUMENT

The Applicant

Corroborating Evidence

[32] The Applicant submits that corroborative evidence is persuasive but is not required. By making an adverse credibility finding based on nothing more than a lack of corroborative evidence, the Board committed an error in law.

[33] The Applicant submits that her place of employment was incidental to her claim and that the agent of persecution was both the Applicant's uncle and her employer. The abuse occurred at both the Applicant's home and at work.

[34] The Applicant says that the Board placed too great of an evidentiary burden on her and, in doing so, committed an error of law. The Applicant relies upon *Nechifor v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1278 (F.C.) at paragraph 6 which states that "[i]t is

settled law that a panel cannot make negative inferences from the fact that a party failed to produce any extrinsic document corroborating its allegations."

[35] The Applicant submits that the Board did not suggest that the Applicant's testimony was inconsistent or implausible. If there were no other factors giving rise to an adverse credibility finding, then the Applicant's testimony is credible. Testimony given under oath is presumed to be true unless there is a reason to doubt its truthfulness: *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 at paragraph 5.

[36] The Applicant cites *Chan v. Canada (Minister of Employment and Immigration)*, [1995] S.C.J. No. 78 (S.C.C.) at paragraph 137 which states that "[w]here [the] evidence is not available in the documentary form, the claimant may still be able to establish that the fear was objectively well founded by providing testimony with respect to similarly situated individuals."

[37] The Applicant points out that a psychological report from Canada about the Applicant and a police report filed by the Applicant's aunt indicating that the aunt had been a victim of violence at the hands of the uncle were not referred to in the Board's reasons. A letter confirming that the Applicant had received psychological counseling in Mexico was referred to in the Board's reasons, but as a "psychological report."

Gender Specific Claim

[38] The Applicant submits that she had a well-founded fear of persecution due to her membership in the "women who have suffered gender-based violence" social group. She says that the Board failed to give due consideration to her testimony about the abuse she had suffered and closed its mind to the potential truthfulness of her allegations. Specifically, the Board failed to consider how a woman in the position of the Applicant would respond. As *Garcia v. Canada (Minister of Citizenship and Immigration)* 2007 FC 79 at paragraph 24 stated, "[it] is necessary to understand what actions can be realistically expected of a woman who has suffered violence."

[39] The Applicant also cites and relies upon *R. v. Lavallee*, [1990] S.C.J. No. 36 (S.C.C.) which states at paragraphs 38 and 51 for the following:

> If it strains credibility to imagine what the "ordinary man" would do in the position of a battered spouse, it is probably because men do not typically find themselves in that situation. Some women do, however. The definition of what is reasonable must be adapted to circumstances, which are, by and large, foreign to the world inhabited by the hypothetical "reasonable man."
>
> …
>
> The issue is not, however, what an outsider would have reasonably perceived but what the accused reasonably perceived, given her situation and her experience.

[40] The Applicant submits that it was unreasonable, in light of the Gender Guidelines, for the Board to suggest that not leaving her place of employment after the first incident of sexual assault demonstrated a lack of subjective fear. Her continued presence at the office was a testament to her

continued fear of her uncle and what he would do to her family. The Board's conclusions on this issue were unreasonable.

Improper Inference

[41] The Applicant submits that the Board erred in law by making an inference based on evidence that was not before it. Specifically, the documents did not provide any evidence about legal expenses in Mexico and how they compared or contrasted with the salary of the Applicant or the cost of a plane ticket to Canada.

[42] The only evidence before the Board was the Applicant's testimony that legal fees in Mexico would have been too expensive for her to afford. There was no reason to doubt that testimony and it should be presumed to be true. The Board overstated what options the Applicant would have had in seeking state protection.

State Protection

[43] The Applicant submits that she sought state protection on one occasion. The evidence before the Board showed that while the DIF provided the Applicant with psychological counseling, it did nothing further to offer substantive protection. Mexico is only a developing democracy: *De Leon v. Canada (Minister of Citizenship and Immigration)* 2007 FC 1307 and *Zepeda v. Canada (Minister of Citizenship and Immigration)* 2008 FC 491 at paragraph 20. The Applicant says that the Board

failed to give a full reading to the documentary evidence, which was an error in law: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (F.C.).

Treatment of Evidence

[44] The Applicant says that the Board also erred in its treatment of the Mexican confirmation of psychological counseling (referred to as the "psychological report" by the Board). The Board treated this piece of evidence in a contradictory fashion. The Board used the psychological report to say that it was not convinced that the Applicant was a victim of crime. Then, later on, the Board stated that the Applicant should have used the report to obtain state protection and her failure to do so defeated her claim for protection in Canada. The Board erred in its use of this document. By twisting the evidence within the same document to suit its purposes the Board demonstrated bias.

Internal Flight Alternative

[45] The Applicant further argues that the Board erred in finding that she had a reasonable IFA in Mexico. The Board did not consider the fact that the agent of persecution was a member of the Applicant's family. This is relevant because the inability to contact one's family is a material consideration for determining if an IFA is available.

[46] The Applicant has kept in contact with her family and they know where she is located. Since the agent of persecution is a member of the Applicant's family, he will have access to the

information of her whereabouts. It is unreasonable to expect the Applicant to sever ties with her family: *Huerta v. Canada (Minister of Citizenship and Immigration)* 2008 FC 586 at paragraph 29. The Applicant concludes that, in the absence of severing all family ties, her uncle will find her anywhere in Mexico. The Board's failure to consider this factor was an error in law.

The Respondent

Refugee Protection is Surrogate Protection—Onus on Applicant

[47] The Respondent submits that refugee protection is meant to be a form of surrogate protection to be invoked only in those situations where a claimant has unsuccessfully sought the protections of their home state: *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 (*Ward*) at page 709 and *Hinzman v. Canada (Minister of Citizenship and Immigration)* 2007 FCA 171 at paragraph 41 (*Hinzman*).

[48] The Respondent says that, absent a complete breakdown of state apparatus, it should be assumed that the state is capable of protecting an applicant. To rebut this assumption, the applicant must deduce "clear and convincing confirmation of a state's inability to protect": *Ward* at pages 724-725 and *Hinzman* at paragraphs 43-44. The Board is not required to establish the existence of state protection: *Samuel v. Canada (Minister of Citizenship and Immigration)* 2008 FC 762 at paragraph 10.

[49] The Respondent submits that an applicant must satisfy the evidentiary burden by introducing evidence of inadequate state protection. To satisfy the legal burden, an applicant must convince the tribunal, on a balance of probabilities, that state protection is inadequate. The quality of the evidence required to rebut the presumption of state protection must be reliable and of sufficient probative value: *Carillo v. Canada (Minister of Citizenship and Immigration)* 2008 FCA 94 at paragraphs 18, 20 and 30.

[50] The burden of proof that rests on an applicant is directly proportional to the level of democracy in the state in question: *Hinzman* at paragraph 44; *N.K. v. Canada (Minister of Citizenship and Immigration)* (1996), 143 D.L.R. (4th) 532 at page 534 (F.C.A.) and *Nava v. Canada (Minister of Citizenship and Immigration)* 2008 FC 706 at paragraphs 21-22. If an applicant cannot deduce clear and convincing evidence to rebut the presumption, they cannot be found to be a Convention refugee or person in need of protection: section 97(1)(*b*)(i) of the Act.

[51] State protection only needs to be adequate, not perfect: *Ward, Samuel* at paragraph 13; *Ortiz v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1365 at paragraph 53; *Blanco v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1487 at paragraph 10 and *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (F.C.A.).

[52] The Respondent further points out that Mexico has been recognized on many occasions by this Court as being a democratic state and presumed to be able to protect its citizens, even if the persecutor is a member of a police force or the government: *Valdes v. Canada (Minister of*

Citizenship and Immigration) 2005 FC 93 at paragraph 4; *Filigrana v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1447; *Guzman v. Canada (Minister of Citizenship and Immigration)* 2008 FC 490 at paragraph 12 and *Sanchez v. Canada (Minister of Citizenship and Immigration)* 2008 FC 66 at paragraph 12.

Adequate State Protection Available

[53] The Respondent submits that the Board understood the relevant jurisprudence and applied the evidence to the appropriate legal test. The Board was aware that the Applicant received psychological help from the DIF, but the evidence showed that the Applicant had not sought protection from the police or other state institutions that deal with sexual abuse. Nor had the Applicant sought help from the state authorities that address corruption, or attempt to move elsewhere in Mexico. The Applicant's one-time approach to the DIF was insufficient to discharge the burden upon her: *Canseco v. Canada (Minister of Citizenship and Immigration)* 2007 FC 73 at paragraph 15, citing *Kadenko.*

All Evidence Considered

[54] The Respondent submits that the Applicant is engaging in a microscopic assessment of the Board's reasons in order to demonstrate a reviewable error. When read as a whole and in context, the Board's reasons are clear and show that the Board engaged in a full analysis of the availability

of state protection in Mexico and the various recourses and avenues that the Applicant had at her disposal: *Wijekoon v. Canada (Minister of Citizenship and Immigration)* 2002 FCT 758.

[55] The Respondent says that although the Applicant may be able to point to excerpts from the documentary evidence which she thinks the Board should have mentioned, a one-sided presentation of the evidence will not show that the Board's weighing of all of the evidence was unreasonable: *Johal v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1760 at paragraphs 10-11.

[56] In the Respondent's view, the Applicant has established no error with respect to the Board's consideration of the evidence and the Board is assumed to have weighed and considered all of the evidence presented to it unless the contrary is shown. The fact that the Board's reasons do not fully canvass the contents of the numerous documents entered into evidence before it, does not indicate that the Board did not take documents into account, nor is it fatal to the Decision; *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) and *Hassan v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 260 (F.C.A.) (*Hassan*) at page 318. It is open to the Board to decide which evidence it prefers or which it attributes more weight to. The issue of country conditions is a question of fact within the jurisdiction and expertise of the Board and is to be accorded significant deference: *Jahan v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 987 (F.C.T.D.) and *Chorny v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1263 (F.C.T.D.).

Internal Flight Alternative (IFA)

[57] The Respondent submits that the legal determination of whether a reasonable IFA is available to a refugee applicant is a question squarely within the special expertise of the tribunal and should be accorded significant deference: *Sivasamboo v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 741 (F.C.T.D.) at paragraph 26. The Respondent says that the Board properly applied the test for an IFA in this case. The Applicant has failed to demonstrate that the Board's IFA determination was perverse and capricious or made without regard to the evidence.

[58] To find an IFA, the Board was required to be satisfied on a balance of probabilities that: (a) there was no serious possibility of the Applicant being persecuted in Mexico City and; (b) that in all the circumstances, conditions in Mexico City were such that it would not be unreasonable for the Applicant to seek refuge there: *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (F.C.A.) and *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (F.C.A.) (*Thirunavukkarasu*).

[59] There is a very high threshold for finding that it would be unduly harsh for an applicant to move to an IFA: *Canada (Minister of Citizenship and Immigration) v. Ranganathan*, [2001] 2 F.C. 164 (F.C.A.) (*Ranganathan*) *& Thirunavukkarasu.* It requires nothing less than the existence of conditions which would jeopardize the life and safety of an applicant in traveling or temporarily relocating to a safe area. It also requires actual and concrete evidence of such conditions: *Ranganathan* at paragraph 15.

[60] The Respondent submits that, once the Board raised the issue of an IFA, the onus was on the Applicant to show that she did not have an IFA in Mexico City. The Applicant has not demonstrated that the Board's IFA findings were unreasonable or that the Board committed a reviewable error: *Rasaratnam* at paragraphs 7 and 12; *Thirunavukkarasu* at paragraph 2 and *Tjuhanda v. Canada (Minister of Citizenship and Immigration)* 2008 FC 152. The Respondent goes on to cite cases in which IFAs in Mexico have been upheld.

All Evidence Provided by the Applicant Fully Considered

[61] The Respondent points out that the Board stated in its reasons that it had considered the Applicant's oral and written testimony, the Gender Guidelines, the representations of counsel and all of the evidence provided. The Board is presumed to have taken all of the evidence into consideration, whether or not it indicates having done so it its reasons, unless the contrary is shown. The fact that all of the documentary evidence is not mentioned in the reasons of the Board is not fatal to its Decision; nor does it indicate that the Board failed to consider or ignored certain evidence: *Florea*; *Hassan* at p. 318 (F.C.A.); *Ortiz v. Canada (Minister of Citizenship and Immigration)* 2002 FCT 1163 (F.C.T.D.) and *Ali v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 242 (F.C.T.D.).

[62] The Board can refer or not refer to reports, and weigh them, as it sees appropriate: *Gosal v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 346 (F.C.T.D.); *Danailov v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1019 (F.C.T.D.); *Chukwuka*

v. Canada (Minister of Citizenship and Immigration) 2002 FCT 532 and *Nasreen v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1376 (F.C.T.D.).

[63] The Respondent says that the reasons of the Board demonstrate that it had a grasp of the pertinent issues and of the relevant evidence.

Credibility Finding Reasonable

[64] The Respondent also says that it was reasonable for the Board to find that the Applicant had failed to submit supporting evidence that could have been obtained. Regardless, the Board states that even if it believed the Applicant's story, there is adequate state protection for individuals like her in Mexico.

Gender Guidelines

[65] The Respondent reminds the Court that the Gender Guidelines provide guidance to the Board to assist in determining whether or not an applicant's claim fits within a Convention ground, since "gender" is not specifically an enumerated ground. As well, they provide guidance on how to sensitively cope with the various difficulties faced by a gender-based claimant regarding evidence and testimony. The Gender Guidelines are not binding on the Board but are intended to be considered by members of the Board in appropriate cases: *Fouchong v. Canada (Secretary of State)*, [1994] F.C.J. No. 1727 (F.C.T.D.).

[66] While the Gender Guidelines are intended to be considered in the context of a gender-based claim, they are not intended to serve as a cure for all deficiencies in an applicant's claim or evidence. The "Guidelines cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth": *Newton v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 738 at paragraph 18.

[67] The Respondent concludes that the Board gave due consideration to the Gender Guidelines.

ANALYSIS

[68] The Applicant appears to be a somewhat troubled and fearful young woman who is deserving of sympathy. However, this does not necessarily mean that the Board committed a reviewable error in assessing her claim.

[69] The Applicant has chosen to isolate herself and her troubles from her family and she has made no real effort to contact the police or avail herself of other supportive organizations in Mexico. She has given reasons for taking this approach but those reasons were examined by the Board and found wanting.

[70] Essentially, she says that Mexico provides no protection for women like her who find themselves the victims of sexual abuse. The problem with this assertion is that it is highly subjective

and the Applicant has supplied little in the way of objective support for her personal experiences or for her assertion that state protection and an IFA are not available to her.

[71] Notwithstanding the Board's credibility findings, it concluded that state protection and an IFA were the determinative issues. The Applicant has sought various ways to suggest that the Board's findings and approach to these issues was unreasonable and/or incorrect.

[72] To begin with, I agree that the Gender Guidelines were applicable to this case and the Board applied them. However, as Justice Layden-Stevenson pointed out in *Canseco v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 115 at paragraph 10, "the gender guidelines do not necessarily absolve applicants from seeking the protection of the state."

[73] The Board provided a detailed analysis of state protection in Mexico that identified its shortcomings, but reasonably concluded that police and legal protection would be available to the Applicant if she chose to access it. The Board did not just look at the theoretical framework and expressions of good intention; it examined actual practice on the ground.

[74] Against this background, the Board also examined what the Applicant herself had done to avail herself of protection. All she did was take DIF psychological counseling which, according to her PIF, was of significant assistance to her. But she did nothing else.

[75] Her explanation that she did not go to the police about her uncle because she felt he had connections was considered and reasonably rejected by the Board.

[76] There were many options available to her but she chose to use none of them. Her various explanations were considered by the Board and were found to be unsatisfactory. According to her own testimony, she knew of the existence of relevant agencies but she simply chose not to seek the help of the police or any other means of assistance apart from the psychological counseling which, when she tried it, obviously worked for her. As Justice Snider pointed out in *Judge v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1089, at paragraphs 8 and 10, it is not sufficient for an applicant to simply believe that state protection is not available.

[77] The Applicant has not given the Mexican police and the Mexican state an opportunity to help her.

[78] As regards the Applicant's criticism of the Board's handling of the documentation, I have to agree with the Respondent that the Applicant is simply complaining about the weighing of evidence. The Board fully acknowledged the shortcomings of state protection in Mexico but reasonably concluded that, should she choose to call upon them, the police and other organizations would be there to assist.

[79] There is also nothing unreasonable about the Board's analysis of a possible IFA. There was no evidence that the Applicant was being pursued by her uncle or that he would be likely to seek her

out in Mexico City, or that he had the temperament or the ability to do so. Once again, the Applicant's explanations were considered but reasonably rejected by the Board. The Applicant's subjective beliefs on this point were entirely speculative. She testified herself that she could get a job. She also demonstrated that she is well aware of the agencies of protection available to her. The Board also considered the psychological evidence but reasonably concluded that it demonstrated nothing except subjective fear.

[80] The issues raised in this application are familiar ones and have been considered by the Court in numerous cases. In my view, it is possible to disagree with this Decision, but there is nothing that takes it outside of the reasonableness criteria set out in *Dunsmuir*. I can also find no procedural unfairness or error of law that would warrant interference by the Court.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application is dismissed

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3639-08
STYLE OF CAUSE:	RUTH ARELY DURAN MEJIA
	APPLICANT
	- and -
	THE MINISTER OF CITIZENSHIP AND IMMIGRATION
	RESPONDENT
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	FEBRUARY 12, 2009
REASONS FOR :	HON. MR. JUSTICE RUSSELL
DATED:	April 8, 2009

APPEARANCES:

Ms. Patricia Wells	APPLICANT
Ms. Laoura Christodoulides	RESPONDENT

SOLICITORS OF RECORD:

Patricia Wells Toronto, Ontario	APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	RESPONDENT