Federal Court  Cour fédérale

Date: 20090430

Docket: IMM-3876-08

Citation: 2009 FC 421

Ottawa, Ontario, April 30, 2009

PRESENT: The Honourable Orville Frenette

BETWEEN:

Rene Alejandro MUNOZ TEJEDA

applicant

and

THE 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 of Canada (Board), dated August 22, 2008, which found that the applicant was not a Convention refugee nor a person in need of protection under section 96 or 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), and thereby denying his claim for refugee protection.

Facts

[2] The applicant, Rene Alejandro Munoz Tejeda, a citizen of Mexico, is claiming refugee protection on the grounds that his life would be in danger if he returned to Mexico.

[3] The applicant was born in Mexico on November 5, 1973, where he went to grade school, high school and college, and became an engineer.

[4] He held several jobs in Mexico between 1989 and 2006. Among other things, he worked for the National Public Security Service as the official in charge of the gymnasium; his duties included organizing courses on public safety. The applicant indicated that in August 2005, the commandant of the State of Quintana Roo, Bernabé de León Álvarez, asked for his help in obtaining copies or originals of accounts of the institution where licentiate Jorge Guadarrama Saldaña was in charge; the latter was the executive director of the regional academy. The commandant told him that he suspected licentiate Saldaña of corruption and wanted these documents to determine how much he had embezzled.

[5] The applicant refused to cooperate, and on December 10, 2005, he allegedly received a note from commandant Álvarez, which he took as a death threat.

[6] On January 20, 2006, he was allegedly attacked by four individuals sent by commandant Álvarez. At the hearing, he added that his attackers were uniformed municipal police officers.

[7] Following this attack, he filed a complaint with the Public Ministry of the State of Tlalixcoyan; he was told that he would be notified in writing of a meeting to identify the suspects.

[8] After seeking refuge with an aunt in Veracruz for a month and a half, he fled Mexico to seek refuge in Canada.

[9] The applicant arrived in Toronto on March 13, 2006 but only filed his claim for refugee protection on March 7, 2007.

Impugned decision

[10] After reviewing all of the evidence presented by the applicant, the Board found that his credibility was questionable on several points. The Board found that his account was not credible in several respects, including a testimony that was difficult to understand, a nonchalant attitude and a lack of effort to obtain the necessary documents that the Board would expect, significant omissions in his Personal Information Form (PIF) and contradictions between this document and his testimony. The applicant did not make enough effort to obtain state protection in Mexico, nor did he attempt to relocate. Finally, the applicant did not discharge the burden of demonstrating, on a balance of probabilities, that he was a victim of persecution or threats to his life in Mexico.

Issues

[11] The two issues are: (1) Did the Board fail to follow the principles of natural justice in denying an application for adjournment? And, (2) were the Board's findings regarding credibility, the possibility of refuge within Mexico and state protection unreasonable or not based on the evidence?

Standard of judicial review

[12] Questions of fact and questions of mixed fact and law are governed by the reasonableness standard (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, paragraphs 51 to 64). Decisions by the Board on this question call for judicial deference (*Dunsmuir* and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12). Again according to *Dunsmuir*, questions of law are subject to the correctness standard. The question of state protection is a question of mixed fact and law (*Mendez v. Minister of Citizenship and Immigration*, 2008 FC 584; *Paguada v. ministre de la Citoyenneté et de l'Immigration*, 2009 CF 351).

[13] Breaches of the rules of natural justice or procedural fairness are governed by the correctness standard. But even if these occurred, the court may refuse to allow the application for review if the breach is minimal and if the challenge of the decision is hopeless (*Cartier v. Attorney General*, [2003] 2 F.C. 317 (F.C.A.), at paragraphs 30 to 36; *Thaneswaran v. Minister of Citizenship and Immigration*, 2007 FC 189).

Legislation

[14] Sections 96 and 97 of the Act read as follows:

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 themself 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 unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

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

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

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

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

(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,

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

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(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.

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

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

(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) 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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(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.

Analysis

[15] The Board found numerous omissions and contradictions between the PIF and the applicant's testimony. It also noted the applicant's difficult testimony, his nonchalant attitude and his lack of effort to obtain the necessary documents he was supposed to provide. It was open to the Board to

draw adverse inferences based on all of these factors (*Koval'ok v. Minister of Citizenship and Immigration*, 2008 FC 145, paragraphs 24 to 26; *Olmos v. Minister of Citizenship and Immigration*, 2008 FC 809, paragraph 32). According to the standards of review and the deference that the Court must show administrative decisions, it cannot intervene in this area (*Dunsmuir* and *Khosa, supra*).

[16] The breaches of the principles of natural justice and procedural fairness claimed by the applicant are unfounded.

[17] The applicant complained that his last application for adjournment, made at the beginning of the hearing on August 19, 2008, was not allowed. He claimed that he had not been given enough time to prepare for the hearing, and that he had not been given the opportunity to present briefs or documents to corroborate his facts.

[18] These complaints call for the events or actions that did or did not occur to be reviewed.

[19] The applicant arrived in Canada on March 13, 2006 and did not claim refugee status until March 7, 2007, that is to say almost one year later. On April 15, 2008, the applicant and his counsel at the time, Marie-José Blain, were notified that the application would be heard on June 5, 2008. On May 28, 2008, the applicant changed lawyers, to be represented by Angelica Pantiru, who, in a letter dated May 28, 2008, requested a deferral of the hearing and gave her availability. This application for adjournment was granted. The documentary evidence shows that notices were sent to the applicant and to the office of Ms. Pantiru indicating that the hearing was scheduled for August 19, 2008. The applicant admitted that he had received this notice, but his new counsel claimed that she had not. However, she admitted that she was told of the hearing date by telephone in June 2008.

Despite this notice, neither the applicant nor his counsel communicated regarding the hearing until August 16, 2008.

[20] At the beginning of the hearing, counsel for the applicant submitted a new application for adjournment, which was discussed and denied by the Board. The applicant testified, and his counsel presented her arguments. They now complain that the rules of procedural fairness were breached.

[21] The applicant submits that the Board failed to consider the factors under section 48 of the *Refugee Protection Division Rules*, SOR/2002-228 (in particular paragraphs 4(*e*), 4(*h*), 4(*i*), 4(*j*) and 4(*k*)) regarding the exercise of discretionary authority on adjournments.

[22] Where the obligation of procedural fairness is concerned, the standard of review which applies here is correctness (see *Ha v. Canada (M.C.I.)*, [2004] 3 F.C.R. 195 (F.C.J.)). In support of his claims, the applicant cited the following decisions: *Bhinder v. Minister of Citizenship and Immigration* (October 9, 1998), IMM-439-98 (F.C.T.D.); *Mangat v. Minister of Citizenship and Immigration*, 189 F.T.R. 62; *Yang v. Minister of Citizenship and Immigration*, 2001 FCT 219; *Kruglov v. Minister of Citizenship and Immigration*, 2001 FCT 1165 and *Chohan v. Minister of Citizenship and Immigration*, 2006 FC 390.

[23] On the subject of adjournment and the application of the rules of procedural fairness, I believe one must bear in mind what the Federal Court of Appeal had to say in *Schurman v. Canada*, 2003 FCA 393, where Justice Robert Décary wrote:

> [6] It is trite law that the decision as to whether to grant an adjournment is a discretionary decision with which this Court will not intervene unless there are exceptional circumstances . . .

[24] In this case, both the applicant and his counsel were notified of the hearing two months ahead of time. If they did not take it upon themselves to communicate with each other and properly prepare for the hearing, they have only themselves to blame.

[25] In my opinion, there was no breach of procedural fairness or of the principles of natural justice.

[26] As to state protection, the applicant did not discharge the burden of establishing that the Mexican government was unable to protect him (*Luna c. ministre de la Citoyenneté et de l'Immigration*, 2008 CF 1132; *Sanchez v. Minister of Citizenship of Immigration*, 2008 FC 134; *Ruiz et al. v. Minister of Citizenship and Immigration*, 2009 FC 337).

[27] The applicant did not discharge the burden of proving that there was no possibility of refuge for him in Mexico. He did not explain his one-year delay in claiming refugee protection.

[28] For all of the above reasons, intervention by this Court is not warranted.

JUDGMENT

This Court orders that:

The application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board of August 22, 2008 is dismissed.

No question is certified.

"Orville Frenette"
Deputy Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3876-08
STYLE OF CAUSE:	Rene Alejandro MUNOZ TEJEDA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
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