

Date: 20090501

Docket: IMM-4530-08

Citation: 2009 FC 442

Ottawa, Ontario, May 1, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

MARIA ELSA REYES RAMIREZ

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, 2001, c. 27 (Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (IRB), Refugee Protection Division (the panel), dated September 22, 2008, that the applicant is not a Convention refugee or a person in need of protection.

Issues:

[2] Did the panel err in finding that the applicant was not credible?

Factual background

[3] The applicant, Maria Elsa Reyes Ramirez, is a citizen of Mexico. She alleges being a victim of conjugal violence at the hands of her spouse who is a police officer and that she was not able to obtain state protection.

[4] She arrived in Canada on February 14, 2007, and claimed protection upon her arrival.

[5] She claims that she fears being persecuted because of her membership in a particular social group, that is, women victims of conjugal violence. Furthermore, she claims that she is a person in need of protection because she would be subjected to a risk to her life or to a risk of cruel and unusual treatment or punishment if she were to return to her country.

Impugned decision

[6] The panel wrote this at paragraph 10 of the decision: “. . . it would be very difficult to conclude that effective protection can be given to a woman who is a victim of domestic violence in Mexico, among other things”.

[7] However, it attributed no credibility to the applicant because her testimony and her written narrative were not consistent with the statement she made at the point of entry on February 14, 2007, concerning the essential elements, that is, her claim for protection from the state or from an organization or humanitarian assistance.

[8] Furthermore, the panel criticized her for not filing evidence of employment or evidence corroborating that her spouse is a member of the Mexican police force.

Standard of review

[9] In questions of credibility and assessment of evidence, it is well established under paragraph 18.1(4)(d) of the *Federal Courts Act*, R.C.S. 1985, c. F-7, that the Court will intervene only if the panel based its decision on an erroneous finding of fact in a perverse or capricious manner or if it made its decision without regard to the evidence.

[10] Moreover, the panel is a specialized panel and its findings relating to credibility are questions of fact. The Court should therefore intervene only in the presence of a patently unreasonable error (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.)).

[11] Assessing credibility and weighing the evidence fall within the jurisdiction of the administrative tribunal called upon to assess the allegation of a subjective fear by a claimant (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 (F.C.T.D.) at paragraph 14). Before *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the standard of review that was applicable in comparable circumstances was patent unreasonableness. Since then, it is reasonableness.

[12] The standard of review that is applicable for questions of state protection is reasonableness (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, 137 A.C.W.S. (3d) 392 at paragraphs 9 and 11 and *Gorria v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 284, 310 F.T.R. 150 at paragraph 14).

1. *Did the panel err in finding that the applicant was not credible?*

[13] The answer to this question is no. The applicant did not submit probative evidence supporting her refugee claim. She fears her spouse because she believes that he wants to kill her. The applicant's written narrative discloses that what she says she knows concerning her spouse is related to the fact that he is allegedly a corrupt police officer in Mexico (see answer to question 31 on the applicant's Personal Information Form (PIF)).

[14] Even though the applicant's spouse's status of police officer is crucial to her refugee claim, the panel noted that she did not have any tangible evidence supporting this element.

[15] On numerous occasions, this Court has confirmed that the panel may draw a negative inference because a claimant has not produced corroborative evidence to support his or her testimony when the panel has credibility concerns (*Sinnathamby v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 473, 105 A.C.W.S. (3d) 725; *Muthiyansa v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 17, 103 A.C.W.S. (3d) 809; *Dhindsa v. Canada (Minister of Citizenship and Immigration)*, 102 A.C.W.S. (3d) 165, [2000] F.C.J. No. 2011 (F.C.T.D.) (QL);

Quichindo v. Canada (Minister of Citizenship and Immigration), 2002 FCT 350, 115 A.C.W.S. (3d) 680).

[16] In the case at bar, in the absence of probative evidence corroborating the applicant's written narrative and testimony, the panel reasonably found that the applicant was not credible.

[17] The applicant criticizes the panel for not having mentioned in its decision the Guidelines of the Chairperson of the IRB concerning women victims of conjugal violence (*Khon v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 143, 36 Imm. L.R. (3d) 55). However, this is not fatal as such provided that the decision maker is sensitive to women when the basis of their claim is related to their vulnerability (*Kaur v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1066, [2006] F.C.J. No. 1345 (QL) at paragraph 12).

[18] In this case, the Court considers that the panel took care to consider the particular situation of the applicant by issuing the *obiter* mentioned in paragraph 5 of these reasons.

[19] No question for certification was proposed by the parties and this application does not give rise to any.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4530-08

STYLE OF CAUSE: MARIA ELSA REYES RAMIREZ
v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 30, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** BEAUDRY J.

DATED: May 1, 2009

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