Date: 20090324

Docket: IMM-4086-08

Citation: 2009 FC 309

Ottawa, Ontario, March 24, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

JOSE MANUEL GOMEZ CORDOVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Mr. Jose Manual Gomez Cordova, is a citizen of Mexico who arrived in Canada in May 2007 and requested protection in Canada shortly thereafter. As articulated in his Personal Information Form (PIF), the Applicant fears persecution in Mexico because of his political opinion and his membership in the social group of artists who criticize the National Action Party (PAN) government through the media. In particular, the Applicant claims to have been attacked by Javier Calderón Guarnica (Javier), a local leader of PAN, and his accomplices who allegedly have threatened and attacked the Applicant as a result of the publication of his political cartoons.

[2] In a decision, dated August 28, 2008, a panel of the Immigration and Refugee Board, Refugee Protection Division (the Board) determined that the Applicant was neither a Convention refugee nor a person in need of protection. The key reasons for the refusal were that:

1. The Board found that the Applicant's evidence was "not credible or trustworthy in areas central and material to his claim"; and

2. Even if the Board had accepted the Applicant's story as credible, the Board concluded that adequate state protection is available to the Applicant.

I. Issues

[3] The Applicant, in seeking to overturn the Board's decision, raises the following issues:

1. Did the Board err in its credibility finding by applying the wrong test for the grant of protection as a Convention Refugee under s. 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA)?

2. Did the Board make an unreasonable finding that the Applicant was not credible?

3. Did the Board err by failing to consider objective evidence of the risk to the Applicant in Mexico?

II. Analysis

A. Standard of Review

[4] The decisions of the Board on the question of credibility and the finding of state protection are subject to a standard of review of reasonableness. However, whether the Board applied the correct test for a finding of refugee protection is a question of law, subject to review on a correctness standard (*Mugadza v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 122 at para. 10). With these standards in mind, I turn to consider the issues raised by the Applicant.

B. Did the Board Member apply the wrong test for the grant of protection as a Convention Refugee?

[5] The Applicant submits that the Board erred by applying the wrong test in assessing his Convention refugee claim. In his decision, the Board made the following statements:

> Therefore, the panel finds that there is less than a mere possibility that the claimant will be persecuted by Javier and his accomplices for a Convention ground, should he return to [Mexico].
> …
>
> Based on the documentary evidence, there is no persuasive evidence to indicate that the claimant will be subject to any other risk, other than the risk of general violence in Mexico. [Emphasis added]

[6] The Applicant submits that the Board incorrectly applied the standard of whether the Applicant "will face a risk to life or be subjected to cruel and unusual punishment". This is a higher standard than required under s. 96 of IRPA and constitutes an error in law (*Mugadza*, above, at paras. 24-26).

[7] I agree with the Applicant that the appropriate standard of proof under s. 96 of IRPA is less than a balance of probabilities but more than a mere possibility of persecution upon return (*Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680 (C.A.) at paras. 5-6, *Mugadza*, above, at para. 12, *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. no. 593 at para. 120, *Ponniah v. Canada (Minister of Employment and Immigration)* (1991), 132 N.R. 32, [1991] F.C.J. No. 359 (C.A.) (QL)).

[8] However, a reading of the decision as a whole demonstrates that, in spite of the one instance where the Board used the word "will", the Board applied the correct standard or test for its analysis. For example, at page 4 of the decision, the Board wrote:

> Based on the totality of the evidence adduced, because of a number of credibility issues, the panel finds that the claimant's evidence is not credible or trustworthy in areas central and material to his claim. Therefore, the panel finds that there is less than a mere possibility that the claimant will be persecuted by Javier and his accomplices for a Convention ground, should he return to [Mexico]. [Emphasis added]

[9] The Board concluded that there was insufficient credible evidence to establish that there was even a "mere possibility" that the Applicant will be persecuted. Based on my reading of the Board's decision, I fail to see how the Board applied a standard that was higher than "substantial grounds". I conclude that the Board applied the correct standard to its analysis under ss. 96 and 97 of IRPA; there is no error of law.

C. Did the Board err in its credibility findings?

[10] While the Board accepted that the Applicant was a journalist, the Board did not accept the entirety of his story. To support his claim that he was a political cartoonist who criticized the government, the Applicant submitted a number of cartoons that he allegedly had drawn. On the basis that the signature on the cartoons was not his name and that he was unable to produce any documentary evidence to substantiate this key aspect of his claim, the Board did not believe that he was the person who had drawn and published the cartoons. The Board did not accept the Applicant's explanation that persons who could have provided corroboration of his claim, such as a letter, feared reprisal. The Board rejected this weak explanation; so would I. While I might have acknowledged that the person who signed the cartoons and the Applicant were the same person, the problem still remains that the Applicant failed to provide convincing evidence that any such cartoons were actually published with the impact claimed. The Board's conclusion was based on the record before it and falls within the possible range of outcomes.

[11] The next alleged error involves the Board's findings related to Javier, the alleged agent of persecution. The Board first noted that, in spite of being asked specifically for the name of his alleged agent of persecution during his Port of Entry (POE) examination, the Applicant replied "I don't know". However, in his PIF, the Applicant described Javier and his role within PAN in great detail. When asked about the omission, the Applicant's only response was that he was nervous during the POE interviews. The Board was not convinced that this was an adequate explanation and drew a negative inference from the omission.

[12] The identity of Javier, both as the agent of persecution and as a Director within PAN, was a key aspect of the Applicant's claim. Given the importance of the omission, it was not unreasonable for the Board to conclude that this "raises a serious doubt in the panel's mind as to whether the claimant was ever targeted by Javier and some members of PAN" (See, for example, *Fernando v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1349, (2008) 58 Imm. L.R. (3d) 227 at para. 20).

[13] What is also important to recognize is that the omission in the POE notes was not the only problem that the Board had with the evidence. As further support for its overall finding on this aspect of the claim, the Board found that the Applicant's story was further undermined by the lack of documentary evidence regarding Javier's employment at a senior level with PAN, as alleged by the Applicant. Finally, the Board noted that, in 2007, the President of Mexico had signed a law that decriminalised defamation and insults (which, I accept, would include the type of political cartoons allegedly published by the Applicant). This raised a question in the Board's mind as to why Javier, a government official, would have targeted the Applicant.

[14] In sum, there were at least three areas of concern for the Board that cumulatively led it to conclude that the story of attacks by Javier because of the Applicant's political opinions was fabricated for the purpose of his refugee claim. The Board's conclusion was supported by the evidence and is not unreasonable.

D. Did the Board err by failing to conduct an objective assessment of the Applicant's risk?

[15] The Applicant submits that the Board, having accepted the Applicant's identity as a journalist, was obligated to assess the objective documentary evidence and failed to do so. In the Applicant's view, had the evidence not been ignored, it would have been sufficient to show that the Applicant's fear of persecution is objectively well-founded. By failing to refer to this evidence, which directly contradicted the Board's findings on risk, the Applicant argues that the Board committed a reviewable error (*Zheng v. Canada (Minister of Citizenship and Immigration)*, (1995) 27 Imm. L.R. (2d) 101, [1995] F.C.J. No. 140 (T.D.) (QL), *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35).

[16] As well-established in the jurisprudence, a claimant must satisfy the Board that his risk is both subjectively and objectively well-founded (see *Canada (Attorney General v. Ward***,** [1993] 2 S.C.R. 689 at para. 47). In this case, because the Board did not believe his story of persecution by Javier for his political cartoons, the Applicant was unable to satisfy the Board that his fear of persecution was subjectively well-founded. Simply asserting that he is a journalist is not sufficient to establish a subjective fear. Accordingly, the fact that journalists have been persecuted in some instances is of no assistance to the Applicant.

[17] Even if the Board ought to have considered the objective documentary evidence as part of the Applicant's refugee claim, any error in this regard is of no consequence. This is because the documentary evidence regarding journalists was considered in the context of the Board's analysis of state protection. A valid finding of state protection would be determinative of the Applicant's claim.

E. Did the Board err in its assessment of state protection?

[18] While rejecting, as not credible, the claims of the Applicant regarding the nature of and publication of his cartoons, the Board did not explicitly reject the Applicant's claim to be a journalist. Therefore, as required, the Board addressed the issue of whether the Applicant had met his "burden of establishing 'clear and convincing' proof of a lack of protection for individuals like him in Mexico". It is evident from reading the Board's reasons on state protection that the Board considered that "individuals like him" included journalists.

[19] The Applicant submits that the state protection analysis was fatally flawed. I do not agree.

[20] Every assessment of the availability of state protection in a particular country must begin with the presumption that a state is capable of protecting its citizens. The onus is on the individual claimant to provide clear and convincing proof of a lack of state protection in his or her country of origin (*Ward*, above, at para. 52). In addition, the more democratic the state's institution, the more the claimant must have done to exhaust all courses of action open to him or her (see *N.K. v. Canada (Minister of Citizenship and Immigration)* (1996), 143 D.L.R. (4th) 532, [1996] F.C.J. No. 1376 at para. 5 (C.A.) (QL); *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 282 D.L.R. (4th) 413 at paras. 56-57).

[21] In the present case, the Applicant admitted that he did not avail himself of state protection in Mexico at all. He knew of but did not seek protection from a number of government agencies that, arguably, could have provided assistance. When questioned, the Applicant explained that he acted

this way because he felt that Javier had connections within the government and that it would be risky to seek help from the police or any other state protection agencies available in Mexico.

[22] The Board concluded that adequate state protection was available to the Applicant for three reasons. First, the Board stated that it was reasonable to expect the Applicant, living in a democracy, to seek out any of the above state agencies to obtain help from them prior to seeking international protection in Canada. Second, there was also documentary evidence from reputable sources, which indicated that state protection was available in Mexico. The documentary evidence indicated that the Mexican government had taken many steps towards protecting journalists. Lastly, there was no evidence that similarly situated individuals were unable to receive adequate state protection. For these reasons, the Board found that state protection was available to the Applicant.

[23] In my opinion, this conclusion was available to the Board based on evidence before it. Ultimately, the Applicant failed to provide clear and convincing proof that he could not obtain state protection in Mexico because he simply did not bother to attempt to seek any state protection. As a result, the Board reasonably concluded that the Applicant had failed to rebut the presumption of state protection. Its finding is therefore well "within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47).

[24] I also reject the Applicant's suggestion that the use of "boilerplate passages" in the Board's decision renders it unreasonable by default. On the whole, the Board's state protection analysis addresses the correct question of whether a journalist such as the Applicant would be at risk. It is

self-evident that much of the analysis will be the same for any given country. Provided that the "boilerplate" is based on the documentary evidence and addresses the particular evidence and position of a claimant, the Board's repetition of certain passages from other decisions is not, in and of itself, an error.

III. Conclusion

[25] Ultimately, the Applicant's claims relating to risk were unproven because the Board found serious credibility issues in his evidence. His claims about the unavailability of state protection were unproven because of the insufficiency of evidence. The Board properly and carefully considered the Applicant's claim. There is no reviewable error.

[26] Neither party proposed a question for certification. None will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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