

Date: 20091104

Docket: IMM-4-09

Citation: 2009 FC 1129

Ottawa, Ontario, November 4, 2009

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

OMAR JASFIR HERNANDEZ SANCHEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] Mr. Omar Jasfir Hernandez Sanchez (the “Applicant”) seeks judicial review of the decision of the Refugee Protection Division, Immigration and Refugee Board (the “Board”). In its decision dated December 16, 2008, the Board determined that the Applicant was neither a Convention refugee nor a person in need of protection, pursuant to section 96 and section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act” or “IRPA”), respectively.

Facts

[2] The Applicant is a citizen of Mexico. He entered Canada as a visitor, holding a visitor's visa that was valid for six months on January 21, 2007. He remained in Canada after expiry of that visa and claimed refugee protection on December 3, 2007, on the basis of a fear of corrupt police officers in his home city of Ecatepec. He testified about an assault and extortion by two local officers which led him to file a complaint with the Attorney General's office.

[3] Before he was scheduled to appear at the Attorney General's office to proceed with a formal action against the officers, the Applicant was hit by a car while riding his motorcycle. The Applicant believed that the police were behind this event.

[4] After the crash, the Applicant took a leave of absence from his employment. Four days after returning to work, the Applicant was allegedly abducted and beaten by other police officers who were unknown to him. Following this attack, the Applicant took a further leave of absence and stayed with his wife's family in a small village in Oaxaca. He testified that after approximately two months, he received a threatening telephone call from the police. This information was not included in the Applicant's original Personal Information Form ("PIF") but was set out in an amended PIF narrative.

[5] The Applicant testified that from the time that he returned home from Oaxaca until he left for Canada, he was followed by the police and threatened with beatings. He also received anonymous threats of death and imprisonment which he attributed to the police.

[6] The Applicant further testified that in addition to filing a complaint with the Attorney General's office, after the initial assault and extortion, he approached the Human Rights Tribunal but was turned away, on the basis that the Tribunal did not deal with complaints relating to the police. He was afraid to pursue the matter after he was injured in the motorcycle crash, abducted and beaten.

[7] The Applicant offered an explanation for the delay in seeking protection in Canada. He said that he had sought advice from an immigration consultant and was advised to obtain documentation from Mexico before filing a refugee claim. The Applicant had been out of status for at least four months before he made his refugee claim. The Board considered this to be a significant delay and concluded that the Applicant's action in this regard undermined his subjective fear.

[8] The Board found no nexus between the Applicant's claim and the grounds for claiming Convention refugee status in section 96 of the Act. The Applicant does not challenge this finding.

[9] In rejecting the Applicant's claim pursuant to section 97 of the Act, the Board found that the Applicant had failed to rebut the presumption that state protection would be available to him. It also found it implausible that the police were able to locate him in Oaxaca and drew a negative inference from the omission of this information from the narrative that formed part of the PIF, as initially filed. The Board further found that the Applicant's claim was weakened by the absence of a link to the police respecting the incidents that occurred after the first incident of assault and extortion "which was accorded due process".

Submissions

[10] The Applicant submits that the Board made unreasonable findings when it rejected his explanation for the delay in making his claim for protection in Canada. He also argues that the Board's findings as to the availability of state protection were unreasonable, having regard to the evidence that he presented.

[11] The Minister of Citizenship and Immigration (the "Respondent") submits that the Board committed no reviewable error in the manner with which it dealt with the issue of the Applicant's delay in claiming state protection and that its finding that state protection was available was reasonable.

Discussion and Disposition

[12] The standard of review for decisions of the Board in matters of fact is reasonableness according to the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[13] The Board's determination with respect to the Applicant's arguments in explaining the delay in claiming protection in Canada involves an assessment of credibility; see the decision in *Huerta v. Canada (Minister of Employment and Immigration)* (1993), 157 N.R. 225 (F.C.A.). That assessment of credibility is reviewable on the standard of reasonableness. I am not persuaded that the Board erred in the manner in which it dealt with this issue.

[14] The Applicant's challenge to the Board's finding relative to the issue of state protection, in my opinion, is essentially a disagreement with the Board's assessment of the evidence. The Board is mandated to weigh the evidence. I am not persuaded that the Board ignored any of the evidence that was submitted in reaching its conclusions. The Board found that the evidence failed to show a link between the attacks on the Applicant and the police, as perpetrators of those attacks.

[15] I am not persuaded that the Board's findings in this regard are unreasonable. It follows that the ultimate conclusion, as to the availability of state protection, is reasonable.

[16] In the result, this application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4-09

STYLE OF CAUSE: OMAR JASFIR HERNANDEZ SANCHEZ v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: June 30, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** HENEGHAN J.

DATED: November 4, 2009

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