Federal Court  Cour fédérale

Date: 20100118

Docket: IMM-2557-09

Citation: 2010 FC 31

Ottawa, Ontario, January 18, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Maria Isabel POZOS MARTINEZ
Sergio Omar HERNANDEZ POZOS

Applicants

and

THE 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*, S.C. (2001), c. 27 (the Act) of a decision rendered by Officer Mélanie Daigle, dated April 7, 2009, denying the application for a pre-removal risk assessment (''the PRRA application'') of the applicants.

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[2] The principal applicant, Maria Isabel Pozos Martinez, is a citizen of Mexico. Sergio Omar Hernandez Pozos is the applicant's son. Mr. Hernandez Pozos' claim is based entirely on his mother's allegations.

[3] The female applicant was born on December 26, 1964, in the city of Cordoba, in the State of Veracruz in Mexico. She claimed refugee protection in Canada alleging a well-founded fear of persecution based on her membership in a particular social group, namely, women who are victims of conjugal violence in Mexico, and because her spouse was a member of the judicial police in Mexico.

[4] All of the facts regarding the incidents of conjugal violence by the female applicant's former spouse, Armando Salina Vera, as well as the circumstances under which the female applicant filed a complaint, are disputed.

[5] The female applicant had apparently tried to end her relationship with Mr. Salina Vera towards the middle of the year 2000 because he had become very violent with her: [TRANSLATION] ''[he] hit me, leaving me with injuries which required me to go [to] the Hospital''. Their relationship had started in 1998. On January 15, 2000, the abuse allegedly reached the point where the female applicant had to be hospitalized. She apparently convinced him to leave the family home in June 2000 and did not hear from him for the following five years. In 2005, he allegedly began showing up at their home in an erratic way, saying that he wanted to come back and live with the female applicant and her son. He also allegedly harassed her.

[6] Towards the beginning of 2006, the female applicant allegedly found out that Mr. Salina Vera had killed someone and suspected that he was working for the judicial police. In February 2006, he apparently stopped showing up at their home. She allegedly travelled to Canada from July 2005 to August 2006 with her son. The reason for their trip was that her son wanted to visit Canada because of his own interest as a student in a tourism program.

[7] Mr. Salina Vera apparently was waiting for the applicants upon their return from Canada. He allegedly began showing up at their home. He then allegedly threatened the female applicant that he would go after her son if she did not meet his demands. After a particularly violent incident in November 2006, she allegedly filed a complaint against her former spouse with the municipal authorities of her city, and her situation apparently received coverage on local television. In her affidavit, the female applicant explained her decision to call the television station: [TRANSLATION] ''I had a better chance of getting protection''. In spite of this, her former spouse allegedly stepped up his threats against the female applicant and her son. She claimed to have fled to Canada with her son because she feared for their lives.

[8] The applicants arrived in Canada on November 17, 2006, and the female applicant claimed refugee protection in 2007, a few months after arriving in Canada. Her claim was heard on March 25, 2008, and on May 22, 2008, was denied by the Refugee Protection Division of the Immigration and Refugee Board (the Board). The Board determined that the applicants were not credible. An application for leave and for judicial review of that decision was dismissed on September 15, 2008.

[9] The applicants filed a PRRA application on November 4, 2008. Several extensions were granted to allow for the translation of the majority of documents submitted in support of the application. On April 7, 2009, PRRA Officer Daigle rendered a decision in which she determined that the female applicant would not be at risk in her country if she were to be returned there. This decision applied to her son as well. The applicants were informed of the decision on April 20, 2009. In between the time the officer issued the decision, on April 7, 2009, and the date on which the applicants were informed of the decision, the applicants submitted new evidence to the PRRA officer. The officer granted the request by the applicants' counsel to reconsider the matter in light of the new evidence submitted on April 17, 2009.

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[10] In support of her PRRA application, the female applicant submitted four new pieces of evidence. However, the PRRA officer found that she was retelling the same story and making the same allegations as those she had made before the Board.

[11] The PRRA officer did not assign any probative value to the new evidence submitted, namely, a letter dated November 16, 2008, by Israel Noriega B., a reporter for the *Televisa* television network. In the letter, Mr. Noriega B. stated that he had interviewed the female applicant about the violence she had allegedly suffered. He explained that he was unable to obtain a recording, given that the television network was no longer located in that city. He failed to mention the date of the interview or when it was broadcast.

[12] The female applicant had testified that she had given an interview about the conjugal violence of which she claimed to be a victim. Yet before the Board, the female applicant was unable to name the reporter who had featured her story. In her reasons, the PRRA officer found that the female applicant had not explained how she was able to find the name of the reporter or how she had contacted him. Furthermore, the PRRA officer found that [TRANSLATION]‘‘most of the major television networks have archive departments’’. The PRRA officer also noted that Mr. Noriega had not explained [TRANSLATION]‘‘in detail what steps he allegedly took to try and obtain a videocassette of the interview from his current employer’’.

[13] Consequently, the PRRA officer drew a negative inference with regard to the probative value of the letter, noting the lack of information about the interview itself.

[14] The second new piece of evidence taken into consideration by the PRRA officer was the letter dated November 14, 2008, by Ms. Blanca Castillo Pérez of the Municipal Executive Committee – Women’s Secretariat. In her letter, Ms. Castillo Pérez referred to a hearing before the Executive Committee and Secretariat held in November 2006. The PRRA officer indicated that this fact was not mentioned in the applicant’s Personal Information Form or during her hearing before the Board. Due to this omission, the PRRA officer did not assign any probative value to this document.

[15] Moreover, the Board did not assign any probative value to the documents Ms. Castillo Pérez referred to in her letter, other than [TRANSLATION]‘‘the investigation’s logbook data sheet’’. In addition, the PRRA officer did not admit the investigation’s logbook data sheet because Ms.

Castillo Pérez failed to explain why this document was not in the record when she had claimed to have it in her possession.

[16] One of the purposes of this letter was to prove that the female applicant had filed a complaint against her former spouse. Yet the PRRA officer noted that the female applicant, in box 51 of her PRRA form, had stated having given a television interview because she [TRANSLATION]‘‘could not file a complaint’’. Therefore, the PRRA officer clearly doubted whether the female applicant had filed a complaint and gave no weight to the document because of this contradiction.

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[17] The applicants raise the following issues:

> 1. Does the decision rendered by the PRRA officer contain findings that are unreasonable or that were made without regard for the evidence, in a perverse or capricious manner, regarding the female applicant’s credibility?
>
> 2. Did the PRRA officer err in law by not applying the guidelines for women fleeing gender-related persecution in her decision (‘‘Gender Guidelines’’)?

[18] The standard of reasonableness applies to the findings of fact in the PRRA officer’s decision because the pre-removal risk assessment of the PRRA officer is an assessment of the facts to which this Court must accord great deference (see, among others, *Pareja v. The Minister of Citizenship and Immigration*, 2008 FC 1333, at paragraph 12 and *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190).

[19] In the case at bar, after hearing counsel for the parties and reviewing the evidence, I am not persuaded that the inferences drawn by the PRRA officer are among those that could not have been reasonably drawn (see *Aguebor v. Canada (M.E.I.)* (1993), 160 N.R. 315).

[20] It should be recalled that a PRRA application made by someone who has been denied refugee status is not an appeal or a reconsideration of the Board's decision. In *Raza v. The Minister of Citizenship and Immigration*, 2007 FCA 385, at paragraph 12, the Federal Court of Appeal wrote as follows:

> [12] A PRRA application by a failed refugee claimant is not an appeal or reconsideration of the decision of the RPD to reject a claim for refugee protection. Nevertheless, it may require consideration of some or all of the same factual and legal issues as a claim for refugee protection. In such cases there is an obvious risk of wasteful and potentially abusive re-litigation. The IRPA mitigates that risk by limiting the evidence that may be presented to the PRRA officer. The limitation is found in paragraph 113(*a*) of the IRPA, which reads as follows:

113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit :
(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection; [...].	*a*) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet; [...].

[21] Here, the PRRA officer's decision appears to me to be completely transparent and intelligible. The issue is not whether the Court would have assessed the facts differently, but rather whether the officer's assessment is reasonable. The applicants also failed to establish that the decision under review is based on an erroneous finding of fact made in a perverse or capricious manner or without

regard for the material before the officer (paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. (1985), c. F-7).

[22] As to whether the PRRA agent erred in not taking into account the Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, given that she made no mention of them in her decision, the applicants' argument does not hold up. The suggestion that there may be a reviewable error in law should the guidelines not be mentioned is not sustainable. As my colleague Justice Michel Shore stated in *Munoz v. The Minister of Citizenship and Immigration*, 2006 FC 1273, at paragraph 33, the purpose of the Guidelines is to ''ensure that gender-based claims are heard with sensitivity'' and ''in some circumstances, the RPD is not even required to mention the Guidelines in its decision'' (at paragraph 30).

[23] In this case, the respondent is right in arguing that the officer must be assumed to have considered the guidelines in her decision, even though she does not specifically mention them. In fact, the respondent correctly criticizes the applicants for not specifying how the PRRA officer allegedly neglected to apply Guideline 4 and how this might have changed her decision.

[24] Finally, the applicants invoke international law and the *Canadian Charter of Rights and Freedoms*, alleging that they face a risk to their safety and to their lives should they return to Mexico. In this regard, I need only mention what I stated in *Singh v. The Minister of Citizenship and Immigration*, 2007 FC 963, at paragraph 7:

> As for the applicant's arguments based on the *Canadian Charter of Rights* (the *Charter*) and international law, it is trite law that the removal of a person after proper risk assessment is not contrary to sections 7 and 12 of the *Charter* (see *Suresh v. Canada (Minister of*

> *Citizenship and Immigration)*, [2002] S.C.J. No. 3 (QL), [2002] 1 S.C.R. 3; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 1 (QL), [2002] 1 S.C.R. 84; and *Al Sagban v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 2 (QL), [2002] 1 S.C.R. 133). As for specific Article 3 of the *Convention against Torture*, Martineau J. stated the following in *Sidhu, supra*:
>
> [26] Paragraph 97(1)(*a*) of the Act refers specifically to the notion of torture contained in Article 1 of the Convention and therefore integrates the principles contained in Article 3 of the Convention. Consequently, the answer to this question is contained in the law itself and does not require certification. [Our emphasis.]

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[25] For all these reasons, the Court's intervention is not warranted and the application for judicial review is dismissed.

[26] The applicants propose the following question for certification:

> [TRANSLATION]
>
> Does the examination of evidence regarding a risk to life or a risk of death in the context of an application on humanitarian and compassionate grounds or the risk of return require an analysis under the constitutional standard pursuant to section 24 of the *Canadian Charter of Rights and Freedoms* when an attempt is being made to establish a Charter violation?

[27] The respondent opposes the certification of this question on the ground that it does not apply to the facts at issue and therefore fails to meet the criteria for certification as set out in *Canada (M.C.I.) v. Liyanagamage* (1994), 176 N.R. 4. I agree with the respondent.

[28] In fact, it seems clear from these reasons that the applicants' version of the facts was given no credence.

[29] Furthermore, it is clear from *Singh*, above, and the case law cited therein that section 24 of the *Canadian Charter of Rights and Freedoms* does not apply to this case.

[30] The proposed question is therefore not certified.

JUDGMENT

The application for judicial review of a decision rendered by Officer Mélanie Daigle, dated April 7, 2009, denying the applicants' application for a pre-removal risk assessment is dismissed.

''Yvon Pinard''
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2557-09
STYLE OF CAUSE:	Maria Isabel POZOS MARTINEZ, Sergio Omar HERNANDEZ POZOS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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