Federal Court  Cour fédérale

Date: 20100601

Docket: IMM-4986-09

Citation: 2010 FC 568

Ottawa, Ontario, June 1, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Israel Ulises ISLAS CEREZO

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 of a member of the Refugee Protection Division of the Immigration and Refugee Board (the panel) under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27 (the Act), by Israel Ulises Islas Cerezo (the applicant). The panel found that he was neither a refugee nor a person in need of protection and therefore rejected his claim for refugee protection.

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[2] The applicant is a citizen of Mexico.

[3] He alleges being persecuted by his former spouse and her mother. He claims to have overheard a telephone conversation between the two women on December 11, 2006, in which their involvement in the trafficking of children was allegedly revealed. After having listened to this conversation, he was allegedly kidnapped and beaten by federal police officers, who he claims were in the pay of his spouse.

[4] He purportedly filed a first complaint with the public prosecutor; then, on January 30, 2007, he registered a second complaint with the public prosecutor and the Public Safety Office.

[5] On January 31, 2007, the applicant apparently retained the services of a lawyer. Having unsuccessfully tried to obtain a copy of the complaints he had filed with the public prosecutor, he purportedly asked his lawyer to do so. However, it would appear that he was subsequently unable to contact his lawyer until June 2008, and that she too was unable to obtain a copy of his complaints.

[6] On the advice of a friend, he decided to flee Mexico and arrived in Canada on June 11, 2007. He claimed refugee protection one week later.

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[7] The panel found the applicant not to be credible. Alternatively, it found that the applicant had failed to prove that state protection was unavailable to him in Mexico and it found that he had an internal flight alternative.

[8] The panel explained its finding that the applicant lacked credibility by his failure to submit corroborative evidence in support of his narrative, and, specifically, a copy of the complaints he claims to have filed with the public prosecutor. It noted that at the beginning of the hearing, the applicant had adduced as evidence a newspaper article about his former spouse, and that he indicated having devoted much effort towards obtaining it. In the panel's opinion, the applicant ought to have shown that much diligence in attempting to obtain a copy of the complaints he allegedly filed. It appears that he did not do so.

[9] The panel did not believe that it had been impossible for the applicant to contact his lawyer for a year and a half. Furthermore, it is possible to obtain, in fairly short order, a copy of any complaint filed with the Mexican police through that country's embassy. The panel further noted that the applicant had not contacted the organization where his former spouse is employed to obtain confirmation of his having filed a complaint.

[10] Moreover, the panel noted that the applicant had contradicted himself when he was asked about the date on which he had filed his second complaint with the public prosecutor. He also neglected to mention having contacted his lawyer in June 2008 in his Personal Information Form (PIF).

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[11] The only issue here is whether the panel made its decision without regard for the facts in the case, both those raised by the applicant and those arising from the documentary evidence on Mexico.

[12] As Justice Binnie explained, on behalf of the majority of the Supreme Court, in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at paragraph 46, ‘‘Parliament intended administrative fact finding to command a high degree of deference’’. The Court will intervene only if such a finding is unreasonable, in that it was ‘‘made in a perverse or capricious manner or without regard for the material before it’’ (par. 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. (1985), c. F-7).

[13] In my view, the panel did not make its finding without regard for the material before it. Even if it did make a few mistakes (with regard to the spelling of some names), these errors are of no great consequence and do not warrant the intervention of this Court.

[14] It was open to the panel to find the applicant not to be credible by reason of the lack of evidence corroborating his narrative and because the narrative itself was tainted by contradictions and omissions. In particular, the panel drew attention to the applicant’s failure to mention that he had been unable to contact his lawyer, either in his PIF or at the beginning of the hearing when he was asked by his counsel whether the information in his PIF was complete and up to date. The applicant submits that the panel, in doing so, misinterpreted the purpose of the PIF. I do not share

this view. First, the applicant testified that he had tried, without success, to contact his lawyer before he left Mexico, but he makes no mention of these efforts in his PIF. Second, at the beginning of the hearing, the applicant failed to offer clear details about what steps he took after he arrived in Canada, while at the same time adducing additional documentation as evidence in support of his narrative. As the panel pointed out, police reports are important documents and the PIF expressly asks that refugee claimants file them with their claims. It was open to the panel to consider the applicant's failure to explain his actions. Moreover, it was not unreasonable for the panel to doubt whether the applicant was truly unable to contact his lawyer for a year and a half (including the year after he arrived in Canada). The panel also noted the applicant's contradictory testimony with regard to the date of his second complaint to the police.

[15] Under these circumstances, the panel was entitled to raise the absence of any documentary evidence in support of the applicant's allegations (see, among others, *Mejia v. The Minister of Citizenship and Immigration*, 2009 FC 1091, and *Azali v. The Minister of Citizenship and Immigration*, 2008 FC 517, at paragraphs 15 and 16), as well as the insufficient efforts he made to obtain such evidence. In fact, section 7 of the *Refugee Protection Division Rules*, SOR/2002-228, provides that ''[t]he claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.''

[16] Moreover, I do not consider the panel's findings with regard to the applicant's attempts to obtain a copy of his complaints to be unreasonable. The panel did not [TRANSLATION] ''disregard'' the applicant's attempts to contact his lawyer: it simply did not believe that it would have taken him

a year and a half to contact his lawyer if he had truly made an effort to do so. Considering that the applicant was in Canada for a good part of this period, where he had every means of communication available to him, and that his lawyer obviously continued to practice her profession, since he did finally get in touch with her, I do not believe this finding is unreasonable. As for the possibility of obtaining a copy of a complaint filed with the police through one of Mexico's consular offices in Canada, it was not [TRANSLATION] ''illogical'' or [TRANSLATION] ''ridiculous'' to expect the applicant to avail himself of this option. Even supposing that the applicant was indeed being pursued by some corrupt policemen, he is not claiming that Mexican diplomats in Canada are complicit in his persecution. There is no reason to believe they would refuse to help him.

[17] As such, the panel could therefore reasonably find that the applicant lacked credibility. Therefore, the intervention of this Court would not be warranted. Under the circumstances, it is not necessary to consider the panel's findings regarding the internal flight alternative or the ability of Mexico to offer state protection to the applicant.

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[18] For all of these reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Board, dated October 5, 2009, is dismissed.

''Yvon Pinard''
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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