

Federal Court



Cour fédérale

Date: 20100622

Unrevised certified translation

Docket: IMM-6670-09

Citation: 2010 FC 683

Ottawa, Ontario, June 22, 2010

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

**ALBERTO PADILLA OCHOA
SARA GONZALEZ TENORIO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] This is an application for judicial review under section 72 *et seq.* of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), filed by Alberto Padilla Ochoa (the male applicant) and by Sara Gonzalez Tenorio (the female applicant), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel), bearing the numbers MA8-00845 and MA8-00846 and dated November 20, 2009. This judgment is rendered by the undersigned judge as *ex officio* judge of the Federal Court as provided for in subsection 5.1(4) of the *Federal Courts Act*, R.S.C. (1985), c. F-7.

[2] The application for judicial review will be dismissed for the reasons set out below.

Background

[3] The applicants are citizens of Mexico, and are now 39 and 42 years of age, respectively. They left Mexico and arrived in Canada on December 12, 2007; they claimed refugee protection that same day. The male applicant's claim is largely dependent on that of the female applicant.

[4] The female applicant worked at a high school for troubled youth. She caught a student selling drugs to fellow classmates and reported him to the school's principal; he was expelled. Following this expulsion, the student wound up in a prison for juvenile offenders.

[5] The female applicant states that the father of the student in question threatened her. Following this she alleges that she was assaulted and raped on June 22, 2007, that windows of her house were broken on July 13, 2007, and that she was raped again on November 7, 2007. The applicants subsequently decided to leave Mexico for Canada.

Panel's decision

[6] The panel found the female applicant's testimony to be neither clear nor straightforward and found that it contained numerous omissions and contradictions. However, the panel did take note of a medical report by the female applicant's attending physician in which she was diagnosed as having a post-traumatic stress disorder that is consistent with the alleged assaults.

The attending physician concluded in his report that the female applicant would have trouble defending her claim before the panel because of her memory and concentration problems and because of her reluctance to talk about her experiences.

[7] Consequently, the panel gave the female applicant the benefit of the doubt and accepted her narrative, which it deemed to be credible and trustworthy.

[8] Since the subjective fear of persecution had been established, the panel then turned its attention to the issue of objective fear; it determined that the applicants had failed to demonstrate that state protection was unavailable to them in Mexico.

[9] In fact, the applicants did not file a complaint following the incidents in June and July 2007. They explained this omission by the fact that they did not trust the police, who are corrupt, according to them. They also believe that the people who are after them have the means to bribe police in any part of Mexico to which they might flee in the wake of these incidents.

[10] The applicants did, however, file a complaint with the police about the incidents which occurred in November 2007, but did not reveal the name of their persecutor, although the person was known to them. The refusal to cooperate with the police is perceived by the panel to be a lack of effort in seeking the protection of the Mexican authorities on their part.

[11] Thus, the panel found that the applicants had failed to rebut the presumption that the Mexican state was able to protect them.

Applicants' position

[12] The applicants argue that the panel's decision is unreasonable since state protection is illusory in Mexico and that, consequently, they were correct not to seek it.

Respondent's position

[13] The Minister raises a preliminary issue regarding the non-observance of time limits with regard to the filing of the application for leave and judicial review. Given the decision on the merits of the case, it will not be necessary to address this question.

[14] With regard to the main issue, the Minister argues that it was up to the applicants to provide clear and convincing evidence to rebut the presumption that a state is able to protect its citizens. In this case, the applicants did not file a complaint with the police after the incidents of June and July 2007, nor did they reveal the name of their assailant to the police at the time of the November 2007 incidents. In these circumstances, the panel could reasonably find that the applicants had not made reasonable efforts to seek the protection of the Mexican authorities.

Standard of review

[15] In *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 282 D.L.R. (4th) 413, [2007] F.C.J. No. 584 (QL), at paragraph 38, the Federal Court of Appeal confirmed that questions as to the adequacy of state protection are “questions of mixed fact and law ordinarily reviewable against a standard of reasonableness”.

[16] The applicable standard of review for decisions of the Refugee Protection Division of the Immigration and Refugee Board regarding the availability of state protection is therefore reasonableness.

Analysis

[17] When refugee claimants maintain that state protection is not available to them, the fundamental rule is that the burden of proof rests with them. This burden cannot be discharged by simply stating that state protection is nonexistent or that security services are corrupt. In other words, in this case the onus was on the applicants to provide precise facts demonstrating that state protection was not available to them.

[18] There are several ways in which this could have been done. For example, applicants could testify to incidents they experienced that demonstrate that the state refused to provide protection, or that such protection was non-existent. They could establish that a third party in a

situation similar to theirs was unable to benefit from state protection. Another option would be to establish, through documentation available in the National Documentation Package or elsewhere, that no protection is available to people in similar situations.

[19] In this case, no such evidence was provided.

[20] I note, for example, that according to the transcript of the hearing before the panel, the applicants did not refer to information provided in the National Documentation Package on Mexico to support their argument. They relied on vague allegations and personal impressions that were not supported by any objective evidence.

[21] Given these circumstances, I cannot conclude that the panel's decision is unreasonable.

[22] In conclusion, the application for judicial review will be dismissed.

[23] The parties raised no question for certification pursuant to paragraph 74(*d*) of the Act and none will be certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

“Robert M. Mainville”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6670-09

STYLE OF CAUSE: ALBERTO PADILLA OCHOA ET AL v. MCI

PLACE OF HEARING: Montréal, Quebec

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

DATED: June 22, 2010

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