Federal Court  Cour fédérale

Date: 20110106

Docket: IMM-2418-10

Citation: 2011 FC 8

Ottawa, Ontario, this 6th day of January 2011

Before: **The Honourable Mr. Justice Pinard**

BETWEEN:

TEODORO PEREZ
LILIANA AIDE TORRES VERGARA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Board (the "Board") pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the "Act") by Teodoro Perez and Liliana Aide Torres Vergara (the "applicants"). The Board determined that the applicants were neither "Convention refugees" nor "persons in need of protection" under sections 96 and 97 of the Act.

* * * * * * * *

[2] The applicants are citizens of Mexico and are a married couple. Prior to their departure, they lived in Acapulco, where the male applicant ran a business and the female applicant was a police officer.

[3] In September 2006, the male applicant's motorcycle was stolen. He was informed by his neighbours that the perpetrators were local firefighters. The applicants allege that it is well-known in Acapulco that firefighters have links with organized crime and drug traffickers. The male applicant complained at the local police station and denounced the firefighters to their commanding officer. In late November 2006, he was interviewed on local television and made a public appeal for the return of his motorcycle. The applicants were not able to obtain an original copy of this interview, but were provided with a synopsis of the interview signed by the reporter; the synopsis does not indicate that the applicant specifically mentioned the firefighters in the televised interview.

[4] The male applicant alleges that he subsequently received threatening phone calls from unknown individuals who told him that they knew his whereabouts and the location of his business. He alleges that suspicious-looking vehicles were occasionally seen around his home. In May 2007 he was followed home from work by unknown individuals.

[5] The applicants moved briefly to the female applicant's mother's home in Acapulco, and then sold the business and moved in with the female applicant's father in Conchero, a three-hour drive from Acapulco. They allege that they continued to feel unsafe there.

[6] The female applicant allegedly fears being killed by organized criminal gangs in Acapulco, who she says have been responsible for a number of murders of police officers since November 2006, including that of her partner, who was killed in a grenade attack.

* * * * * * * *

[7] The Board found that there was no nexus to a Convention ground, and that therefore section 96 did not apply. The Board found that with the exception of some slight exaggerations, the applicants were credible. The determinative issue was the existence of an internal flight alternative ("IFA") in Durango. The Board found that on the balance of probabilities, there was no serious possibility of persecution and/or risk to life or risk of torture or cruel and unusual punishment in Durango, and it would be objectively reasonable for the applicants to build a life there.

* * * * * * * *

[8] There are two issues in this application, as argued orally by counsel for the parties who also referred the Court to their written submissions:

a. Did the Board err in its characterization of the central element of the applicants' claim?
b. Did the Board err in concluding that an internal flight alternative was available to the applicants?

[9] The applicants raise procedural fairness questions with the first issue, alleging that the Board committed a breach of natural justice by misunderstanding or mischaracterizing the central elements

of their claim, thereby leading to erroneous conclusions. According to *Khosa v. Canada (Minister of Citizenship and Immigration)*, [2009] 1 S.C.R. 339, at paragraph 43, issues of procedural fairness attract a standard of review of correctness.

[10] The standard of review applicable to the Board's finding of the existence of an IFA, which is a fact-based question, is reasonableness, according to *Navarro v. The Minister of Citizenship and Immigration*, 2008 FC 358, at paragraphs 12 to 14.

* * * * * * * *

A. *Mischaracterization of the basis of the applicants' claim*

[11] The applicants allege that the Board misunderstood the central basis of their claim. They allege that their main fear was not simply harassment related to the denunciation of the motorcycle theft, but rather that they believe that this harassment was a way for the drug cartels to harass the family of a police officer in order to later blackmail the officer for favours. They allege that the Board did not understand this, due to the complexity of their claim, and argue that it was the responsibility of the Board and of the Refugee Protection Officer present at the hearing to ensure that all necessary clarifications were obtained and the central basis of their claim was understood.

[12] In my view, if the applicants felt that the Board did not fully understand the nature of their claim, they should have raised this issue at the hearing itself. In *Ayub v. The Minister of Citizenship and Immigration*, 2004 FC 1411, Justice Luc Martineau held at paragraph 21 that the "failure to object at the hearing amounts to an implied waiver of any breach that might have occurred". In

Ayub, the applicant was also alleging that the Board had not properly understood her testimony, but Justice Martineau found that "the applicant had every opportunity to explain her side of the story and to respond to the tribunal's questions". Moreover, in my opinion, the hearing transcript and the applicants' Personal Information Form ("PIF") do not bear out their argument. There is nothing at all to suggest that the basis of their claim was anything other than the motorcycle story. The PIF and the submissions by the applicants' counsel at the tribunal hearing focus solely on this incident without raising any connection to the female claimant's job. Moreover, the female applicant was specifically asked if there was a connection between what happened to her husband and her fear of her job, to which she replied that there was not (Certified Tribunal Record, at page 527). I find that there is no evidence that the Board erred in its characterization of the claim, and that the applicants could have raised this objection at the hearing had they chosen to do so. Furthermore, this would not overcome the issue of the existence of an internal flight alternative.

B. *Internal flight alternative*

[13] The applicants argue that it was unreasonable of the Board to find an internal flight alternative in Durango, as there was no evidence in support of this finding. The applicants cite *Barajas v. The Minister of Citizenship and Immigration*, 2010 FC 21, in which Justice James Russell found that the Board had committed a reviewable error in identifying certain cities as IFAs "without citing any evidence that might have established that the situation existing in the metropolitan areas identified was qualitatively different from that prevailing in Guadalajara" (paragraph 72). The applicants also contend that the Board demonstrated a lack of knowledge of the conditions and *modus operandi* of Mexican drug organizations, which they allege are well-known by most Mexicans. The applicants appear to be arguing that the Board ignored evidence of

corruption and drug trafficking in Durango, while failing to cite any evidence showing that the applicants would be safe there.

[14] I note that in the *Barajas* case, there was ample evidence that the applicant, having been beaten by police on several occasions for denouncing police corruption, was still being pursued even while he was in Canada, and his remaining family members in Mexico were being threatened in his absence. In my opinion, the facts are therefore distinguishable from the present case.

[15] The threshold for disproving an IFA is high, and the applicants must demonstrate conditions that would jeopardize their life and safety, according to *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.). International protection is provided only if the applicants' country of origin cannot provide them with adequate protection throughout its territory, as per *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.), at page 711. Here, the Board explicitly acknowledged that criminality and impunity problems exist in Durango, and yet still found it to be a viable IFA. It appears from the Board's reasons that the Board relied on common sense and rationality regarding the passage of time since the incident as well as the perpetrators' apparent lack of real interest in the male applicant while he was still in Mexico. The Board did not ignore any evidence, but rather took into account the applicants' fears, while finding them insufficient to displace the Board's findings.

[16] The respondent submits that the applicants mischaracterize the decision when they argue that the Board did not provide any evidence supporting its finding of an IFA. The respondent points to paragraphs 16 to 24 of the decision, which outline the Board's finding that the agents of

persecution are unlikely to pursue the applicants in the future. I agree with the respondent that it was this conclusion that formed the basis of the Board's conclusion that Durango constituted a reasonable IFA, despite the acknowledged presence of drug traffickers and organized crime. I find the Board's reasoning to be sound: the applicants were not likely to be pursued by anyone once they left Acapulco, and therefore there would be no danger to them in Durango arising from the relevant incidents. A generalized fear of drug traffickers is not enough to ground a finding of persecution under section 97.

[17] In my opinion, the applicants have not identified any reviewable error in the Board's reasoning in this regard, nor have they identified any evidence which the Board failed to take into account.

* * * * * * * *

[18] For the above-mentioned reasons, the application for judicial review is dismissed.

[19] I agree with counsel for the parties that this not a matter for certification.

JUDGMENT

The application for judicial review of the decision of a member of the Immigration and Refugee Board, determining that the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2418-10
STYLE OF CAUSE:	TEODORO PEREZ, LILIANA AIDE TORRES VERGARA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	December 1, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	PINARD J.
DATED:	January 6, 2011

APPEARANCES:

Me Patrizia Ruscio	FOR THE APPLICANTS
Me Simone Truong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Patrizia Ruscio Montréal, Quebec	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT