

Federal Court



Cour fédérale

Date: 20110207

Docket: IMM-2939-10

Citation: 2011 FC 134

Ottawa, Ontario, February 7, 2011

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

**JESUS TAPIA CASTILLO
VIRIDIANA MORA CASTILLO
GUADALUPE TAPIA CASTILLO
SAMUEL ALBERTO GONZALEZ CASTILLO**

Applicants

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 the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) dated April 28, 2010. The RPD refused the Applicants' claim for protection, finding that the four Applicants were not Convention refugees or persons in need of protection.

[2] For the reasons that follow, I have concluded that the Court's intervention is not warranted. The Applicants' arguments amount to no more than simple disagreement with the Board's findings, and it is not the role of this Court to reassess the conclusions of implausibility drawn by the RPD. In any event, the RPD could reasonably conclude that there was adequate state protection and that the Applicants had not rebutted the presumption of state protection.

I. Facts

[3] The Applicants are citizens of Mexico and they are all related. Jesus Tapia Castillo (Jesus) is the principal Applicant; the applications of his sister Guadalupe Tapia Castillo and of their cousin Viridiana Mora Castillo both rely on Jesus' narrative. Their other cousin, Samuel Alberto Gonzalez Castillo (Samuel), has prepared his own narrative.

[4] For four and a half years leading up to November 2007, Jesus worked as an administrative assistant at a customs agency in Vera Cruz. Between November 3 and 7, 2007, he was approached and threatened repeatedly by a man named Valentin Rosas, who worked for the security company "Delfines". Mr. Rosas wanted Jesus to cooperate in a theft operation; this man asked Jesus to provide information on shipments arriving in Vera Cruz in order to facilitate the theft of merchandise arriving via shipment. Mr. Rosas showed Jesus photographs of Guadalupe, Samuel and Viridiana, implying that their lives would be threatened unless Jesus agreed to cooperate in the thievery operation. Guadalupe and Viridiana were also approached and threatened.

[5] On November 8, 2007, Jesus, along with at least Guadalupe and Viridiana and possibly Samuel, lodged a complaint with the Public Prosecutor. The Prosecutor's office told Jesus that

Mr. Rosas would be watched over, and that the office would send a lawyer to follow up on the complaint with Jesus.

[6] Jesus continued to receive threats from Mr. Rosas, so he resigned from his job on January 14, 2008. On January 28, 2008, he and Guadalupe and Viridiana went into hiding in Paso De Macho, a 2-3 hour drive away from Vera Cruz, where they remained until travelling to Mexico City on February 16 for a flight to Canada. In Canada, they immediately sought refugee status.

[7] As for Samuel, he had been employed for over four years preparing custom documents for an import/export company (where, presumably, he also had information pertaining to shipments). In early November, he was also confronted by a Jorge Colan, who worked for the same security company as Mr. Rosas. Mr. Colan threatened Samuel and his cousins, asking Samuel to cooperate in the thievery operation planned by Mr. Rosas and Mr. Colan. On November 8, he says he went with the others to lodge a complaint with the Public Prosecutor. He was allegedly beaten by the persecutors on January 27th, 2008, though he had received no further threats before that since early November.

II. The impugned decision

[8] The Board member based its negative determination of refugee status on a finding that the evidence presented does not establish, on a balance of probabilities, a likelihood of a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture if removed to Mexico. The Tribunal found a lack of credibility and plausibility with respect to determinative issues, and also that the Applicants had not rebutted the presumption of state protection.

[9] The Board member found the Applicants' story implausible. Since Jesus allegedly quit his job on January 14, the member reasoned that the men who were threatening him should have lost interest at that point, since they had wanted him to share information that he had through his job. Therefore, the member found not credible that the claimant felt he needed to go into hiding and to flee the country after he had quit his job.

[10] Regarding state protection, Jesus testified that after filing his complaint, he was told that the prosecutors would keep a watch out for Mr. Rosas and that he would be contacted by a lawyer. No lawyer contacted him. In the member's opinion, Jesus should have followed up on this or filed additional complaints. The women claimed that they did not seek protection because Jesus already had. The member did not find these actions constituted the reasonable steps to seek protection necessary to rebut the presumption.

[11] The member also found it implausible that Jesus would have failed to tell his employer about the threats. Jesus claimed that he did not want his employer to blame him if any theft took place, but given that he had been an employee in good standing for four years, the member felt that the employer would likely not have blamed Jesus if he had come forward with his concerns. As such, Jesus' failure to do so was not credible. The member thinks that the fact that the Applicants resigned from their jobs at the same time and almost immediately decided to seek protection in Canada meant that they had already made a decision not to seek state protection in Mexico.

[12] The Tribunal noted that it had taken cognizance of the documentary evidence filed on behalf of the claimant, but that documentary evidence pertaining to human rights violations and drug cartels was not pertinent to the Applicants.

[13] Regarding Viridiana and Guadalupe, the member found that if there had ever been a risk to their lives, that risk ceased when Jesus quit his job. The member did not find it credible that on January 25, ten days after both Jesus and Samuel had quit their jobs, Guadalupe would have been threatened.

[14] The member also found that Samuel's narrative was not credible, for the same reasons that Jesus' story was not credible – if the men had quit their jobs in mid-January, they should have ceased to be of interest to the men threatening them. Therefore their desire to hide and flee was not believable. Furthermore, Samuel alleged no threats between November 7 and the time he was beaten on January 27, so it is not credible that he would have felt the need to quit his job on January 14. His explanation for his failure to consult his employer was the same as that of Jesus – fear of being blamed in the event of a theft, which the member did not find convincing.

[15] The Board noted that Samuel's remarks regarding whether Mr. Colan was vulnerable to or immune from the police were inconsistent (he had contradictorily alleged both) in an immigration interview. He blamed these inconsistencies on erroneous note-taking on the part of the interviewer, which the member did not find credible.

[16] As for Samuel's alleged physical attack in January and his injuries, which are substantiated by a medical report, the Board member wonders why the medical report and Samuel's own comments are inconsistent regarding the extent of the injuries, and why such a brutal beating would not have prompted another police report in January. In fact, the member was not convinced that Samuel even went to the prosecutor on November 8 (before the beating) with the others as he claimed to have done.

[17] Having found that adequate state protection existed for the claimants, the Board did not examine the questions of an internal flight alternative.

III. Issues

[18] This application for judicial review raises two issues:

- a. Did the Board err in making its credibility finding?
- b. Did the Board err in making its state protection finding?

IV. Analysis

[19] The RPD's determination of credibility findings and the existence of state protection attract a standard of reasonableness. Accordingly, the decision will be upheld so long as it falls within a range of possible and acceptable outcomes: *Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 47-48 and 51.

A. *The Credibility Finding*

[20] It is worth noting that the Applicants Samuel, Guadalupe and Viridiana do not provide any affidavit, and that Guadalupe and Viridiana did not submit a narrative with their personal information form (PIF). Moreover, they do not appear to challenge the RPD's findings with respect to their claims, except for a vague allegation that the RPD was overzealous in the analysis of their claim. Indeed, most of the arguments made by their counsel focus on the portion of the Board's decision dealing with Jesus' claim.

[21] The assessment of credibility of evidence is a question of fact. The Board's decisions on credibility are to be accorded a high level of deference unless they are shown to be clearly unreasonable: *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA).

[22] The Board member offers several examples of implausibilities to support his conclusion:

- i. It was unlikely that Mr. Rosas and Mr. Colan, who began their persecution because they sought shipping information for the purposes of robbery, would continue their threats after the Applicants lost access to such information;
- ii. It was implausible that the Applicants did not tell their long-term employers about these threats and planned robberies, even though they had been employees in good standing and the situation had a very direct impact on the employers;
- iii. It was implausible that Samuel would, out of fear of his persecutors, quit his job on January 15 even though he had not receive any threats since November 7, and then, suddenly and for no apparent reason, be brutally beaten by the persecutors later in January; and
- iv. It was also strange that Samuel would not have reported the beating to the prosecutor's office, as this would have been an important update to the claim he had alleged already filed.

[23] The RPD was entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole. The Applicants' mere disagreement with the implausibilities drawn by the RPD does not warrant this Court's intervention.

[24] As well, the RPD was under no obligation to alert the Applicants of its concerns about weaknesses in the evidence that could give rise to implausibilities: *Quijano v Canada (Citizenship and Immigration)*, 2009 FC 1232; *Farooq v Canada (Minister of Citizenship and Immigration)*, 2005 FC 867.

[25] With respect to the documentary evidence, the RPD could reasonably conclude that the documentary evidence on human rights violations from Amnesty International was not relevant in the context of the Applicants' claim. In any event, an allegation of risk cannot be based simply on documentary evidence without any link between the condition in a country and an applicant's situation: *Prophète v Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, aff'd 2009 FCA 31.

B. *The State Protection Finding*

[26] The test as to whether state protection exists has been conclusively determined by the Supreme Court of Canada and the Federal Court of Appeal. The courts must presume that the state is capable of protecting its own citizens. This presumption can only be displaced upon clear and convincing confirmation of the state's inability to protect a claimant: *Canada (Attorney General) v*

Ward, [1993] 2 S.C.R. 689, at p 724; *Canada (Minister of Employment and Immigration) v Villafranca* (1992), 150 N.R. 232, at p. 235 (F.C.A.).

[27] More recently, the Federal Court of Appeal confirmed that a person claiming that state protection is inadequate bears the evidentiary burden of adducing evidence of inadequate state protection, and the legal burden of persuading the trier of fact that the claim in this respect is well-founded: see *Canada (Minister of Citizenship and Immigration) v Flores Carrillo*, 2008 FCA 94, at paras 17-19, 28 and 30.

[28] In the present case, the RPD thoroughly reviewed the documentary evidence and principles relating to state protection and the Applicants' incomplete attempts to avail themselves of state protection. For example, the RPD noted that the Applicants had not followed up with the authorities after making their complaints on November 8, 2007. The RPD also noted that the applicants did not take their complaint to a higher authority before fleeing to Canada.

[29] The RPD reasonably relied on this Court jurisprudence to the effect that a claimant's decision to flee before the police have had an opportunity to properly respond to and investigate a transgression did not amount to a lack of state protection: see, for example, *Montemayor Romero v Canada (Minister of Citizenship and Immigration)*, 2008 FC 977, at paras 24-25.

[30] Contrary to the Applicants' allegation, the onus was upon them to make diligent efforts to exhaust all reasonable course of action available in seeking assistance. In *Kadenko v Canada (Solicitor General)* (1996), 143 DLR(4th) 532, at p 534, Déary J.A. elaborated on these principles

and highlighted that the more democratic a country, the more the claimant must have done to seek out the protection of his or her home state. The principles were reaffirmed more recently by the Federal Court of Appeal in *Hinzman v Canada (MCI)*, 2007 FCA 171.

[31] As for the Applicants' subjective belief that the authorities would have acted in collusion with their persecutors (had they been approached for assistance), such an allegation it is not sufficient to rebut the presumption of state protection, especially when that conviction is not based on any objective evidence: see *Quijano, supra*, at para 42; *Judge v Canada (MCI)*, 2004 FC 1089, at paras 8, 10.

[32] In light of the foregoing, I am of the view that this application for judicial review ought to be dismissed. No question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed. No question is certified.

"Yves de Montigny"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2939-10

STYLE OF CAUSE: JESUS TAPIA CASTILLO et al. and M.C.I.

PLACE OF HEARING: Montréal (Quebec)

DATE OF HEARING: February 3, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** de MONTIGNY J.

DATED: February 7, 2011

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