Federal Court Cour fédérale

Date: 20110304

Docket: IMM-3705-10

Citation: 2011 FC 261

Ottawa, Ontario, March 4, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

HALL, ZITA
OCHOA, QUINCY VIRGIL
OCHOA, QUASI ROMARIO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek an order setting aside a May 31, 2010 decision of the Refugee Protection Division of the Immigration Refugee Board (the Board), which found them to be neither Convention refugees nor persons in need of protection under sections 96 and 97 of *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). The applicant, Zita Hall, is the mother of Quincy Virgil

Ochoa and Quasi Romario Ochoa, the minor-applicants. For the following reasons the application for judicial review is dismissed.

[2] The applicant advances three principal grounds in support of the argument that the Board's decision is unreasonable and should be set aside; the adequacy of the reasons, the finding in respect of state protection, denial of a fair hearing and failure to address key evidence.

[3] The first of these grounds is the adequacy of the Board's reasons for its decision. It is argued by the applicant that the reasons do not mention the interests of the minor-applicants, nor do they reflect an independent analysis of the claims advanced under section 97 of the *IRPA*. It is also contended by the applicant that the reasons fail to serve the important public policy objectives of maintaining public confidence in the administration of justice, consistency and most importantly, explaining to the party why they did not succeed. The applicant also argues that the reasons fail to meet the criteria of justification, transparency and intelligibility as expressed in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

[4] On a close reading of the record, this argument fails. The claims of the minor-applicants are entirely dependent on those of their mother. Indeed, the Personal Information Form (PIF) filed on behalf of the minor-applicants simply repeated information found in the applicant's PIF.
In addition, the case law is clear that the burden of proof for an *IRPA* section 97 claim is higher than a section 96 claim and hence, should the section 96 claim fail, an additional review of section 97 and its jurisprudence is not required: *Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635 at paras 17-18. In any event the reasons, on their face, indicate that the Board did turn

its mind to, and did fully consider, the issues put forth by the applicant with respect to the minor-applicants.

[5] Counsel for the applicant contends that, having regard to the Board's review of the evidence indicating shortcomings in the degree of state protection for victims of domestic and spousal abuse in Trinidad, the findings with respect to state protection are unreasonable. This argument fails as the Board, in a careful and balanced analysis of the evidence before it, examined relevant evidence demonstrating, in its view, the contrary. In the course of its review of the legal framework governing the criminal law and the organization of law enforcement agencies, the Board also considered the nature and extent of civilian oversight and recourse mechanisms available to citizens aggrieved by the failure of state authorities to act. The Board also reviewed the extent to which other government agencies were available to assist victims of domestic abuse. As noted by Barnes J. in *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, the existence of state agencies that may offer assistance in providing protection where the police response is inadequate is relevant in the analysis of state protection. The Board's analytical approach on the objective standard to the effect that Trinidad offers "not perfect but adequate" state protection is consistent with the Federal Court of Appeal's decision in *Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94.

[6] The applicant also contends that the Board erred in concluding that she had not discharged her obligation to seek out state protection. Counsel for the applicant argues that there are two exceptions to the general proposition that state protection must be diligently sought out: first, where no protection would be forthcoming based on prior requests made personally, and second, where

others had sought protection and the request had been ignored. On the facts before the Board, neither of these exceptions is engaged. Relating to the second exception, the prior circumstance offered by the applicant as objective evidence of futility was simply a vague story of a friend of a friend who complained to the police and, understandably, was never heard of again. No details of this account were offered other than a first name. This evidence was rejected by the Board.

[7] Relating to the first exception, the circumstances pertaining to the applicant's personal requests for assistance failed on the evidence as the Board found that the applicant had reported her abuser's behaviour, which she described as harassment, to the police only once, and on that occasion told the police that she did not want them to investigate further as she wished to settle the matter personally. The burden to provide clear and convincing evidence of the failure of the state to provide protection, and the burden on the applicant to make convincing efforts to seek protection, cannot be met on a single complaint to the police about harassment, and where an insufficient amount of time was allowed for the police to respond to the complaint: *Gutierrez v Canada (Minister of Citizenship and Immigration)* 2008 FC 971 at para 19.

[8] The Board's decision with respect to the applicant's failure to seek state protection is also informed by a number of negative credibility findings. The Board rejected numerous aspects of the applicant's testimony with respect to the nature and extent to which she engaged the protection of the police. When questioned as to why she did not report earlier abuse, the applicant stated that "... she would have to file a formal complaint which she did not want to do because the process would take too long." The Board also noted the absence of a reference in the existing police report to a threat made by the applicant's alleged abuser to kidnap her children and the threat he made with a

gun on another occasion. The applicant's response as to why the police did not record these matters was because "...they were corrupt and that they did not take down the information correctly." This explanation was rejected by the Board as not credible. Moreover, the Board also noted that these very significant events were also not included in the applicant's PIF.

[9] Thirdly, the applicant argues that the she was deprived of the right to a fair hearing. In the course of the hearing, the Board advised counsel and the applicant that it accepted the allegation that the applicant was a victim of abuse and that she had filed the police report in question. It is contended by the applicant that, by these statements, the Board lured her into a false sense of comfort and hence she did not know the case that she had to meet. This argument fails. The transcript indicates, quite clearly, that the Board accepted the authenticity of the police report, but nothing more. The credibility of the applicant's claim and her assertions as to what precise elements of abuse she reported, to whom and when, remained in issue throughout the course of the hearing. The transcript makes clear that the applicant's credibility, and in particular the material discrepancies between her testimony and the narrative, and between her testimony as to what she reported to the police and the content of the police report itself, remained live issues throughout the hearing. To choose but one example, the fact that the police report was accepted as authentic did not mean that the Board was prepared to accept that the omission of these matters was due to the corruption of the police.

[10] It is also argued in the context of the right to a fair hearing that the Board did not consider or take into account the expert medical report of a psychologist, establishing that the applicant was depressed, timid and confused as a result of the abuse she suffered. The Board did, in fact, consider

the report and accepted that it helped in establishing the claimant's subjective fear of returning to Trinidad, thus satisfying the first of the two part subjective-objective test articulated in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689. The Board also situated its assessment of the applicant's testimony in the context of Guideline 4 issued by the Chair of the Board pertaining to *Women Refugee Claimants Fearing Gender-Related Persecution.*

[11] In light of the reasons provided above, I find that based on the evidence before it, the Board's decision is within the possible, acceptable range of outcomes defensible in respect of the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. It is therefore my opinion that the decision is reasonable.

[12] As a result, the application for judicial review is dismissed.

[13] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3705-10
STYLE OF CAUSE:	HALL, ZITA, OCHOA, QUINCY VIRGIL, OCHOA, QUASI ROMARIO v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto
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APPEARANCES:

Ms. Christina Gural	FOR THE APPLICANT
Ms. Nina Chandy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Christina M. Gural Barrister & Solicitor Vaughan, Ontario	FOR THE APPLICANT
Myles J. Kirvan, Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT