Federal Court Cour fédérale

Date: 20110310

Docket: IMM-3456-10

Citation: 2011 FC 297

Ottawa, Ontario, March 10, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

MAYRA PAOLA CAMPOS QUEVEDO
SIGRID CAMPOS QUEVEDO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mayra Paola Campos Quevedo, the principal Applicant, is a citizen of Mexico who alleges having suffered abuse at the hands of her then-boyfriend. She sought asylum in Canada with her daughter, but her claim was denied by the Immigration and Refugee Board (IRB). By way of a decision dated April 6, 2010, the IRB ruled that the Applicants were neither Convention refugees

nor persons in need of protection under the statutory regime of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). Leave was granted on November 30, 2010.

[2] After relating the principal facts of the case, the IRB tackled the issue of the law on state protection. Then, having set out the legal principles, the IRB determined that the protection offered by Mexico would be reasonably forthcoming should the principal Applicant be willing to avail herself of it. It was indicated that there was no persuasive evidence to show that the police were not investigating the allegations. The IRB noted that the principal Applicant should have sought protection from other authorities. The responses given in terms of state protection were deemed to be "not credible and were largely unsubstantiated and were not consistent with the documentary evidence". While the IRB did discuss the documentary evidence, the IRB decided in favour of the evidence to the effect that Mexico was making progress and that protection was available for battered women. As such, the claim for asylum was denied as clear and convincing evidence was not put forward to rebut the presumption of state protection.

I. Standard of Review

[3] The Applicants set out many arguments in support of their application for judicial review. While their position is considerably more nuanced, the Court subsumes the Applicants' pleadings in one, more general question: did the IRB err in assessing the existence of state protection for battered women in Mexico?

[4] Being a mixed question of fact and law, this question is to be reviewed on the standard of reasonableness, whereby the Court is to consider whether the decision falls within the range of

acceptable outcomes defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47; *Garcia Bautista v Canada (Citizenship and Immigration)*, 2010 FC 126; *Flores Campos v Canada (Citizenship and Immigration)*, 2010 FC 842).

II. Analysis

[5] The IRB's decision is unreasonable: its analysis of the sufficiency of state protection is deficient. The Court is also concerned with the coherence and the completeness of the IRB's analysis.

[6] Firstly, it is adequate to reproduce paragraph 19 of the IRB's reasons in its entirety, in order to better illustrate the concerns about coherence in the impugned decision:

> I find that the principal claimant is merely speculating that the police were not investigating her allegations. When asked if she knew what Jovani's activities were since she left him, the principal claimant indicated that he went into hiding after the nightclub he was working at closed down. I find that it would be difficult for the police to pursue Jovani for the assaults and threats on the principal claimant if he was in hiding. Furthermore, the police took action when the principal claimant's mother reported Jovani's threats to them in February 2009. A summons for Jovani to appear before the Department of Preliminary Investigations was issued on April 7, 2009. The principal claimant does not know the outcome of this investigation. There was no persuasive evidence that would indicate that the police were not investigating all of the principal claimant's allegations.

[7] Statements within this paragraph are hard to reconcile. The IRB notes that it would be difficult for the police to find Jovani, and therefore meet the state's obligations to protect its population. On the other hand, it is indicated that there is no persuasive evidence indicating that the police were not investigating. These statements are at odds with each other. Also, the lack of

"persuasive evidence" results from a selective reading of the principal Applicant's statements. One of these statements is to the effect that an Official at the Public Ministry wrote a report only after the insistence of her stepfather. The IRB noted this fact at paragraph 4, but omitted a necessary fact: that the principal Applicant had recognized this officer as one of her boyfriend's collaborators in the drug trade. Since the Applicant's credibility was not directly reproached by the IRB, it had the duty to include this important fact, or at the very least explain why it was not considered, in order for the statement that the principal Applicant is "merely speculating" to be adequate. Furthermore, in terms of "persuasive evidence indicating that the police were not investigating", the principal Applicant did indeed say she received a call from the Public Prosecutor's office to the effect that information about her complaint could not be obtained because of Jovani's influential friends. The IRB noted this evidence at paragraph 4, but did not address its validity or why it was not to be considered. Again, as credibility was not clearly at play, the IRB should have dealt with this information in its reasons, more so as any neutral reader could have considered the evidence as "persuasive".

[8] Generic statements that "all the evidence" was considered do not suffice in this case. Before stating that there was no "persuasive evidence", the IRB had the duty to meaningfully address the evidence and the principal Applicant's statements, especially if these could reasonably be seen as addressing the IRB's concerns with the sufficiency of state protection. The fact that the IRB must address the evidence before it, especially when it appears as possible "persuasive evidence", is a well established principle in immigration law (see, *inter alia*, *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, (1998) 157 FTR 35 (FCTD); *Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491; *Vigueras Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359).

[9] In this case, the IRB's broad statement to the effect that the principal Applicant's responses were "not credible and were largely unsubstantiated and were not consistent with the documentary evidence" may have been nuanced. The facts of the case may have called for a more sensible assessment of the situation. Among these facts is that the principal Applicant approached the authorities six (6) times with gender-based violence, without having concrete evidence that the state was taking steps to protect her. Hence, it is clear that beyond the general statement that the "Guidelines had been considered", the IRB failed in this case in addressing the considerations put forth by the *Gender Guidelines*. In doing so, a reviewable error was committed (*Isakova v Canada (Citizenship and Immigration)*, 2008 FC 149). Here, it is not the case of the *Guidelines* bolstering a sketchy claim and presenting testimony as truth, as may have been the case in *Vigueras Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, but rather a case where the *Gender Guidelines* were not meaningfully addressed.

[10] In regards to the documentary evidence and the sufficiency of state protection, it is apparent that the IRB proceeded with what has been called pro forma analysis (see, for example, *Alexander v Canada (Citizenship and Immigration)*, 2009 FC 1305). Evidently, the principles of state protection are such that an asylum-seeker must exhaust internal recourses before seeking the surrogate protection of refugee law (*Canada (Attorney General) v Ward,* [1993] 2 SCR 689). However, the Court makes its own the *ratio* of Mister Justice De Montigny in *Aguirre v Canada (Citizenship and Immigration)*, 2010 FC 916, at para 20:

> The case law is replete with statements confirming that it is not sufficient for a state to make efforts to provide protection; an objective assessment must also establish that the state is able to do so in practice: see, inter alia, *Avila v. Canada (M.C.I.)*, 2006 FC 359 (CanLII), 2006 FC 359; *Sanchez v. Canada (M.C.I.)*, 2009 FC 101

> (CanLII), 2009 FC 101; *Capitaine v. Canada (M.C.I.)*, 2008 FC 98 (CanLII), 2008 FC 98. However, the Panel does not seem to be alert to this distinction, and does not refer to any documentary evidence showing that the resources devoted to combating crime have produced any tangible results.

[11] In this case, this clear distinction was not considered, as the IRB's analysis of the protection offered was largely theoretical. It did not address the documentary evidence pointing to how the laws and measures taken manifest themselves concretely. At the very least, the IRB is required to meaningfully address why evidence is not considered (*Cepeda-Gutierez*, above). In this case, it is clear that the generic statements to the effect that the Member would be at fault if it did not address the contrary evidence do not suffice. Also, the Court is concerned of the IRB's use of legislative and policy measures as justification for sufficient state protection, while at the same time citing later documents that clearly indicate that said measures have failed or are not efficient.

[12] Surely, there has to be an effort on the part of the IRB to go further than presenting a general view that state protection is available in Mexico. Clear, informative and updated analysis has to be made.

[13] It may be the case that the summons issued to Jovani is determinative of the outcome. Also, the IRB may make findings similar to those made in this case. However, as is recognized by case law, adequate justification must be given to do so, which was not the case here. In order for a reviewing court to duly acquit itself of its duties, due consideration must be given to the justification of the decision, and not only the final outcome of the decision (*Dunsmuir*, above, at para 47: "A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes").

[14] As such, the proper remedy here is to grant the application and send the matter back for redetermination by a newly constituted panel of the IRB.

[15] No question for certification was submitted and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed. The matter is to be sent for redetermination by a newly constituted panel of the IRB. No question is certified.

"Simon Noël"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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