Federal Court  Cour fédérale

Date: 20110519

Docket: IMM-6424-10

Citation: 2011 FC 580

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 19, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

PEDRO ESCARBALLEDA VALDEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is the case of a Mexican citizen whose claim was rejected by the Immigration and Refugee Board (Board) on the ground that there was an internal flight alternative (IFA). It was reasonable for the Board to find that the applicant had not met his burden of establishing that there was no serious possibility of him being persecuted in the region of the proposed IFA, and that the

conditions in the said region were such that it is not unreasonable, given all of the circumstances, for the refugee claimant to seek refuge there (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (FCA)).

II. Judicial procedure

[2] This is an application for judicial review in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision by the Refugee Protection Division (RPD) of the Board, dated October 5, 2010, that the applicant is not a Convention refugee under section 96 of the IRPA or a person in need of protection under section 97 of the IRPA.

III. Facts

[3] The applicant, Pedro Escarballeda Valdez, was born on June 1, 1981, and is a Mexican citizen. He was living in the State of Morelos when the events under review occurred.

[4] Mr. Valdez is alleging that he fears returning to his country because his life would be at risk. He apparently refused to give money to individuals who initially stopped him while leaving work on December 13, 2008. Mr. Valdez was purportedly also attacked on three other occasions by these same individuals:

a. On January 29, 2009, when he left home to go to work;

b. On February 12, 2009, when he was in the municipality of Yautepec, in the State of Morelos, inquiring about job possibilities;

c. On March 2, 2009, when he was passing through a party in the village and was allegedly recognized by his supposed persecutors.

[5] Mr. Valdez alleges that he filed a complaint with the Office of the Public Prosecutor after each of these three attacks. He also claims that he sent his wife and children to live outside of the State of Morelos after the attack on January 29, 2009. He himself apparently stayed in the State of Morelos.

[6] The applicant arrived in Canada on March 5, 2009, and claimed protection that same day. His wife and children still live in Mexico.

IV. Impugned decision

[7] Having heard the applicant's testimony and analyzed all of the evidence, the RPD determined that the refugee claim should not be allowed. First, there was no nexus to one of the five Convention grounds under section 96 of the IRPA. Second, there was no torture under paragraph 97(1)(*a*) of the IRPA since there was no involvement by a state agent or any person acting on behalf of or with the consent of a state agent. Consequently, the analysis was conducted with respect to paragraph 97(1)(*b*) of the IRPA.

[8] It appears from the RPD's reasons that " . . . several questions with respect to the claimant's credibility were raised during the hearing . . . " (decision at paragraph 7) and that he was inconsistent with respect to the dates for the various places he allegedly lived in Mexico. However, the RPD found that the determinative issue was the existence of an IFA. The applicant could have

availed himself of an IFA in Mexico City, Monterrey or Veracruz (decision at paragraphs 9 and 12). In particular, the RPD specified that it was rejecting the applicant's explanations that he had not moved to another state for the safety of his family.

V. Issue

[9] Did the RPD make a reviewable error with respect to the existence of an internal flight alternative?

VI. Relevant statutory provisions

[10] The following provisions of the IRPA apply to this case:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tous lieux de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Parties' claims

[11] The applicant claims that he would be found by his persecutors if he were to return to Mexico and that the methods of protection noted by the RPD in the documentary evidence submitted would be of no help. The applicant assumes that he was given the benefit of the doubt because the RPD specified that there had been no major contradictions regarding elements central to the refugee claim and that the IFA had been identified as the only determinative issue.

[12] The respondent argues that the RPD's decision is based on the evidence adduced, draws reasonable inferences from it and respects the relevant legal principles.

VIII. Standard of review

[13] Regarding the issue of an internal flight alternative, it has been established that it is a question of mixed fact and law that is within the purview of the RPD (*Sosa v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 275, at paragraph 15; *Esquivel v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 468, at paragraph 13). The Court must therefore analyze the

issue on the standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

IX. Analysis

[14] The Federal Court of Appeal developed, in *Rasaratnam*, above, at paragraph 10, a two-part test to determine the existence of an IFA: 1) the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the refugee claimant being persecuted in the region of the proposed IFA; and 2) the conditions in the said region must be such that it is not unreasonable, given all of the circumstances, for the refugee claimant to seek refuge there.

[15] In this case, it was reasonable for the RPD to find that the applicant had not met his burden of establishing, on a balance of probabilities, the existence of such conditions.

[16] For the first part, one of the questions the RPD asked the applicant was why he did not believe he would be safe in Mexico City, Monterrey or Veracruz, to which the applicant replied, namely: “[b]ecause those people have information about me. They know that I could be here in Canada, because the people in my neighbourhood know that I am here.” (decision at paragraph 9; TR at page 128). It was reasonable for the RPD to find that the applicant’s answers were insufficient to demonstrate that his persecutors had the desire or ability to find him throughout Mexico.

[17] In its analysis, the RPD specified that the applicant had not been obligated to try to move to another state before seeking protection (decision at paragraph 9); however, a move would have shown that the persecutors had the desire and ability to find the applicant throughout Mexico. In this

case, the applicant did not try to move to another state, even after his in-laws invited them to move in with them outside of Morelos for a period of time (he sent only his wife and children). His own parents apparently suggested that he move to the State of Tlaxcala, which the applicant did not do. Contrary to what he states in his memorandum (at paragraph 9), the applicant did not relocate three times. The evidence demonstrates that the applicant had always been subject to attacks while living in the State of Morelos. One of the attacks even seemed fortuitous, as he was passing through a party in the village. However, the applicant should have explored these options before seeking international protection. It is settled law that international protection exists only if the government of the country of origin is unable to offer effective protection throughout its territory and if it is proven that it would be unreasonable for an applicant to avail him- or herself of the possibility of seeking refuge in another part of the country:

> [22] The applicant's only criticism of the Board's judgment on the IFA is that it did not examine the evidence as to whether or not the serious efforts to fight violence were paying off in Mexico. Since the applicants made no effort to seek an IFA, we will never know if an effort on their part in that direction, instead of seeking refuge abroad, would have succeeded or not. Moreover, the Board is presumed to have considered all evidence, and is not required to refer to all the evidence (*Florea v. Canada (Minister of Employment and Immigration)*(F.C.A.), [1993] F.C.J. No. 598 (F.C.A.)).
>
> [23] There being no evidence that the applicants would be at risk in a different city in Mexico, the Court sees no reason for intervention on the IFA issue.

(*Esquivel*, above).

[18] With respect to the second part of the test in *Rasaratnam*, the applicant stated that the only obstacles to settling down in the proposed IFAs were his fear of the threats he was subject to before he left Mexico and the fact that he works in construction and would not be able to find suitable employment in this field:

> [15] . . . "I do not know anyone there. There is not much construction in those places, and I work in construction, and those are cities with many buildings. Mexico City is already built, and as for Monterrey and Veracruz, I do not know the construction situation there." . . .

(Decision; Tribunal Record (TR) at page 130).

[19] It is worth remembering that, with respect to the second part of the test, the Federal Court of Appeal, in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (CA), placed the bar very high:

> [14] . . . It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. . . .

[20] It was therefore reasonable for the RPD to come to the conclusion that the applicant had not met his burden of proof. It was up to the RPD, as part of its role and part of its expertise, to assess the evidence submitted, determine the weight to be attached to it and make the necessary determinations.

X. Conclusion

[21] The Court's intervention is unwarranted in this case and in light of the foregoing, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question for certification arises.

"Michel M.J. Shore"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Claudette Menghile	FOR THE APPLICANT
Yaël Levy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claudette Menghile, Counsel Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT