

Federal Court



Cour fédérale

Date: 20110525

Docket: IMM-5454-10

Citation: 2011 FC 612

Montréal, Quebec, May 25, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

**PATRICIA ROMO GOMEZ
MAURICIO SANTIAGO ORTIZ ROMO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), of a decision of the Immigration and Refugee Board of Canada – Refugee Protection Division (the Board), dated August 18, 2010, whereby the Board determined that the applicants were neither Convention refugees pursuant to section 96 of the *IRPA* nor persons in need of protection pursuant to subsection 97(1) of the *IRPA*.

I. Background

[2] The principal applicant Patricia Romo Gomez (the applicant) and her son Mauricio Santiago Ortiz Romo are citizens of Mexico. They lived in Tampico, Tamaulipas. They arrived in Canada on June 20, 2008 on board a direct flight from Mexico City to Edmonton. They sought refugee protection upon arrival.

[3] The applicant alleged that her husband began to receive threatening phone calls to his mobile phone in July 2007. The callers were unidentified and indicated to the applicant's husband that he would pay for what he had done. The calls became more frequent and at one point, the caller told the applicant's husband that nobody could help him and that he should not ask for help because his situation would only get worse. The applicant and her husband also noticed that "strange cars" parked in front of their house.

[4] The applicants left the family home and decided to stay with the applicant's parents who lived in Tampico.

[5] The applicant's husband left the home as well and went to live with a friend in Villahermosa, Tabasco. The applicant's husband allegedly received another threatening call on his mobile (despite having changed his mobile phone number) while in Villahermosa where the caller indicated that he could not hide and that he was a "dead man". The applicant's husband eventually left Mexico and entered Canada on a valid work permit.

[6] The applicants came twice to Canada to visit family and the applicant's husband. On June 5, 2008, the applicants travelled back to Mexico so that the applicant could complete the requirements for the professional certification that she had been working towards.

[7] The applicant alleged that two incidents occurred upon their return to Mexico which led them to leave the country and claim asylum in Canada. First, a few days after arriving in Mexico, the applicant began to receive threatening phone calls inquiring about her husband. The callers indicated that the applicants would be kidnapped and that they would pay.

[8] Second, on June 15, 2008, the applicant was driving with her son to meet her family for lunch in Tampico. A black truck approached them while they were stopped at a traffic light. Three people got out of the truck and attempted to get into the applicant's vehicle. They shouted for her to unlock the doors. The applicant accelerated away and sought refuge in her parents' garage.

[9] On June 20, 2008, the applicant fled with her son to Canada.

[10] The applicant indicated that she was not sure who was targeting her family. However, she outlined two possibilities. First, it could be her husband's former employer, Mr. Ruiz Willis. In 2006, her husband was successful in a wrongful dismissal claim against Mr. Ruiz Willis. Mr. Ruiz Willis had allegedly indicated that one day the applicant's husband "would pay" for bringing the claim.

[11] Second, it was also possible that the brothers Mario and Jose Aladro (the Aladro brothers) were her family's persecutors. In 2004, her husband had testified against the two brothers regarding an incident where he witnessed the Aladro brothers attacking the applicant's brother. The applicant alleged that the Aladro brothers had become key persons involved in the Gulf Cartel in Tampico and, as a result, had significant influence there.

[12] Just prior to her hearing before the Board, the applicant submitted an update to her Personal Information Form (PIF) wherein she indicated that the latter theory had been "confirmed". She alleged that one month after her arrival in Canada, her brother was told that he would have to pay 25,000 pesos a month if he wished to continue to operate the family business without interference. He accepted. On October 19, 2009, he was allegedly arrested by Mexican federal agents and accused of false charges of kidnapping and "organized delinquency". The applicant believed that the incidents are linked to the 2004 incident involving the Aladro brothers.

II. Decision under review

[13] The Board found that the availability of a viable Internal Flight Alternative (IFA) was the determinative issue in the applicants' case. It found that there was no serious possibility of the applicants being persecuted or facing a risk to their lives or a risk of cruel and unusual treatment or punishment if they returned to another part of Mexico, away from the state of Tamaulipas. The Board specifically considered Mexico City, Guadalajara and Monterrey as potential IFAs.

[14] The Board indicated that the evidence suggested that the applicants' most likely persecutors were localized in the Tampico or at least in the state of Tamaulipas and that they probably did not have the motive or the ability to locate and pursue the applicants in another part of Mexico. The Board based its conclusion on the following findings:

- The alleged agents of persecution have not been identified but the applicant advanced two theories; the theory involving her former husband's employer and the one involving the Aladro brothers. The evidence remained unclear as to whether any of these individuals were actually involved in any of the incidents described in the claimant's evidence.
- Of the three most probable individuals identified as agents of persecution, one of them was based in Tampico while the other two had influence in Tamaulipas state;
 - a) both incidents of actual contact - the parked cars and the June 15, 2008 incident – had occurred in Tampico;
 - b) the threatening phone calls were initially received in Tampico;
 - c) all calls, including the call received by the applicant's husband in Villahermosa, were received on mobile phones.
 - d) the applicant did not encounter problems during the time she spent in Mexico City in 2007 and 2008;
 - e) the applicant, in her PIF, indicated that:

The reason which brought us to Canada is the unsafety which personally and directly we lived at our country, specially at the state of Tamaulipas, where the organized delinquency have us with fear and the incompetence of our authorities to protect the physical integrity of my family and myself" [Emphasis added].
- The evidence suggested that the agents of persecution were mostly interested in the applicant's husband.

- There was no evidence of actual efforts by the alleged agents of persecution to actually harm the applicant's husband or to attempt to harm him.
- There was no evidence connecting the unknown agents of persecution with the Gulf Cartel.

[15] During the hearing, the Board member suggested Mexico City, Guadalajara, or Monterrey as Internal Flight Alternatives. The applicant stated that she and her son, would not be safe in any of these cities considering the experience of her husband in Villahermosa and the possibility of the agents of persecution, if they were the Aladro brothers, to locate them anywhere in the country since they had connections with the Gulf Cartel and connections with corrupt police and judges.

[16] The Board found that the applicant's suggestion that her family could be located anywhere in Mexico via the use of "databases" for credit cards, utilities and taxes was not compelling. It found that these concerns were largely speculative, given the absence of past efforts to locate and harm the applicants in areas outside Tampico, and given the absence of evidence regarding the actual identity of the persecutor and their ability to access public information to locate the applicants. The Board also concluded that there was no evidence connecting the agents of persecution with the Gulf Cartel.

[17] The Board also found that an IFA in Mexico City, Guadalajara, or Monterrey would be objectively reasonable in all the circumstances. It noted that the applicant was very well educated and had extensive, varied work experience. It pointed out that the applicant, herself, had agreed that were it not for the alleged persecution, she could live and work in any of these urban centres.

[18] On the whole, the Board concluded that an IFA in Mexico was not only viable and reasonable in all the circumstances, but it was also accessible. As such, it concluded that the applicants were not entitled to refugee protection pursuant to section 96 or subsection 97(1) of the *IRPA*.

III. Issues

[19] Only one issue arises for determination on this application:

- a) Did the Board err in finding that an IFA was available to the applicants in Mexico?

IV. Standard of review

[20] Determinations as to the availability of an IFA warrant deference because they involve the evaluation of both the applicants' circumstances, as reported by them in their testimony, and expert understanding of country conditions (*Sivasambo v Canada (Minister of Citizenship and Immigration)*, [1995] 1 FC 741 at para 26, 52 ACWS (3d) 136 (TD)). As such, the appropriate standard of review to apply is the reasonableness standard (*Rodriguez Diaz v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1243 at para 24, [2009] 3 FCR 395).

[21] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 described the reasonableness standard as being "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as

well as also being “concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

V. Analysis

a) *Did the Board err in finding that an IFA was available to the applicants in Mexico?*

[22] When the prospect of an IFA is raised, the burden falls to the individual claimant to show either: a) that there is a serious possibility of being persecuted or of being subjected to a risk to their life or of cruel and unusual treatment or punishment in the proposed IFA area, or b) that in all the circumstances, it would be objectively unreasonable for them to seek refuge in the proposed IFA area (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at para 9-10, 140 NR 138 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at para 9-12, 109 DLR (4th) 682 (CA); *Lugo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 170 at para 35, 364 FTR 188).

[23] The applicants claim that the Board erred in its consideration of the first prong of the IFA test. In particular, they allege that the Board conducted its analysis without regard to the totality of the evidence. In particular, the applicants claimed that the Board made the following errors.

[24] First, they claim that the Board disregarded the information contained in the applicant’s updated PIF and did not understand the heart of the allegation, namely that the applicant now knew that the agents of persecution were the Aladro brothers. They point to the fact that the Board

indicated that there were still two “theories” as to who was targeting the applicants in Mexico and that the applicants did “not know who the alleged agents of persecution” were. In fact, the applicant submits that she had “confirmed” in her updated PIF, based on the incidents involving her brother, that the Aladro brothers were the agents of persecution. This error, they say, undermined the Board’s IFA analysis.

[25] The remainder of the alleged errors the Board made are all based on the premises that the evidence established that the agents of persecution were in fact the Aladro brothers and that these individuals were connected with the Gulf Cartel.

[26] The applicants allege that the Board erred by concluding that the agents of persecution were localized and had influence only in the areas of Tampico or Tamaulipas. They claim that the Board ignored the evidence regarding the threats that the applicant’s husband received when he was in Villahermosa. They further allege that the Board also erred when it concluded that the persecutors did not have the motive or ability to locate and pursue the applicants anywhere in Mexico. They further contend that the Board erred by not considering that evidence regarding the influence and power of the Gulf Cartel.

[27] Upon reviewing the record and upon reading the transcript of the hearing before the Board, I am satisfied that the applicant’s arguments are without merit.

[28] First, it is true that the applicant submitted an updated version of her PIF narrative shortly before the Board hearing. It is also true that in that updated version, the applicant added a number of

paragraphs explaining the troubles that the applicant's brother had experienced in Mexico since the applicants had arrived in Canada. Indeed, the update began with the following paragraph:

Being already in Canada, our worst fears became reality. In fact the theory that Mario and Jose Aladro are behind our problems is confirmed with the illegal detention of my brother, Lino Romo Gomez.

[Emphasis added]

[29] However, in reality, none of the detail added in the PIF, and none of what was said before the Board, served to confirm the identity of the applicants' alleged agents of persecution. No link was demonstrated between the incidents involving Lino, the applicant's brother – who was allegedly required to pay a monthly fee for protection and was later arrested by federal agents – and the applicants' situation. The applicants speculate that the Gulf Cartel was responsible for the applicant's brother mistreatment for the same reason that they believe the Gulf Cartel was behind their mistreatment, because both the applicant's brother and her husband had testified against the Aladro brothers in 2004. However, no evidence was provided to support this theory.

[30] At the Board hearing, counsel for the applicants admitted that the additional evidence regarding the incidents involving the applicant's brother did not truly act to "confirm" that the Aladro brothers were the applicants' agents of persecution. Indeed, counsel indicated that there was no certainty in this regard and that it was very difficult to prove the connection (Tribunal Record at p. 381):

Yeah, yeah, but I mean we are not 100 percent sure but what I think is that the second theory is the most likely why, because only – until the moment, only the brother and only the husband and his family have been attacked, not any other member. Of course that the other family members, because they are wealthy and everything, they are at risk but we are talking of general risk. They are at risk of

kidnapping. In fact when the brother was disappear, they immediately think he was kidnapped. Why? Because they are wealthy. So if some person of the family disappear like this, it's the most immediately thought to think that he was kidnapped. But what - according to all the testimony what we can see in this case is that it's not because they are wealthy that they are targeted in this case, according to me. It could be, but it's not – I don't think it's the case. It's because these two brothers who belong to the Gulf Cartel who are crazy people who wants to take revenge because there was some problem in the past, so they attacked the husband, they attacked the family and they attack the brother.

Of course it's very difficult and I confess that it's very difficult -- it's very difficult to prove all the links. We don't have all the documents to prove that link. It's very difficult, but I think that the facts are pointing out –

(sic)
[Emphasis added]

[31] The applicant, for her part, was quite clear in her testimony that, in her mind, there were still two possible theories as to the identity of her persecutors – not just one. When the Board asked about her persecutors, the applicant responded as follows (Tribunal Record at p. 328-329):

Q: Okay. I'm going through your PIF and reading through it, it appears that you actually don't even know who the people are that are after you, is that true?

A: Correct.

...

A: We have --- these are the people that we're afraid of, the people that would harm us. We have three possibilities of people that would harm us. Three persons –

...

Q: Who are these three people?

A: Who are three people? They are two brothers. It's Mario and Jose Aladro (phonetic) and the other person is Consalo Luis Will (phonetic)

[32] As such, it is clear from the record that the Board did not err by indicating that the applicants were uncertain as to who was targeting them in Mexico. It is also clear that the Board did not err

when it indicated that the applicants had two “theories” about who was involved. Both statements accurately reflected the evidence before the Board. It should also be pointed out that, contrary to the applicants’ assertion, the Board did go on to note the additional evidence regarding the applicant’s brother. It noted that he had “experienced a series of incidents, in which he was extorted for protection money, kidnapped, and held by authorities on the basis of false charges.”

[33] Second, regarding the threat that the applicant’s husband received while in Villahermosa, the evidence indicates that he only received one threatening phone call while he was in Villahermosa. The Board addressed this evidence at paragraph 24 of its decision where it indicated that the call was received on the applicant’s husband’s cell phone, “making the caller’s knowledge of his location at best questionable.” The Board went on to note that there was no evidence that anyone had attempted to harm him while he was in Villahermosa. The Board’s treatment of this evidence was reasonable. I see no reviewable error in the Board’s finding.

[34] Third, the Board did not canvass the evidence with respect to the power of the Gulf Cartel, because it did not accept that the Gulf Cartel was in any way involved in the applicants’ alleged past persecution. At paragraph 26, the Board rejected the applicants’ theory that the Gulf Cartel was responsible for their mistreatment by pointing to an “absence of evidence connecting the unknown agents of persecution with the Gulf Cartel.” Indeed, the only evidence linking the Gulf Cartel with the incidents of 2007 and 2008 was the evidence that in 2004, three years before the first threatening phone call, the applicant’s husband and brother had testified against two alleged Gulf Cartel members. Given this tenuous evidentiary basis, it was reasonable for the Board to conclude that the applicants had not demonstrated that the Gulf Cartel was involved in their persecution and, in turn,

it was reasonable for the Board not to consider evidence related to the Gulf Cartel's ability to locate and pursue individuals throughout Mexico.

[35] Ultimately, given the lack of evidence as to the identity of the applicants' alleged persecutors, given the evidence suggesting that the alleged persecutors were localized in the Tampico and Tamaulipas areas, and given the fact that the suggested IFAs are all large centres located at a considerable distance from Tamaulipas, I find that it was reasonable for the Board to conclude that there was no serious possibility of the applicants being persecuted or facing a risk to their lives or a risk of cruel and unusual treatment or punishment in Mexico City, Guadalajara, or Monterrey.

[36] The applicants do not take issue with the Board's determination on the second prong of the IFA test, as to the objective reasonableness of the proposed IFAs.

[37] As such, I am unable to conclude that the Board erred in deciding that an IFA was reasonably available to the applicants in Mexico City, Guadalajara, or Monterrey. Since the finding of an IFA is determinative of a claim for refugee protection, this application for judicial review is dismissed.

[38] No questions of general importance were proposed for certification and none arose.

JUDGMENT

THIS COURT'S JUDGMENT is that the judicial review is dismissed. No questions are certified.

“Marie-Josée Bédard”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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