

Date: 20050420

Docket: IMM-3822-04

Citation: 2005 FC 534

Ottawa, Ontario, April 20, 2005

**PRESENT: THE HONOURABLE MADAM JUSTICE LAYDEN-
STEVENSON**

BETWEEN:

JIMMY CORDERO CHINCHILLA

MARIANELLI DEL CARMEN URENA VALVERDE

(a.k.a. MARIANELLI URENA VALVERDE)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicants are husband and wife and citizens of Costa Rica. The Refugee Protection Division (RPD) of the Immigration and Refugee Board determined that they are not Convention refugees or persons in need of protection. They seek judicial review of that decision.

BACKGROUND

[2] The claims for protection were based on the female applicant's fear of her mother's common law husband Francisco Mora (Mora). For ease of reference, I will refer to the female applicant as Marianelli and to the male applicant as Jimmy.

[3] In 1996, Mora moved into the home of Marianelli and her mother in Perez Zeledon. Marianelli claims that Mora was always possessive of her. When she began dating Jimmy, she kept their relationship a secret from Mora and her mother. When she and Jimmy married, in a civil ceremony on June 18, 2000, only Jimmy's family attended. Some time later, when they defaulted on their mortgage and lost their home, Marianelli and Jimmy claim that, out of necessity, they moved in with Marianelli's mother and Mora. In June of 2002, Marianelli learned that she was pregnant.

[4] Marianelli alleges that while Jimmy was away on business in September of 2002, Mora raped her at gunpoint. She says that she went to the hospital on September 9th and miscarried. Jimmy attempted to report the rape to the police but was told that he had no evidence and that Mora was a respectable man. The couple left Perez Zeledon and went to Jimmy's aunt's home, a number of hours away. They allege that, on September 20th, they received, at the aunt's home, an unsigned letter addressed to them. The anonymous author stated that he was aware that they had gone to the police and that they would be killed. Marianelli and Jimmy believe that Mora wrote and sent the letter. When they approached the police with the death threat, the police refused to assist stating that the letter did not prove anything.

[5] In October of 2002, Mora and a number of his friends, some of whom were police officers, showed up at the aunt's home. On October 16th, Marianelli and Jimmy obtained passports. They left Costa Rica on October 18th, arrived in Canada the same day, and made claims for refugee protection.

THE DECISION

[6] The RPD rejected the claims on the basis that adequate state protection is available in Costa Rica. The board noted the applicants' two efforts to access police assistance, but concluded that they could have sought the assistance of the Ombudsman with respect to the police inaction. Based on the documentary evidence, the RPD found that the Ombudsman was an effective mechanism for dealing with complaints about the police and that it had an office of women's affairs dedicated to dealing with issues of domestic violence.

[7] At the hearing, Jimmy testified that he had tried to complain to the Ombudsman but when he saw that assistance would not be forthcoming, he decided not to follow up. The RPD dismissed the evidence as not credible. There was no reference to this effort in the personal information form (PIF). The board did not find that Jimmy satisfactorily explained the omission and it consequently rejected his explanation.

[8] In arriving at its conclusion, the RPD also referred to the law in Costa Rica providing for the promotion of education and training of the police and others regarding violence against women, the presence of special courts to deal with domestic violence, and the availability of women's shelters and legal assistance for victims.

[9] Last, the RPD accepted that Marianelli and Jimmy had been diagnosed with post traumatic anxiety and stress disorder as outlined in a psychological assessment. However, having found that state protection is available, it did not comment further on the psychological assessment.

THE ARGUMENT

[10] The applicants assert that the effectiveness of the law against domestic violence in Costa Rica was overstated by the RPD because the state continues to be unresponsive. Women's shelters, they claim, are not as available as the RPD concluded and domestic violence is getting worse. The Ombudsman's office has no enforcement mechanism or power and no authority to bind the government.

[11] Moreover, it is argued that the RPD failed to consider key factors when it stated that they needed to do more than they did to access state protection. The board did not consider that Mora is well-connected to the police, that he raped Marianelli and threatened to kill them both, that the police had twice refused to assist them, that they placed no trust in the police as a result of the attacks, threats and miscarriage, and that the threats have continued since they have come to Canada.

[12] They submit that the RPD should have exempted them from going to the authorities because of their genuine belief that doing so would be useless or would make things worse. Last, they contend that the RPD erred in failing to consider the psychological report - it had a duty to consider whether their emotional conditions might impact on their ability to seek further state protection.

ANALYSIS

[13] I am not persuaded that the finding of the RPD that state protection exists in Costa Rica is in error in relation to these applicants. The submission that the RPD made no adverse credibility finding is not accurate. The board did not accept the evidence that they had sought the assistance of the Ombudsman.

[14] The board's review of the documentary evidence was comprehensive. The fact that it referred in its reasons to some, but not all, of the contents of the documents does not constitute reviewable error. The board is presumed to have considered all of the evidence. The applicants have not demonstrated that the RPD did not consider specific evidence. Rather, their quarrel is with the manner in which the board weighed the evidence. It is not for the court to usurp the board's function in this regard.

[15] The RPD did not fail to note Mora's alleged connection to the police. It acknowledged that this issue could be addressed by seeking the assistance of the Ombudsman. The documentary evidence contained a wealth of positive information regarding the effectiveness of the Ombudsman's office.

[16] There was evidence before the RPD which suggested that state protection is not perfect. Perfection is not the test. The Federal Court of Appeal in *Kadenko v. Canada (Solicitor General)* (1996), 143 D.L.R. (4th) 532 (F.C.A.) determined that it is not enough to merely show that the government has not always been effective at protecting persons in his or her particular situation. The claimant must do more than simply show that he or she went to see some members of the police force and that his or her efforts were unsuccessful. The present circumstances fall within the *Kadenko* reasoning.

[17] This is not a situation where the applicants repeatedly sought the assistance of the police and were turned away. Nor is it a case where they were unaware of the existence of the particular arm of government to which they could turn in relation to police inaction, where the police were the perpetrators, or where an acceptable explanation for not accessing the infrastructure was provided. It was open to the RPD to find, on the basis of the discrepancies between the applicants' PIFs and their evidence at the hearing, that Jimmy's alleged attempt to avail himself of the assistance of the Ombudsman's office was not credible.

[18] I can not conclude, on the basis of the evidence that was before it, that the RPD could not reasonably determine that state protection exists in Costa Rica for these applicants. I also find no error regarding the board's treatment of the psychological report. The report concluded that the applicants would be "at a high risk for retraumatization" should they be forced to return to Costa Rica. However, I agree with the respondent that the report does not deal with the applicants' ability to access state protection in Costa Rica. In my view, the report speaks to the applicants' subjective fear, but it does not assist in relation to the objective issue of state protection.

[19] The applicants have not persuaded me that my intervention is warranted and the application will be dismissed. Counsel did not suggest a question for certification and none arises on these facts.

ORDER

THIS COURT ORDERS THAT the application for judicial review is dismissed.

"Carolyn Layden-Stevenson"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3822-04

STYLE OF CAUSE: JIMMY CORDERO CHINCHILLA

MARIANELLI DEL CARMEN
URENA VALVERDE (a.k.a.
MARIANELLI URENA VALVERDE)
v. MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 13, 2005

REASONS FOR ORDER: LAYDEN-STEVENSON J.

DATED: APRIL 20, 2005

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