Date: 20050317

Docket: IMM-7852-04

Citation: 2005 FC 381

Ottawa, Ontario, March 17, 2005

IN THE PRESENCE OF THE HONOURABLE MR. JUSTICE BEAUDRY

BETWEEN:

JOHN WILLIAM DEJO DILLON

Applic
ant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respond
ent

REASONS FOR ORDER AND ORDER

[1] This application for judicial review was filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, 2001 S.C. c. 27, (the Act), with regard to a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated August 23, 2004, that the applicant is not a Convention refugee under section 96 of the Act or a person in need of protection under section 97 of the Act.

ISSUE

[2] Did the panel err in finding that the applicant was not a Convention refugee or a person in need of protection?

[3] I did not note any patently unreasonable errors in this decision. The application for judicial review will be dismissed.

BACKGROUND

[4] The applicant is a citizen of Peru. He alleges that he has a reasonable fear of persecution at the hands of the inhabitants of Pueblo Joven Zamora. He claims that his life would be in serious danger and that he would risk being subject to cruel and/or unusual treatment and punishment if he had to return to his country of origin.

IMPUGNED DECISION

[5] The conclusions of the panel were based on the following facts:

- The applicant's wife and father-in-law remained in this region until

September 2003, and then settled in Lima.

- The fact that the applicant did not obtain personal guarantees is not enough to show that the authorities in his country cannot offer him protection.

- The applicant's problems are in no way connected to the Shining Path (SL).

- The documentary evidence indicates that state security forces show dogged determination in fighting against SL.

ANALYSIS

[6] The applicant contends that the panel did not rule on his credibility. He alleges that the decision maker did not take into account his explanation for not giving the police the address of his attackers. The panel failed to indicate that his father-in-law and wife had moved to Lima in order to go into hiding. The applicant believes that there is no internal flight alternative, as he is Asian and could easily be spotted in his community if he had to return to his country. Finally, he was apparently not confronted with the documentary evidence. He adds that he would not have any objections to the case being remitted to the same member.

[7] The standard of review applicable to state protection (SP) as well as the internal flight alternative (IFA) is the standard of the patently unreasonable decision, as we are dealing with a question of fact *(Czene v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J.

No. 912 (T.D.) (QL)) and *Canada (Minister of Citizenship and Immigration) v. Abad*, [2004] F.C.J. No. 1065, (F.C.) (QL)); (IFA) (*Chorny v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1263 (T.D.) (QL), paragraph 9).

[8] International refugee law was formulated to serve as a back-up to the protection owed a national by his or her state. The international community intended that persecuted individuals first approach their own country before seeking the protection of other states (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at paragraph 18; see also James Hathaway, *The Law of Refugee Status* (1991), page 135).

[9] The applicant must provide clear and convincing confirmation of his state's inability to protect. Except in situations of complete breakdown of the state apparatus, it should be assumed that the state is capable of protecting its citizens. It is at the objective fear stage that the analysis of state protection should be considered (*Ward, supra*).

[10] In the case under review, the panel found it surprising that the applicant was not able to provide the police with the address of his attackers, given the fact that he lived in a small community (from 1,100 inhabitants in 1993 to 2,000 or 2,500 at the time of the hearing).

[11] However, in the words of the decision maker, "the basic issue in this case - if the family of the claimant's father-in-law was indeed targeted by the other inhabitants of the region - is whether the claimant was able to obtain protection from the Peruvian government or to find refuge in another region of Peru". In *Thirunavukkarasu v. Canada (Minister of Employment and Immigration*), [1994] 1 F.C. 589 (C.A.) at paragraph 2, the Federal Court of Appeal listed two elements to be considered when establishing an IFA: the Board must be satisfied on the balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists, and, taking into account

all the circumstances, including those specific to the applicant, the situation in the proposed location must be such that it would not be unreasonable for the applicant to seek shelter there.

[12] The reasons alleged by the applicant for not being able to find refuge in another city in Peru are that his father-in-law's enemies have ties to the SL, and that the father-in-law is hiding in Lima with the applicant's wife. These explanations were not accepted owing to a lack of evidence. On the contrary, the independent documentary evidence analysed supports the panel's conclusions. I do not see any patently unreasonable errors here.

[13] It is true that the decision does not contain any references to a lack of credibility as such, but it is clear from reading it that the panel did not endorse the explanations provided by the applicant (see paragraph 2, page 2 of the decision: "The panel has seen no reliable document adduced in support of the claimant's allegations", and paragraph 4, page 2: "In the panel's opinion, that statement is unsupported by any evidence.")

[14] The decision-maker did not have to rule on the applicant's subjective fear, as he reasonably concluded that the applicant had not demonstrated a subjective fear of persecution.

[15] Despite a well-supported argument on the part of the applicant's counsel, I am not satisfied that the refugee claimant rebutted the presumption that the panel took into consideration all the evidence submitted to it before rendering its decision (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (QL)).

[16] The parties declined to submit questions for certification. The case does not include any.

ORDER

THE COURT ORDERS that the application for judicial review is dismissed. There is no question to be certified.

"Michel Beaudry"

Judge

Certified true translation

Magda Hentel

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7852-04

STYLE OF CAUSE: JOHN WILLIAM DEJO DILLON

v.

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	March 10, 2005
REASONS FOR ORDER	
AND ORDER BY:	THE HONOURABLE MR. JUSTICE
BEAUDRY	
DATED:	March 17, 2005

APPEARANCES:

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