Federal Court  Cour fédérale

Date: 20110620

Docket: IMM-6162-10

Citation: 2011 FC 726

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 20, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

MARCO ANTONIO MARTINEZ ORTIZ

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review submitted in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board), dated September 24, 2010, rejecting the applicant's refugee claim and finding that he is not a refugee under section 96 of the IRPA or a person in need of protection under section 97 of the IRPA.

I. Background

[2] Marco Antonio Martinez Ortiz (applicant) is a native of Mexico. He is alleging that he was a victim of threats by the criminal group “the Familia” in the following context. While he was working at a grocery store located near a school, he apparently saw individuals selling drugs to youths. When he appeared at the local police station to file a complaint, he saw these same individuals in a friendly discussion with police officers. The applicant got scared and decided to not sign the complaint. A few days later, masked individuals purportedly entered the grocery store and threatened him with a gun, telling him that they knew that he had gone to the police and warning him that he should not get involved in family business. At the hearing, the applicant specified that that was a reference to the “Familia”.

[3] The applicant purportedly then went to stay with his parents in the State of Morales for around 15 days. He was then informed that some individuals had allegedly been found dead in the State of Morales with the words “No one should get involved with the family” written on their bodies.

II. Board’s decision

[4] The Board rejected the applicant’s refugee claim for three reasons. First, it did not believe the applicant’s account. The Board’s finding in this regard is based on several omissions and contradictions between the applicant’s interview with the immigration officer, his Personal

Information Form (PIF) and his testimony at the hearing. The omissions and contradictions were related mainly to the identification of the agent of persecution. During his interview with the immigration officer and in his PIF, the applicant consistently referred to “the family”, but his story changed during the hearing and he referred to “the Familia”, a criminal group. Counsel for the applicant explained that the change resulted from mistakes in how the applicant’s PIF and interview notes were translated. The Board also noted omissions and contradictions with respect to when the applicant tried to file a complaint, when he saw the individuals talking with police officers and how many police officers were talking with the individuals. The Board also found that the applicant had invented his visit with his parents and the information on the individuals purportedly found dead with words written on their bodies to embellish his account.

[5] The Board also found that the applicant had not succeeded in rebutting the presumption of the state because, aside from an anonymous complaint that he in no way followed up on, he did not try to seek state protection. The Board found the applicant’s explanation that he had not sought state protection because he was scared insufficient. The Board found that the evidence submitted by the applicant was not sufficient to find that police officers were in collusion with these individuals and that, even if this were the case, the fact that a few police officers were laughing with the two individuals did not prevent the applicant from taking other steps with the authorities to seek protection.

[6] The Board also found that the applicant had an internal flight alternative (IFA). One fact the Board relied on was that the applicant himself admitted that he had no problems while staying with his parents in the State of Morales for 15 days.

III. Issues

[7] The applicant is challenging all of the Board's findings. The criticisms made raise the following issues: did the Board err in finding that the applicant was not credible, that he had not rebutted the presumption of state protection and that an IFA existed?

IV. Standards of review

[8] The credibility issue requires a very high degree of deference from the Court as it is at the core of the Board's expertise. This issue is subject to the standard of reasonableness (*Auguste v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1099, at paragraph 17 (available on CanLII); *Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698, at paragraph 11 (available on CanLII)).

[9] Reviewing a state protection finding is a question of mixed fact and law that is also reviewable on the standard of reasonableness (*Chaves v. Canada Minister of Citizenship and Immigration)*, 2005 FC 193, at paragraph 38, 137 A.C.W.S. (3d) 392; *Nunez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1661, at paragraph 10 (available on QL)).

[10] Finally, the IFA finding is also subject to the standard of reasonableness (*Guerilus v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 394, at paragraph 10 (available on CanLII)).

V. Analysis

[11] I will begin with the issue of the applicant's credibility.

[12] The applicant contends that the panel was overzealous in indicating omissions and contradictions that were groundless. I consider that the analysis of the evidence as a whole, including the discrepancies between the information given by the applicant during his interview with the immigration officer, the information contained in his PIF and his testimony, could reasonably lead the Board to find that the applicant's account was not credible and that he had embellished it over time. However, even if I were to find the Board's decision unreasonable in this respect, I believe that the Board's state protection and IFA findings are reasonable and that each of these issues is sufficient to reject the refugee claim.

[13] The evidence clearly shows that the applicant did not actually try to seek state protection.

[14] In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 709 (available on QL) (*Ward*), Justice La Forest explained the principle underlying the refugee protection regime and the crucial importance of the presumption that the home state offers protection to its citizens as follows:

> **18** At the outset, it is useful to explore the rationale underlying the international refugee protection regime, for this permeates the interpretation of the various terms requiring examination. International refugee law was formulated to serve as a back-up to the protection one expects from the state of which an individual is a national. It was meant to come into play only in situations when that protection is unavailable, and then only in certain situations. The international community intended that persecuted individuals be

> required to approach their home state for protection before the responsibility of other states becomes engaged. For this reason, James Hathaway refers to the refugee scheme as "surrogate or substitute protection", activated only upon failure of national protection; see *The Law of Refugee Status* (1991), at p. 135. With this in mind, I shall now turn to the particular elements of the definition of "Convention refugee" that we are called upon to interpret.
>
> [Emphasis added.]

[15] Generally, a person must seek the help of the authorities before finding that the state is unable to offer adequate protection, but this is not necessary in all cases. Justice La Forest, still in *Ward*, specified that the applicant is not required to risk his or her life seeking state protection:

> This is not true in all cases. Most states would be willing to attempt to protect when an objective assessment established that they are not able to do this effectively. Moreover, it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness. (page 724)

[16] In *Kadenko v. Canada (Minister of Citizenship and Immigration)*, (1996), 143 D.L.R. (4th) 532, 68 A.C.W.S. (3d) 334 (FCA), Justice Décary indicated that the burden of proof was on the applicant and that it was proportional to the level of democracy of the country in question.

[17] The presumption that state protection is available can be rebutted only if the applicant submits “clear and convincing” evidence of his or her home country’s inability to offer effective protection (*Ward*). In *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636, the Federal Court of Appeal addressed the quality of the evidence that was required, and specified the following at paragraph 30:

> . . . In other words, a claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate.

[18] In *Castillo v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 134 (available on CanLII), at paragraph 31, Justice de Montigny indicated that the subjective belief that the authorities would have acted in collusion with the agent of persecution is not sufficient to rebut the presumption of state protection when this belief is not based on any objective evidence. I share this opinion.

[19] In this case, the Board very clearly stated the applicable principles and the onus on the applicant to succeed in rebutting the presumption of state protection.

[20] Mexico is a democratic state and the applicant did not show that it would have been unreasonable for him to seek protection from the authorities.

[21] The evidence also shows that, after the incident in which he was purportedly threatened by masked individuals, the applicant made no attempt, other than an anonymous complaint that he in no way followed up on. The evidence shows that he spent 15 days with his parents and another period of three weeks at his house before leaving for Canada and that no incident occurred. The evidence also does not show that agents of persecution have tried to find the applicant since he left Mexico. It was therefore reasonable for the Board to find that the applicant's fear alone was insufficient to justify his failure to seek protection from the authorities or to rebut the presumption of state protection. Furthermore, it was equally reasonable for the Board to find that the applicant

could have taken other steps if he had thought that the few police officers at the local police station were in collusion with the drug dealers.

[22] I also consider the Board's finding that an IFA existed reasonable.

[23] In *Julien v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 313, 145 A.C.W.S. (3d) 137, the Court noted the concept of the IFA and cited the Federal Court of Appeal's decision in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (available on QL):

> **9** For a refugee claim to be approved under sections 96 or 97 of the Act, there must be an internal flight alternative in the applicant's country of nationality:
>
> > As to the third proposition, since by definition a Convention refugee must be a refugee from a country, not from some subdivision or region of a country, a claimant cannot be a Convention refugee if there is an IFA. It follows that the determination of whether or not there is an IFA is integral to the determination whether or not a claimant is a Convention refugee. I see no justification for departing from the norms established by the legislation and jurisprudence and treating an IFA question as though it were a cessation of or exclusion from Convention refugee status. For that reason, I would reject the appellant's third proposition. (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.), at paragraph 8.) [Emphasis added.].

[24] It is up to the applicant to prove that it is objectively unreasonable for him to seek an IFA in another region of the country. He is also responsible for demonstrating that he is at risk of persecution throughout the country, as indicated in *Guerilus*, above, at paragraph 14:

> It is well established that refugee claimants must provide the evidence that they consider to be necessary to show that their refugee

> protection claim is well founded (*Rahmatizadeh v. Canada (Minister of Employment and Immigration)*, 48 A.C.W.S. (3d) 1427, [1994] F.C.J. No. 578 (QL) at paragraph 9). Refugee protection claimants have the burden of proof to demonstrate that it would be unreasonable for them to seek refuge in another part of the country or to prove that there are in fact conditions which would prevent them from relocating elsewhere (*Ramirez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1214, [2008] F.C.J. No. 1533 (QL); *Palacios v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 816, 169 A.C.W.S. (3d) 619 at paragraph 9). . . .

[25] In *Perez v. Canada (Minister of Citizenship and Immigration*), 2011 FC 8, at paragraph 15 (available on CanLII), the Federal Court recalled that the threshold for disproving an IFA is high. In this case, the Board member asked the applicant why he could not live in one of the big cities like Mexico City, Guadalajara, Monterrey, Cancun or Acapulco, and the applicant replied the following: [TRANSLATION] “Because all of the States that you mentioned are full of those people”.

[26] Considering the absence of evidence that the agents of persecution wanted to find the applicant and the evidence that the applicant had no problem while visiting his parents in the State of Morales, I consider that it was reasonable for the Board to find that an IFA existed.

[27] The Board also found that it would be reasonable to expect the applicant to move to one of the proposed IFAs. This finding, which was also not challenged in the applicant’s memorandum or claim, was equally reasonable.

[28] The Court’s intervention is unwarranted and this application for judicial review is dismissed.

[29] Neither party proposed a question for certification and this matter does not give rise to any.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Marie-Josée Bédard"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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