

Federal Court



Cour fédérale

Date: 20150917

Docket: IMM-8486-14

Citation: 2015 FC 1084

Ottawa, Ontario, September 17, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**MARIA DEL ROSARIO NAVARRO LOPEZ
AND HER DEPENDANT CHILDREN
BRIAN RODRIGUEZ NAVARRO
MARCO DAVID ORTIZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Maria del Rosario Navarro Lopez and her two children sought refugee protection in Canada. They claimed to fear Ms. Navarro's former partner who had subjected her to longstanding physical and mental abuse while the family was living in the United States. While the Board accepted that Ms. Navarro was a victim of domestic violence, it rejected her claim because she failed to establish that there was more than a mere possibility that she would face a

risk to her life in Guatemala, her country of citizenship. The Board further found that adequate state protection would be available to her two children in the United States, where they were citizens.

[2] No challenge has been taken to the Board's finding with respect to Ms. Navarro's children. Ms. Navarro submits, however, that in refusing her refugee claim, the Board erred in its assessment of her prospective risk, and by failing to carry out a state protection analysis.

[3] I have concluded that the Board's assessment of Ms. Navarro's prospective risk was reasonable. Having found that Ms. Navarro did not face more than a mere possibility of persecution in Guatemala, the Board was not required to go on to assess the availability of state protection for victims of domestic violence in that country. Consequently, the application for judicial review will be dismissed.

I. Background

[4] Ms. Navarro entered the United States in 2003, settling there without legal status. She subsequently entered into a conjugal relationship with Luis Melvin Rodriguez, a citizen of the Dominican Republic, who was also living in the U.S. without status. The couple were together for approximately eight years, during which time they had a child. Ms. Navarro has a second child from a previous relationship.

[5] Ms. Navarro's relationship with Mr. Rodriguez was marked by domestic violence. He was physically, sexually, verbally and psychologically abusive towards Ms. Navarro, and had threatened to kill her several occasions. The police were often called to the couple's home,

criminal charges were laid and restraining orders were taken out. On occasion, Ms. Navarro required medical treatment for her injuries.

[6] Ms. Navarro separated from Mr. Rodriguez in May of 2012. She testified that Mr. Rodriguez continued to pursue her and her children after the separation, and that he had physically abused her on one occasion during a period when the couple had briefly resumed their relationship. During this time, Mr. Rodriguez again threatened that he would kill Ms. Navarro himself, or have a friend do it for him. Ms. Navarro testified that Mr. Rodriguez also told her that if she were to return to Guatemala, he would find her there and kill her.

[7] The couple separated again, and Ms. Navarro testified that the last time that she had contact with Mr. Rodriguez was in August of 2013. One year later, Ms. Navarro and her children came to Canada seeking refugee protection.

II. Analysis

[8] The Board accepted Ms. Navarro's testimony, finding that her relationship with Mr. Rodriguez had been marked by years of domestic violence, and that she was genuinely afraid of him. The Board was not, however, satisfied that there was more than a mere possibility that Mr. Rodriguez would seek out Ms. Navarro in Guatemala.

[9] While the Board had found Ms. Navarro to be generally credible, it did find that she had attempted to embellish her evidence regarding how Mr. Rodriguez would be able to locate her in Guatemala. Ms. Navarro claimed for the first time at her refugee hearing that Mr. Rodriguez had visited her family home in Guatemala in 2006, and would thus know where to find her if she were to return to Guatemala.

[10] Given that Ms. Navarro's refugee claim was entirely based upon her assertion that Mr. Rodriguez would seek her out in Guatemala, it was reasonable for the Board to be concerned about Ms. Navarro's failure to mention Mr. Rodriguez' 2006 visit to Guatemala (and his resultant awareness of the location of the family home in Guatemala) at either the port of entry or in her Basis of Claim form.

[11] Ms. Navarro testified at her November, 2014 refugee hearing that she had not had any personal contact with Mr. Rodriguez since August of 2013, and that she did was not aware of his current whereabouts. She did say, however, that in mid-September, 2014, she had heard that Mr. Rodriguez was leaving the Dominican Republic to return to the United States, and that he intended to pass through Guatemala on the way there. Ms. Navarro also testified that Mr. Rodriguez had called her mother in September of 2014, telling her that he was in Guatemala and asking for Ms. Navarro. During this call, Mr. Rodriguez threatened Ms. Navarro and her children, telling Ms. Navarro's mother that he knew how to locate her.

[12] It was reasonable for the Board to find that this evidence did not establish that Mr. Rodriguez was actually in Guatemala when he made the call, because, as the Board noted, the call could have been made from anywhere. Even though Mr. Rodriguez apparently believed that Ms. Navarro was at her mother's home in September of 2014, there is no suggestion that he ever went to the home during the period that he was ostensibly in Guatemala, There is also no suggestion anyone saw Mr. Rodriguez in Guatemala at that time, and the police report produced by Ms. Navarro in support of her refugee claim simply recites that Mr. Rodriguez had told her mother that he was in Guatemala, and does not provide independent proof of that fact.

[13] There was also no evidence before the Board that Mr. Rodriguez was in Guatemala at the time of the hearing, or that he would be there at any point in the future. Moreover, as the Board noted, while Ms. Navarro testified that Mr. Rodriguez had threatened to use his contacts to hurt Ms. Navarro, there was no suggestion that he had ever done so in the past.

[14] Taking all of these considerations into account, the Board concluded that the risk posed by Mr. Rodriguez was speculative, and that Ms. Navarro had failed to establish that she faced a forward-looking risk of harm at the hands of Mr. Rodriguez in Guatemala. This was a finding that was reasonably open to the Board on the record before it.

[15] This does not mean that claimants seeking refugee protection on the basis of domestic abuse must always be able to provide proof of their abuser's whereabouts in order to establish that they face a serious possibility of persecution. They do, however, have to provide non-speculative evidence that they face more than a mere possibility of persecution in their country of citizenship. The Board found that Ms. Navarro failed to do so in this case and I have concluded that this finding was reasonable.

[16] The Board applied the correct legal test for persecution, and Ms. Navarro has not pointed to any evidence that was misinterpreted or overlooked by the Board. Rather, she is essentially asking this Court to re-weigh the evidence that was before the Board and to come to a different conclusion on the basis of that evidence. That is not the task of this Court in considering an application for judicial review.

[17] Ms. Navarro also takes issue with the Board's failure to carry out an assessment of the level of state protection available to victims of domestic violence in Guatemala.

[18] The Board recognized that there is a serious problem with violence against women in Guatemala. However, Ms. Navarro's claim was based upon her fear of one specific individual - Mr. Rodriguez - and not on a generalized fear of conditions for women in Guatemala. Having concluded that Ms. Navarro had not established that there was more there was more than a mere possibility that Mr. Rodriguez would seek her out in Guatemala, there was no requirement for the Board to go on to assess whether adequate state protection would be available to her in that country.

III. Conclusion

[19] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case is fact-specific, and does not raise a question for certification

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8486-14

STYLE OF CAUSE: MARIA DEL ROSARIO NAVARRO LOPEZ AND HER
DEPENDANT CHILDREN BRIAN RODRIGUEZ
NAVARRO MARCO DAVID ORTIZ v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 10, 2015

**REASONS FOR JUDGMENT
AND JUDGMENT:** MACTAVISH J.

DATED: SEPTEMBER 17, 2015

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