

Federal Court



Cour fédérale

Date: 20100210

Docket: IMM-3762-09

Citation: 2010 FC 136

Ottawa, Ontario, February 10, 2010

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MIRNA GUADALUPE GOMEZ RAMIREZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant claims to have been persecuted by one Ernesto Salazar Romero, who allegedly raped and harassed her. After having hesitated for some time, the applicant, accompanied by her sister, eventually reported him to the police, but apparently the police simply ignored her complaint. Afterward, it appears that her assailant found out that she had attempted to report him to the police and again threatened her, hence the decision to leave her country of Mexico and apply for refugee protection in Canada.

[2] The applicant is currently challenging the legality of a decision by the Refugee Protection Division of the Immigration and Refugee Board (panel), dated June 22, 2009, which found that the applicant was neither a Convention refugee nor a person in need of protection. In this case, the panel did not believe the applicant, and instead found that there was no credible basis for her refugee claim. Furthermore, the panel found that the presumption of state protection available in Mexico had not been rebutted and that the applicant had an internal flight alternative in several cities in Mexico.

[3] In terms of the applicant's credibility, the panel noted several implausibilities, inconsistencies or contradictions in her written narrative and her testimony given at the hearing. As such, the applicant had originally stated that she had filed two written complaints against her assailant, then stated that the second complaint had been verbal, while there were also some unresolved issues with regard to the circumstances surrounding her first interview with the police. As for the implausibilities, the panel found that the applicant's reference to the authorities of the state of Cancun, when in fact she lived in the state of Quintana Roo (Cancun being a city located in that state), undermined her credibility, but more importantly, the panel dismissed the applicant's explanations with regard to why she had never consulted a doctor, either after her alleged rape or even after having filed a complaint with the police. The panel further noted the lack of any evidence corroborating the fact that she had filed a written complaint with the police, even though it would be possible to obtain a record of such a complaint, either in Mexico or in Canada, by putting in a

request to the Mexican embassy. The applicant also failed to submit any evidence that could even confirm the very existence of her persecutor, other than two unidentified photographs.

[4] On a side note, even if her narrative had been credible, the panel noted that the applicant had failed to demonstrate that the Mexican authorities would be unable to protect her from her alleged aggressor. This is evident in that the applicant did not ask to speak to the supervisor of the police officer who supposedly ignored her complaint, did not go the federal authorities, and did not seek the help of women's groups. Finally, the panel found that there was an internal flight alternative in other cities within Mexico. Being a young woman with a good education and a good level of work experience, she could have moved to another city besides Cancun. Her persecutor would probably not have been able to find her, and this would have been a reasonable alternative under the circumstances. The applicant did not even consider this possibility before coming to Canada.

[5] The applicant challenges the validity of each and every one of the panel's findings, but first of all, in her written memorandum, she criticizes the general demeanour of the member at the hearing who, according to the applicant, did not allow her to express herself about key elements of her claim. While this first ground for setting aside the decision was not elaborated on at the hearing before the Court, it does not change the fact that, after considering all of the evidence in the record, this general allegation seems unjustified to me under the circumstances. The fact that the applicant alleged that she had been a victim of rape did not excuse the panel from its duty to verify the credibility of her allegations. In order to do this the member was entitled to confront her with the inconsistencies, implausibilities and contradictions that he found in her narrative or in parts of her

testimony. With respect to the panel's wish to obtain brief and specific answers from the applicant, I see only an attempt to facilitate the work of the interpreter and the panel. In this particular case I see no evidence of any unwillingness to hear the applicant. In the case at bar, a review of the transcript does not lead me to detect any reasonable fear of bias or any breach of procedural fairness. It is obvious that the applicant, represented by her counsel, had the opportunity to provide explanations at the hearing. Moreover, no objections were raised by the applicant or her counsel vis-à-vis any of the member's interruptions.

[6] At the hearing before the Court, the applicant's learned counsel challenged the reasonableness of the panel's general non-credibility finding by first attacking the negative inference drawn from the lack of evidence corroborating the claim that a complaint had been filed with the police. As such, at paragraph 17 of its reasons, the panel declared itself to be unsatisfied with "the effort or lack of effort made to obtain a copy of the complaint" from August 13, 2006, and did not find the applicant's explanation convincing. In this case, the applicant claims that she had not been informed of the possibility of obtaining this document through the Mexican embassy and that her counsel at that time, [TRANSLATION] "regarding whom we do not know whether he was aware of this piece of documentary evidence, and who surely did not have to carry out such a procedure that would not, at any rate, have produced any results before the hearing".

[7] The allegation made by the applicant is not justified. The onus was on the applicant to prove that her refugee protection claim was well-founded. In this case, she has not discharged her burden of proving that a complaint had been filed with the police because her testimony was not conclusive

in this regard. Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228, states that “[t]he claimant must provide acceptable documents establishing identity and other elements of the claim [and that] [a] claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them”. Ignorance of the proper procedures by the applicant’s former counsel is nothing but pure speculation in this case.

[8] In the case at bar, there were a number of contradictions or implausibilities in the applicant’s narrative. As my colleague, Justice Pinard, recently recalled in *Mejia v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1091, [2009] F.C.J. No. 1313 (QL), the panel “can raise the absence of relevant documentary evidence if it finds contradictions or inconsistencies” in the testimony of a refugee claimant and can find him or her not to be credible. This is what the panel did in the case at bar, and there is nothing here that would warrant the Court’s intervention.

[9] The applicant also maintains that the panel erred in attaching too much importance to the fact that she had not consulted a doctor after she was raped, when her real fear was the threats by her persecutor, who continued to harass her. According to the evidence in the record, the applicant stated that she had not consulted a doctor because she was ashamed to talk about what had happened to her. However, she did not do so even after having talked to the police. I do not think the panel was unreasonable in considering this an implausibility and in drawing a negative inference with regard to the applicant’s credibility.

[10] The applicant also criticizes the panel for having wrongly assumed that she had been the target of threats on the part of the police. In the panel's defence, and with the Court having itself read the allegations contained in the Personal Information Form, it must be noted that the applicant's allegations are translated and written in a vague and unclear language that leaves much open to interpretation, such as the following excerpt cited by the applicant: [TRANSLATION] "[my sister] took me to the authorities to report him, but that was no use, because they did not listen to me, since his brother was a big shot around town, so they didn't even bother him; the only thing we succeeded in doing was in getting threatened by him" (Tribunal Record, page 35, lines 46-49).

[11] The applicant also argues that the panel's error with regard to the date on which her passport was issued had negative repercussions. In fact, the panel had mistakenly believed that the passport had been issued on August 14, 2006, so that the applicant would have had to have applied for it even before having filed a complaint with the police. In fact, the passport was issued on August 14, 2007, but, as the respondent pointed out, the applicant herself contributed to the panel's error by responding in the affirmative when asked whether she had applied for a passport before filing a complaint against her alleged assailant.

[12] The Court dismisses the applicant's allegations with regard to the panel's general non-credibility finding. It should be remembered that the panel is in a better position than the Court to assess the credibility of a refugee claimant and to determine if there is in fact no credible basis. It is not enough to simply disagree with the panel's findings. The panel's findings of fact are entitled to considerable deference. The appropriate standard of review to be applied in this matter is

reasonableness (*Jiang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 775, [2008] F.C.J. No. 979 (QL)). In this case, the general non-credibility finding appears reasonable to me under the circumstances. On the whole, this finding is supported by the evidence in the record and the material errors cited by the applicant are not sufficient in the case at bar to confirm that the panel's finding is not justified, transparent and intelligible or that it does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47).

[13] In short, and at the risk of repeating myself, while some of the panel's findings of fact may be open to dispute or may even be plainly wrong, the panel's decision must be read and understood in its entirety. Even if the panel had not been mistaken about the date on which the passport had been issued or about the fact that she had not been threatened by the police, the Court is of the view that this would not have caused the shortcomings in the applicant's evidence to disappear. In passing, despite changes to the standards of review brought about by *Dunsmuir*, the Supreme Court's observations with regard to the reasonableness standard, expressed in *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247 at paragraph 56, remain relevant:

[Reasonableness] does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.

[Emphasis added.]

[14] In short, the panel simply did not believe the applicant because of the inconsistency of her testimony, because of the contradictions between this testimony and her PIF, and because of the lack of evidence both with regard to her complaints to police and with regard to the identity of her alleged assailant.

[15] Alternatively, the applicant is challenging the panel's finding that her refugee protection claim has no credible basis. According to her counsel, the panel should have considered the documentary evidence, particularly the evidence related to the situation of women rape victims in Mexico. However, as the respondent notes, the existence of such documentary evidence cannot in itself be considered as a basis for the applicant's refugee protection claim. That evidence must be related to the refugee claimant's personal situation. As the Federal Court of Appeal stated in *Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89, [2002] 3 F.C. 537 at paragraph 51, the panel "[is required to] examine all the evidence and ... conclude that the claim has no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim" [emphasis added]. This is the situation in the case at bar. In fact, the only evidence presented to the panel by the applicant consisted of testimony it found to be inconsistent as well as not credible, and two unidentified photographs. In addition, it does not strike me as being unreasonable to conclude, under the circumstances, that there was no trustworthy or credible evidence that could support a recognition of the applicant's claim.

[16] Finally, while it is not necessary to analyze the panel's findings with regard to state protection and internal flight alternatives, I would add that these findings have not been shown to be unreasonable by the applicant.

[17] For all these reasons, the application for judicial review must therefore be dismissed. No question of general importance was raised by the parties and none arises in this case.

JUDGMENT

THE COURT ORDERS AND ADJUDGES the dismissal of the application for judicial review.

No question is certified.

“Luc Martineau”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3762-09

STYLE OF CAUSE: **MIRNA GUADALUPE
GOMEZ RAMIREZ
v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 27, 2010

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

DATED: FEBRUARY 10, 2010

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