

Federal Court



Cour fédérale

Date: 20101130

Docket: IMM-599-10

Citation: 2010 FC 1202

Ottawa, Ontario, November 30, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

OSCAR YASMANI GOMEZ NIETO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Oscar Yasmani Gomez Nieto fled Mexico in 2008 and sought refugee protection in Canada. He claims to be at risk of persecution in Mexico because of his sexual orientation.

[2] A panel of the Immigration and Refugee Board dismissed Mr. Gomez Nieto's claim because it concluded that he would be able to live safely in Mexico City, even if he might be at risk elsewhere in Mexico. Mr. Gomez Nieto argues that the Board's conclusion was unreasonable and asks me to order another panel to reconsider his claim.

[3] In my view, the Board's conclusion that Mr. Gomez Nieto could avoid persecution in Mexico City was reasonable considering the evidence before it. Therefore, I must dismiss this application for judicial review.

[4] The sole issue is whether the Board's conclusion was unreasonable.

II. Factual Background

[5] Mr. Gomez Nieto grew up in Puebla City. Between September 2006 and May 2007, when he was in his mid-20s, he lived in Mexico City while caring for an ill relative. After returning to Puebla City, he was detained by police and forced to perform oral sex on a policeman. In March 2008, he was jailed overnight and raped by fellow prisoners. After his release, he briefly moved back to Mexico City and then tried, unsuccessfully, to leave Mexico. In May 2008, he returned to Puebla City and had more problems there. He was attacked outside a supermarket. Soon thereafter, he and a friend were abducted, robbed and sexually assaulted by police. As a result, he spent two days in a hospital.

[6] Mr. Gomez Nieto went to the police but he was insulted and humiliated because of his sexual orientation. The next day, he received threatening phone calls. He decided to leave Mexico and seek refugee protection in Canada.

III. The Board's Decision

[7] The Board accepted Mr. Gomez Nieto's account of events in Puebla City. However, it found that he had a reasonable internal flight alternative (IFA) in Mexico City.

[8] The Board reviewed documentary evidence indicating that:

- The Federal District (i.e. Mexico City) protects and promotes the rights of homosexuals, and permits same-sex domestic partnerships.
- The National Council Against Discrimination (CONAPRED) investigates complaints of discrimination based on sexual orientation and enforces compliance with applicable laws.
- Major political parties in Mexico support gay rights.
- The Gay Pride Parade in Mexico City attracted hundreds of thousands of participants and spectators.
- Tolerance of homosexuality is growing, particularly in major urban centres and among young people.
- Statistics do not show an elevated rate of homicide against homosexuals.

[9] In addition, the panel noted that Mr. Gomez Nieto lived safely in Mexico City for about eight months and did not have any problems, other than being jeered at. While the police did not

help him in Puebla City, documentary evidence showed that police in Mexico City were more responsive and reliable.

[10] The Board also considered a psychiatric report submitted by Mr. Gomez Nieto. The psychiatrist stated that Mr. Gomez Nieto experiences depression, post-traumatic stress, and agoraphobia, and expressed concern that Mr. Gomez Nieto's symptoms might worsen if he were sent back to Mexico. The Board found that Mr. Gomez Nieto could receive support and counselling in Mexico City from the many homosexual advocacy groups there, as well as from government agencies.

[11] Based on this evidence, the Board concluded that Mr. Gomez Nieto could live safely in Mexico City. Further, it found that it would be reasonable for him to take refuge there. He had lived there before. The only reason he did not stay in Mexico City after May 2007 was because he could not transfer from his job at a drugstore in Puebla City to Mexico City without a loss of seniority.

IV. Was the Board's Decision Unreasonable?

[12] Mr. Gomez Nieto submits that the Board's decision was unreasonable because it did not take adequate account of the psychiatric report he submitted. In particular, he suggests that the Board failed to factor his mental state into the analysis of the reasonableness of the proposed IFA in Mexico City. He relies on Justice John Richard's statement that a psychological report "may provide objective evidence that it would be 'unduly harsh' to expect the applicants who have been

persecuted in the past in one part of the country to move to a less hostile part of the country” (*Singh v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No. 1044 (FCTD), at para 8).

[13] In addition, Mr. Gomez Nieto argues that the Board overlooked important evidence about the treatment of gays by the police in Mexico City, which caused it to arrive at an unreasonable conclusion about his ability to live safely there.

[14] In my view, the Board considered the psychiatric report and Mr. Gomez Nieto’s mental state when analyzing whether it would be reasonable for him to live in Mexico City. It found, relying on documentary evidence, that adequate resources would be available to him there. I can find nothing unreasonable about that conclusion.

[15] In terms of the evidence the Board allegedly overlooked, the record clearly contains documentary evidence the Board did not cite. Indeed, the record is voluminous; the Board cannot be expected to refer to every piece of evidence before it. The question is whether the Board failed to take account of important evidence contradicting its conclusion: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425.

[16] The Board reviewed an extensive array of documentary evidence supporting its conclusion that Mr. Gomez Nieto would be able to live safely in Mexico City. The Board also cited some of the contrary evidence and explained why it found it less persuasive than the evidence on which it relied. In addition, of course, the Board took into account Mr. Gomez Nieto’s own experiences of living safely in Mexico City for several months on two separate occasions. As I read the Board’s decision,

it contains a fairly thorough review of the evidence and an adequate explanation for its conclusion. None of the additional evidence cited by Mr. Gomez Nieto raises issues that were not considered by the Board or directly contradicted its conclusion. Therefore, I can find nothing unreasonable about the Board's decision.

V. Conclusion and Disposition

[17] The Board considered the relevant evidence and determined what weight to assign it. Its conclusion was reasonable in light of that evidence. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-599-10

STYLE OF CAUSE: OSCAR YASMANI GOMEZ NIETO v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 21, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: November 30, 2010

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