Federal Court  Cour fédérale

Date: 20101202

Docket: IMM-2084-10

[Unrevised certified translation] **Citation: 2010 FC 1219**

Ottawa, Ontario, December 2, 2010

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

SOFIA RAMIREZ ONOFRE
JOSE MANUEL RAMOS ROMERO
DIEGO OMAR RAMOS RAMIREZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by the principal applicant, Sofia Ramirez Onofre (the female applicant), her spouse, Jose Manuel Ramos Romero (the male applicant), and their minor son, Diego Omar Ramos Ramirez, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated March 24, 2010, rejecting their claim for refugee protection.

Background

[2] The applicants' claim for refugee protection is based on the following allegations: the female applicant worked for the company Cablecom from December 2005, first as a journalist, and later as an editor. In March 2007, a work colleague whom she had befriended was dismissed without cause. On April 13, 2007, the father of this colleague, who was the owner of the newspaper Imagen, seeking to avenge his daughter's dismissal, published an article revealing the illegal activities of two of Cablecom's managers, specifically activities linked to drug trafficking and the production of pornographic material.

[3] A few days later, when she had stayed at the office to work late, the female applicant stumbled upon the same two managers in possession of packages containing drugs. One of the managers told her to leave and warned her not to say anything. The day after this incident, a second article about Cablecom and the illegal activities of its directors was published in the Imagen newspaper.

[4] The female applicant maintains that the managers immediately suspected her of having leaked information to the journalists who had written the incriminating articles. The female applicant was dismissed on April 30, 2007. On May 10, 2007, she received threats from one of Cablecom's managers. She filed a complaint with the public prosecutor, but in spite of her requests for follow-up, the investigation went nowhere.

[5] In February 2008, the female applicant was informed that a new article incriminating the Cablecom managers was about to be published. On February 14, 2008, the male applicant was accosted and beaten when he was leaving work by two individuals in the pay of Cablecom who told him to give his spouse the message to stop disclosing information. He was hospitalized for two days after the assault and later filed a complaint with the public prosecutor. In spite of the applicants' follow-up, their complaint was never acted upon. On March 20, 2008, the applicants consulted a lawyer who confirmed to them that no state protection was available to people in situations such as theirs.

[6] On March 30, 2008, the female applicant was the subject of an attempted kidnapping by the Cablecom managers but managed to escape. After this incident, the applicants left their home and went to stay with a friend who lived in a town that was two hours away by car from their residence. On May 10, 2008, the female applicant received death threats over the telephone. The applicants subsequently decided to leave Mexico. They arrived in Canada on June 1, 2008, and claimed refugee protection four days later.

Impugned decision

[7] The Board found that the applicants were neither refugees nor persons in need of protection. The Board determined that the alleged behaviour of the applicants was not compatible with that of people fearing for their lives. It based its finding on three main points:

- The fact that the applicants remained at their residence until March 30, 2008, in spite of a series of related assaults;

- The fact that the applicants did not leave Mexico until June 1, 2008, even though they had received their child's passport on April 17, 2008;

- The fact that the applicants waited a few days after arriving in Canada before claiming refugee protection.

Issues

[8] The present application for judicial review raises the following two issues:

a. Did the Board assess the evidence in an unreasonable manner by failing to consider the evidence submitted by the applicants?

b. Was the Board unreasonable in its assessment of the applicants' credibility?

Analysis

Standard of review

It is settled law that findings of fact by the Board, and more particularly its assessment of the evidence and of the applicant's credibility, are reviewable on a reasonableness standard. It is not for the Court to substitute its own assessment of the facts for the Board's, and it will intervene only if the Board's findings were made in a perverse or capricious manner or without regard for the material before it (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 798, [2009] F.C.J. No. 933; *Allinagogo v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 545, [2010] F.C.J. No. 649.

[9] The Court's role in a judicial review of a decision on a standard of reasonableness was established in *Dunsmuir*, at paragraph 47:

> … In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

1. Did the Board assess the evidence in an unreasonable manner by failing to consider the evidence submitted by the applicants?

[10] The applicants argue that the Board failed to consider or address in its decision the following evidence submitted by them, evidence which corroborates their narrative:

- The female applicant's press card;
- The newspaper articles published about Cablecom;
- The complaint filed by the female applicant with the public prosecutor on May 10, 2007;
- The medical certificate describing the injuries suffered by the male applicant and his hospitalization after he was assaulted on February 14, 2008;
- The complaint filed by the male applicant with the public prosecutor on February 16, 2008;
- The statement by the female applicant's former work colleague;
- The statement by the applicants' friend who had let them stay with her from March 30 until June 1, 2008.

[11] It is settled law that the Board is presumed to have considered all of the evidence before it and that it is not required to mention every single piece of evidence in its decision. In addition, the

Board’s reasons are not to be read hypercritically by the reviewing Court. The Court should instead verify whether the totality of the evidence would reasonably support its findings.

[12] Moreover, the case law has established that the Board must, in its decision, mention evidence which relates to an important element and which contradicts the findings made by the decision-maker. In *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] F.C.J. No. 1425, Justice Evans aptly outlined the principles to be applied:

> [15] The Court may infer that the administrative agency under review made the erroneous finding of fact "without regard to the evidence" from the agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency. …
>
> [16] On the other hand, the reasons given by administrative agencies are not to be read hypercritically by a court (*Medina* v. *Canada (Minister of Employment and Immigration)* (1990), 12 Imm. L.R. (2d) 33 (F.C.A.)), nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it (see, for example, *Hassan* v. *Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (F.C.A.). That would be far too onerous a burden to impose upon administrative decision-makers who may be struggling with a heavy case-load and inadequate resources. A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its findings of fact.
>
> [17] However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains* v. *Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). …

[13] Applying these principles to the case at bar, I cannot conclude that the Board failed to consider the evidence that was before it. I agree that the Board did not mention in its reasons the material evidence submitted by the applicants. However, in its decision, the Board considered and analyzed all of the factual elements relied on by the applicants and its finding was based on its assessment of their behaviour, which it found to be incompatible with that of people fearing for their lives.

[14] Some of the evidence submitted by the applicants does corroborate a few of their allegations, such as the complaints filed with the public prosecutor and the statement of the person the applicants stayed with. Nonetheless, this evidence does not directly contradict the Board's findings with respect to the length of time it took for the applicants to leave their residence, to leave their country and to claim refugee protection in Canada.

[15] It appears from the decision that it was the applicants' behaviour, from the time of Mr. Ramos Romero's assault (February 14, 2008) until the time they left Mexico, that was determinative for the Board and that this finding was based on its assessment of all of the facts.

[16] There is nothing before me in the case at bar to suggest that the Board failed to consider evidence submitted to corroborate certain facts which the Board clearly addressed in its decision. I consider the fact that the Board mentioned "analyzing all the evidence" in its decision to be sufficient in the case at bar. There is therefore no reason for the Court to intervene on this ground.

2. Was the Board unreasonable in its assessment of the applicants' credibility?

[17] The applicants also criticize the Board for allegedly making unreasonable implausibility findings and for having dismissed the applicants' explanations without regard for the evidence. It appears from the following passages that the Board made two negative inferences with regard to the plausibility of the applicants' narrative.

[18] The Board explained its reasoning with regard to the fact that the applicants continued to remain in the same place until March 30, 2008, as follows:

> [18] The panel does not see, in the fact that the claimants remained all that time in the same place, behaviour that is compatible with that of someone who fears for their life. The panel is of the opinion that it is not plausible, under the circumstances, that the female claimant could have feared her former bosses, who threatened to kill her, to that extent, and yet she did not move after being warned that an article was about to be published that would likely raise their ire, and after her spouse was beaten. The female claimant cannot allege in the same breath that she stayed in the same place because she believed that the police would be able to protect her and, at the same time, maintain that the police were totally ineffective in her case, and that she had been advised by a lawyer that the Mexican State could not protect her. This is not a reasonable explanation under the circumstances.

[19] The Board also drew a negative inference from the fact that the applicants did not leave Mexico until June 1, 2008, and found their explanation for this to be unreasonable:

> [19] On March 30, 2008, after the principal female claimant was followed, the claimants allegedly moved in with a friend who was living two hours away from their usual place of residence. They did not leave Mexico until June 1, 2008. In answer to the panel's question as to why they had not left their country earlier, the claimants replied that they could not obtain a passport for their child

> without the child being examined by a paediatrician. In reply to the panel when it was pointed out to the principal female claimant that their child obtained his passport on April 17, and that this did not explain why they stayed in the country until June 1, the female claimant replied that they wanted to travel during peak season and that the travel agency could not get them any tickets before then.
>
> …
>
> [21] Once again, the panel does not see behaviour that is compatible with that of someone who fears for their life. The panel retains the fact that the claimants stayed with their friend from March 30 until June 1, although they had already decided to leave Mexico and they had all the necessary documents to do so. The panel does not believe that it is plausible, under circumstances, that the female claimant would have put the life of her entire family in danger while they waited for airline tickets for Canada. The panel cannot understand how seats could not be found on a flight destined for Canada during all that time.

[20] The Board drew a third negative inference about the applicants' credibility from the fact that they did not claim refugee protection immediately upon their arrival in Canada.

[21] In *Khaira v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 62, [2004] F.C.J. No. 46 at para. 14, Justice Martineau aptly summarized the latitude enjoyed by the Board in assessing credibility and the parameters within which a reviewing Court may intervene:

> [14] … In effect, the role of this Court, in the context of an application for review, is not to reassess the evidence filed before the Board. To the contrary, if the findings on credibility are reasonably supported by the evidence, this Court must not intervene. The Board is the trier of facts and is entitled to make reasonable findings regarding the credibility of a claimant's story based on implausibilities, common sense and rationality (*Ahmed v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 629 (F.C.T.D.) (F.C. 1re inst.) (QL), at paragraph 4). Bear in mind, it was the Board that heard the testimony, asked questions and noted the

> answers. Accordingly, the Board is in a better position than this Court to make these findings.

[22] I share the view of my colleague and find that, in the case at bar, the Board's findings regarding the plausibility of certain aspects of the applicants' narrative and its overall assessment of their behaviour are not unreasonable. The Board clearly identified the elements of the applicants' narrative which led it to conclude that certain aspects of their narrative were implausible and lacked credibility. Moreover, its reasons are clearly expressed, its reasoning is logical and its findings are reasonably supported by the evidence.

[23] Where the Board's findings fall within a range of possible, acceptable outcomes in respect of the evidence, the Court should not substitute its own assessment and its own opinion for those of the Board, even if a different outcome would have been preferred by the Court.

[24] The Court's intervention is therefore not warranted.

[25] The parties submitted no question for certification.

JUDGMENT

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

"Marie-Josée Bédard"
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2084-10
STYLE OF CAUSE:	SOFIA RAMIREZ ONOFRE ET AL. v. MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 24, 2010
REASONS FOR JUDGMENT:	BÉDARD J.
DATED:	December 2, 2010

APPEARANCES:

Stéphanie Valois	FOR THE APPLICANTS
Lynne Lazaroff	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stéphanie Valois Montréal, Quebec	FOR THE APPLICANTS
Miles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT