

Federal Court



Cour fédérale

Date: 20110218

Docket: IMM-4422-10

Citation: 2011 FC 203

Vancouver, British Columbia, February 18, 2011

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

LETICIA MARTINEZ VALENCIA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the RPD) dated June 30, 2010, concluding that the Applicant, Ms. Martinez Valencia, was not a Convention refugee or a person in need of protection. The RPD found that the Applicant has an Internal Flight Alternative (IFA) in Mexico, namely Veracruz or Guadalajara.

Factual Background

[2] The Applicant, a citizen of Mexico, left her country of nationality on June 22, 2008 and arrived in Canada on June 23, 2008. She sought refugee protection in Canada to escape her abusive ex-common law spouse, Octavio Garcia Salinas (Octavio), the father of her two children. She filed her refugee claim on June 24, 2008.

[3] The Applicant's relationship with Octavio began in 1985 and it is also then that he began to physically and emotionally abuse her. She was aware that he had serious drug and alcohol addiction problems. She also knew that by reason of childhood friendships, Octavio had police connections in Iztacalco, Mexico City, where they lived.

[4] In November 1999, after suffering another assault, the Applicant filed her first formal complaint against Octavio with the police. She was referred to the CAVI (a support center for domestic violence) and to the Center for Mental Health. She was told to return home and to wait for a summons since both she and Octavio would be called in for counselling. When the summons arrived in December 1999, Octavio tore it up and beat her. After this incident, the Applicant fled to Coixtlahuaca to a friend's place with her two sons.

[5] Five months later, Octavio located her, assaulted her on the street and choked her. She then returned to Mexico City with Octavio where she felt safer with the support of her in-laws and family.

[6] After an incident where Octavio had threatened to kill himself and their sons and had set fire to the home patio, the Applicant complained to the local police. The police did not intervene because he lived in the home.

[7] In September 2001, after another incident, the Applicant asked Octavio to leave the home and she changed the locks on the doors. He thereafter constantly harassed her. The police did not intervene considering his behavior not to be criminal.

[8] In May 2003, the Applicant attempted suicide and was hospitalized for a month due to depression.

[9] The Applicant and Octavio separated in September 2006. She then moved without her children to Matamoros, Tamaulipas, where she opened a branch of her interior decorating business.

[10] Octavio located the Applicant again, and in February 2007 he hit her van with his pickup truck while she was driving. She lost control and was badly injured. As a result, she filed a complaint with the police for attempted homicide. The police did not pursue the complaint because she could not inform them of Octavio's whereabouts. She then decided to move back to Mexico City to live with one of her sons. She had no contact with Octavio until June 2007.

[11] The Applicant discovered that Octavio was now residing with his parents in Mexico City. She informed the local police of this but they were not interested in pursuing the case. She was

referred to the Office of the Attorney General of the Republic who in turn told her to return to Matamoros where the crime had been committed.

[12] The threats, beating and harassment continued until the Applicant decided to leave Mexico.

The RPD Decision

[13] The RPD denied the Applicant's claim. The RPD found the Applicant to be a credible witness in regard to the events which led her to flee Mexico. However, it found that the Applicant has an Internal Flight Alternative (IFA) in Mexico, namely Veracruz or Guadalajara. It concluded that despite Octavio's police connections in Iztacalco, Mexico City, these connections did not extend to Veracruz or Guadalajara.

[14] In relation to Veracruz, the RPD relied on the state's domestic violence laws as well as the availability of a number of programs aimed at victims of domestic violence, including: free and confidential legal, psychological and social support services to crime victims and their families, dedicated phone lines to victims of domestic violence offering health, psychological and legal services, and shelters for abused women.

[15] In relation to Guadalajara, the RPD relied on domestic violence legislation and the availability of shelters, legal and mental health assistance.

[16] The RPD concluded that it would be reasonable for the Applicant to relocate to Guadalajara or Veracruz. It noted that she has post-secondary school education and had owned and operated a business by herself. Further, she could access counseling treatment and reasonably establish herself in either of these two cities.

[17] The RPD consequently concluded that there was no possibility the Applicant would be persecuted on a Convention ground or would be subjected personally to a risk of cruel and unusual treatment or punishment or to a danger of being tortured if she returned to Mexico.

Issues

[18] The following two issues are raised in this judicial review:

1. Is there a serious possibility that the Applicant will be persecuted in Veracruz or Guadalajara, the proposed IFAs?
2. Did the RPD err in its reasonableness assessment under the second prong of the IFA test?

The Law

[19] The legal test for determining the viability of an IFA is two-fold. A decision-maker must be satisfied on a balance of probabilities that:

1. There is no serious possibility that the claimant will be persecuted in the proposed IFA; and

2. Conditions in the proposed IFA must be such that it would be objectively reasonable in all the circumstances, including those particular to the claimant for the claimant to relocate.

(Thirunavukkarasu v. Canada (M.E.I.), [1994] 1 F.C. 589 (FCA) at p. 5; Rasaratnam v. Canada (M.E.I.), [1992] 1 F.C. 706 (FCA))

Standard of Review

[20] The determination of an IFA is a question of fact. The applicable standard of review is therefore reasonableness: concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process and “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47).

Analysis

[21] The Applicant argues that she made numerous attempts to obtain state protection in her home country prior to coming to Canada. She contends that it was unreasonable for the RPD to find that a person who has had no success in seeking protection from state authorities for almost twenty years and who has tried to relocate in far away states without success should return and try in another state. She claims that she could not do so without putting herself in danger.

[22] The Applicant contends that the RPD erred in finding that it was reasonable for the Applicant to relocate to Veracruz or Guadalajara. She maintains that the RPD failed to assess the

country conditions documentation with a view to the nature and type of violence the Applicant faces in Mexico, and in particular, the brutal, unpredictable and unexpected attacks after months without communication and the great lengths to which Octavio went in order to locate her.

[23] The Applicant challenges information relied on by the RPD which was obtained from the Response to Information Requests (RIR). She claims that the RPD makes selective use of the information and claims that much of it was taken from government websites and conversations with unnamed government employees. She argues that the information is not a thorough assessment of the level of protection offered to a woman in the Applicant's circumstances.

[24] The Applicant further argues that, according to the country documents, the preventative protection or protective measures in Jalisco (Guadalajara) or Veracruz, are unavailable to her because these can only be obtained in the state where the violence occurred. Further, she contends that other documents before the RPD corroborate the Applicant's assessment of the lack of availability of state protection for women in her circumstances.

[25] The Applicant also argues that the RPD did not take into consideration the *Gender Guidelines* in its assessment of the availability for an IFA. In deciding an IFA, the guidelines suggest consideration of factors such as a claimant's personal circumstances, past persecution, the claimant's psychological condition, safety and security, and economic survival.

[26] The Applicant argues that the RPD failed to address the severity of the Applicant's psychological condition and failed to consider the psychological report of the clinical psychologist.

She contends that it is unreasonable to characterize relocation in Mexico as merely “difficult” for the Applicant, given the findings of the psychologist who opined that her psychological state would deteriorate if returned to Mexico. The psychologist also expressed concerns for her life, given past suicidal ideation.

[27] The Applicant’s credibility is not in issue. This case turns on whether the RPD erred in determining that there was viable IFA for the Applicant in Veracruz or Guadalajara districts of Mexico. For the reasons that follow, I find that the RPD made no reviewable error in so finding.

[28] The Applicant claims that she did seek state protection in Mexico on many occasions over the years, mostly in Mexico City. However, the RPD accepted her evidence that protection would not be forthcoming in Mexico City by reason of Octavio’s connections with the police. The RPD further concluded that Octavio’s police connection only existed in the jurisdiction of Ixtacalco in Mexico City where they lived. It found that if she sought protection elsewhere, it would be available to her.

[29] On the two occasions the Applicant left Mexico City, she claims that she did seek protection, but to no avail. The RPD considered the Applicant’s evidence of Octavio’s attacks on both occasions and her dealings with the authorities in both locations. The first time, in Coixtlahuaca in December 1999, where Octavio located her and assaulted her, she did not seek state protection in Coixtlahuaca. Her evidence is that “since he located me, I thought I would be safer in Mexico City where I had my in-laws to intervene and my own extended family for support”.

[30] The second time she left Mexico City, she fled to Matamoros. This is where Octavio ran her off the road with his vehicle and seriously injured her. There is no dispute that the Applicant did report this attack to the local police. However, here too she decided to return to Mexico City since Octavio had found her. She argues that the police did nothing because she could not inform them of his whereabouts at that time. When she subsequently learned, after returning to Mexico City, that Octavio was living with his parents in Mexico City, she did not follow-up with the authorities in Matamoros. Instead, she approached the local police who referred her to the Federal Police who in turn referred her to the authorities in Matamoros. The Applicant argues that she got the run around. While I accept that this may be evidence of serious inadequacies in policing services in Mexico, particularly regarding inter-jurisdictional cooperation, the fact remains that, on this occasion, the authorities in Matamoros were not provided with the necessary information to pursue the investigation. The Applicant chose not to drive to Matamoros to pursue the matter. This is understandable, given the distances. She was told she had to appear in Matamoros in person. It would seem that a phone call could have been made to confirm if this was the case. No explanation is offered as to why she did not place a call to the authorities in Matamoros.

[31] In my view, on the evidence, it was open to the RPD to find that the Applicant did not seek state protection in either Coixtlahuaca or Matamoros. Therefore, on the two occasions, in locations where the authorities were beyond the reach of Octavio's influence, the Applicant failed to seek or pursue state protection.

[32] I agree with the Respondent that the Applicant's challenges to the RPD's reliance on the RIR are unfounded. The information was current, either publicly available or based on interviews for which the identity of the source and information on the nature of the conversation are available.

[33] A careful review of the RPD's reasons shows that it was well aware of the Applicant's circumstances in Mexico. The recitation of the Applicant's allegations and circumstances is detailed and complete. The RPD found the Applicant to be credible and stated that, "The panel understands that the claimant has been through much emotional and physical turmoil based on what happened to her in the past." Reading the decision as a whole, I am satisfied, that the RPD considered the Applicant's particular circumstances in assessing the country conditions documentation. The RPD specifically addressed the issue of women from other states being able to access support services available by reason of agreements signed by the state of Jalisco and other states in Mexico. The RPD's reasons set out in detail the protective services and measures available to abused women in Jalisco (Guadalajara) and Veracruz. I am satisfied that the RPD's findings made in relation to areas of Mexico as possible IFAs for the Applicant were reasonably open to it on the evidence.

[34] Regarding the country documents relating to Jalisco, I agree with the Applicant that the fact that more human rights complaints were filed by men than by women does not translate in a positive outcome for women. The fact that women tend not to report abuse can only support the contention that circumstances for women would be worse than the statistics show. On this basis the RPD concluded that it was difficult to access reliable comprehensive statistics on domestic violence. In my view, the RPD erred in so concluding. However, considering the overall assessment of the country documentation relating to the two IFAs, the error is not fatal to the RPD's decision.

[35] The Applicant's claim that the RPD did not consider the *Gender Guidelines* in assessing the availability of an IFA is without merit. The RPD expressly stated that it kept in mind the *Chairperson's Gender Guidelines* with respect to the Applicant's evidence. In its reasons the Panel stated:

The Panel understands that the claimant has been through much emotional and physical turmoil based on what happened to her in the past. However, the panel's duty is to assess the reasonableness of an IFA and the panel finds that although it may be difficult for her to be back in Mexico where she may be reminded of her ordeal, it is still reasonable for her to establish herself in either of the cities named.

[36] I am satisfied that the Panel considered the guidelines in assessing the nature and grounds of the alleged persecution and in assessing the Applicant's fear. Further, there is nothing to suggest that the Applicant experienced any difficulty in testifying before the panel or raised any concerns relating to the conduct of the hearing.

[37] The Applicant also argues that the RPD failed to take into account the Applicant's psychological condition and failed to consider the psychological report of the clinical psychologist. The RPD, in its reasons, expressly stated that it took the report into account. The report does not assist in assessing whether the Applicant's claim is well-founded or on the availability of a viable IFA in Veracruz or Guadalajara. The report speaks to aspects of the Applicant's subjective condition. Further, I agree with the Respondent that the report does not rebut the RPD's finding of available psychological, legal, medical and social assistance through government-run centers in Guadalajara and Veracruz.

Conclusion

[38] I find that the Applicant has failed to demonstrate a reviewable error of law or an error of fact made capriciously or without regard to the evidence. The RPD's decision is reasonable. It falls within a range of possible, acceptable outcomes which are defensible in respect to the facts and law. For the above reasons, the application for judicial review will be dismissed.

[39] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review of the June 30, 2010 decision of the Refugee Protection Division is dismissed.
2. No question of general importance is certified.

“Edmond P. Blanchard”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4422-10

STYLE OF CAUSE: LETICIA MARTINEZ VALENCIA
v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: February 8, 2011

**REASONS FOR ORDER
AND ORDER:** BLANCHARD J.

DATED: February 18, 2011

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