

Federal Court



Cour fédérale

Date: 20120518

Docket: IMM-6783-11

Citation: 2012 FC 611

Ottawa, Ontario, May 18, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

NUBIA DEL CARMEN ORELLANA ORTEGA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Nubia Del Carmen Orellana Ortega, contests the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated September 1, 2011, finding that she was neither a Convention refugee nor person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the following reasons, her application for judicial review is dismissed.

I. Background

[3] A citizen of El Salvador, the Applicant brought a refugee claim in Canada on November 17, 2010 based on a risk of harm at the hands of the Mara 18 gang. She had been kidnapped, beaten, raped, and ordered not to contact police. Thereafter, she responded to threatening telephone calls demanding the payment of money.

[4] In its determination regarding her claim, the Board was not convinced of the well-foundedness of the Applicant's fear as her actions were "not consistent with someone fleeing persecution, or a risk of harm, in that she made only the merest of efforts to seek state protection even though it was readily offered." Despite her initial report of the attack, she did not make further efforts to seek protection in response to the extortion payments.

[5] Reviewing documentary evidence, the Board also concluded that "as a whole, the issues of gang criminality, and corruption and deficiencies within the police, are being addressed by the state of El Salvador."

II. Issue

[6] The general issue raised by the Applicant is the reasonableness of the Board's decision.

III. Standard of Review

[7] *Mendez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 584, [2008] FCJ No 771 at paras 11-13 confirmed that the standard of review for determinations regarding state protection was reasonableness. In applying this standard, the Court will address the “existence of justification, transparency and intelligibility” as well as “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, [2008] 1 SCR 190 at para 47).

IV. Analysis

[8] The Applicant asserts that the Board’s findings were based in part on a misperception of her testimony as to what she told police and a selective review of documentary evidence.

[9] In particular, the Applicant contends it was unreasonable for the Board to conclude that she could have done more to seek police protection and get information from her friend Josue. She provided an initial report to police as to when and by whom she was attacked. The only new information provided by Josue was the reason why she was attacked and this would not have helped police. In addition, the police knew where her sister lived, but there was no evidence of any contact with her. The Applicant did not report subsequent extortion because of the threats to her family.

[10] The Respondent maintains that she could have provided more specific information to the police. Although the police did not get back in touch with her, this is not indicative of a lack of adequate state protection.

[11] I am prepared to accept the Respondent's position that the Board's conclusion in this regard was reasonable. The failure to take steps to seek state protection beyond an initial denunciation is a relevant consideration (see for example *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 843, [2011] FCJ no 1044 at para 19; *Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] FCJ no 399 at paras 32-34).

[12] Contrary to the Applicant's claims, I also fail to see how the Board erred in its treatment of documentary evidence regarding the adequacy of state protection in El Salvador. The Board clearly acknowledges contradictory information as to the ongoing challenges facing police in that country to combat gang violence, referencing "police corruption and deficiencies." Pointing to various programs in place, however, the Board found, based on a preponderance of the documentary evidence canvassed, that serious efforts are being made to address the problem and adequate state protection exists for victims of crime. This was not the only conclusion that could be drawn from the evidence, but it was one within the range of acceptable outcomes.

[13] The failure to refer to every piece of documentary evidence that the Applicant points to in submissions before this Court does not make the determination unreasonable (*Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ no 946 (CA)). The Court's role is not to reweigh the evidence before the Board.

[14] Justice Robert Barnes adopted a similar approach when he determined that a failure to refer to all the documentary evidence dealing with the gravity of the problem of gang violence in El Salvador as analyzed by the Board in the particular case before him did not constitute a reviewable error in *Paniagua v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1085, [2008] FCJ no 1350 at para 8. He stressed the “Board understood that state protection in El Salvador was not perfect but it also recognized correctly that perfection is not the standard by which the sufficiency of protection is to be measured.” He continued “[a]lthough the problems of gang violence were unquestionably profound, there was plausible evidence that the state protection apparatus in that country continued to function. It is not for the Court to reweigh the evidence or to substitute its views of that evidence for those of the Board.” This general line of reasoning was also applied to the assessment of documentary evidence in *Velasquez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 109, [2009] FCJ no 112 at paras 20-21 and *Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 236, [2011] FCJ no 301 at paras 15-17.

[15] As the Board in this instance also gave due consideration as to the issues associated with gang violence and state protection in El Salvador stressed by the Applicant, the Court would not be justified in intervening based on its treatment of documentary evidence.

V. Conclusion

[16] Since the Board's assessment of state protection was reasonable under the circumstances, the application for judicial review is dismissed.

JUDGMENT

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

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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