

Federal Court



Cour fédérale

Date: 20121004

Docket: IMM-8172-11

Citation: 2012 FC 1170

Ottawa, Ontario, October 4, 2012

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

ERIKA GALLO MUNOZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, a 28 year old citizen of Mexico, challenges in this judicial review application the September 30, 2011 decision of the Refugee Protection Division (the Tribunal) which determined she was not a Convention refugee nor a person in need of protection under section 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). The Tribunal based its decision on two findings which are determinative of her claim.

[2] First, the Tribunal found the applicant's story not to be credible. The fear she had expressed in her revised Personal Information Form (PIF) was rooted in an allegation she was brutally beaten and raped several times on the night of February 7, 2007 by two men in the apartment of a female person named Karla who had recently befriended her.

[3] The fact of her having been raped was not disclosed in her first PIF which was framed to be consistent with the claims of her two brothers who earlier had come to Canada to claim refugee status. The fact of the allegation of rape came out during a hearing into the refugee claim of her brother Francesco on which her first PIF was tailored. The hearing was adjourned because of her psychological state. She was later declared a vulnerable person. A second PIF was filed detailing the circumstances surrounding the new allegation of rape and was supported by a psychological report which explained why the applicant had been unable to tell the true story.

[4] The second determinative ground was the finding made by the Tribunal of the existence of an internal flight alternative (IFA) available to the applicant in Mexico City. It reached this conclusion "even if the panel had believed the applicant's allegations of rape and brutality by the trio". The panel also noted the applicant had gone to Mexico City for a month to stay with her aunt before her departure to Canada and was not harmed in Mexico's capital.

[5] The Tribunal framed the test for an IFA as follows:

... The test to be applied in determining whether there is an IFA is two-pronged: (i) there is no serious possibility of the claimant being persecuted in the proposed IFA area and (ii) conditions in the IFA area must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[6] The Tribunal found; (1) the applicant would not be of interest to the persecuting trio today, particularly after being told by one of the applicant's other aunt she had fled to Canada; (2) she is an educated young woman with a university education and training in accounting; (3) it would be possible for her to live in Mexico City; she has an aunt there with whom she stayed for a month and no harm had come to her; (4) considering her vulnerability she would not be alone in Mexico City, a city which has a good number of psychologists to help her deal with her issues involving anxiety; (5) concluded it would not be unreasonable for her to move to Mexico City and the proposed IFA would not jeopardize the life and safety of the applicant.

[7] It is settled law that the existence of a viable IFA is determinative of the applicant's claim because there is no serious possibility the applicant would be persecuted if she returned to Mexico and therefore is not a Convention refugee under section 96 of the *IRPA* and for the same reason would not be exposed to the harms listed in section 97 of the *IRPA* and therefore not a person in need of protection.

[8] It is settled law the existence of an IFA is inherent in the definition of a refugee under the Convention (See *Rasaratnam v Canada (Minister of Employment and Immigration)* (CA) [1992] 1 FC 706, at p 710 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (CA) [1994] 1 FC 589, both decisions of the Federal Court of Appeal).

[9] As Justice Linden expressed it in the 1994 case, a viable IFA must be sought rather than seeking international refugee protection. The judicial review application must be dismissed on the basis the applicant had a viable IFA.

JUDGMENT

THIS COURT'S JUDGMENT is that this judicial review application is dismissed. No certified question was proposed.

“François Lemieux”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-8172-11

STYLE OF CAUSE: **ERIKA GALLO MUNOZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

PLACE OF HEARING: Montreal

DATE OF HEARING: May 16, 2012

**REASONS FOR JUDGMENT
and JUDGMENT:** LEMIEUX J.

DATED: October 4, 2012

APPEARANCES:

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