Federal Court  Cour fédérale

Date: 20121023

Docket: IMM-1136-12

Citation: 2012 FC 1211

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 23, 2012

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Maria Isabel RUIZ COTO
Leslye Josefina MONTERO RUIZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by Anna Brychcy, a member of the Refugee Protection Division of the Immigration and Refugee Board (panel), filed in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC (2001), c 27 (Act). The panel rejected the refugee claim by Maria Isabel Ruiz Coto and Leslye Josefina Montero Ruiz (applicants), finding that they were not "Convention refugees" or "persons in need of protection" under sections 96 and 97 of the Act.

[2] The principal applicant, Maria Isabel Ruiz Coto, is 32 years old and was born in the State of Veracruz, Mexico. The second applicant, Ms. Coto's daughter, Leslye Josefina Montero Ruiz, is 10 years old. At the hearing before the panel, the principal applicant was appointed as the designated representative of her daughter.

[3] Before considering the facts and assessing the credibility of the principal applicant, the panel stated that it carefully assessed the guidelines of the Chairperson of the Immigration and Refugee Board entitled *Women Refugee Claimants Fearing Gender-Related Persecution*.

[4] After analyzing all of the evidence in the record, the panel found that the applicant was not a "Convention refugee" or a "person in need of protection".

[5] The panel accepted the applicant's claims that she was a victim of violence in the past. However, the determinative issue was state protection. The panel found that state protection was available to the applicant in the State of Veracruz, Mexico, where she lived, and that efforts were made to ensure her protection.

[6] Both the applicant and the respondent agree that the standard of review applicable to the adequacy of state protection is reasonableness given that it is a question of mixed fact and law (see *Hinzman v Canada (The Minister of Citizenship and Immigration)*, 2006 FC 420, [2007] 1 FCR 561 at paragraph 199 and *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47 (*Dunsmuir*)).

[7] I will add, however, that this Court must show considerable deference (*Singh v The Minister of Citizenship and Immigration*, 2006 FC 565) in determining whether the findings are justified, transparent and intelligible and fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above). It is not up to this Court to reassess the evidence that was before the panel (*Zrig v Canada (The Minister of Citizenship and Immigration)*, 2003 FCA 178, [2003] 3 FC 761 at paragraph 42).

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[8] Since the panel accepted that the applicant had been a victim of violence in the past, the determinative issue was thus strictly state protection in this case.

[9] In the absence of a complete breakdown of the state apparatus, there is a presumption that the state is able to defend its citizens. That "presumption serves to reinforce the underlying rationale of international protection as a surrogate, coming into play where no alternative remains to the claimant". Thus, the responsibility toward a refugee lies with the state of which the refugee is a citizen (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at page 726).

[10] I agree with the respondent's claims that the Federal Court of Appeal reminded us in *Carrillo v Canada (The Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 FCR 636 (*Carrillo*) that Mexico is a functioning democracy and that there is a strong presumption of state

protection capability. Even if the situation is not perfect, Mexico is a democratic country that can provide, at least in certain circumstances, protection to its citizens.

[11] The applicant therefore had the burden of proving with clear and convincing evidence, on a balance of probabilities, that the said protection was inadequate or non-existent. She was required to demonstrate that she had offered her country the real possibility of intervening before being able to legitimately infer that it was not capable of providing her with the necessary protection (*Hinzman et al v Canada (The Minister of Citizenship and Immigration)*, 2007 FCA 171, 362 NR 1).

[12] This case is different from *Capitaine v The Minister of Citizenship and Immigration*, 2008 FC 98, to which the applicant refers, in several respects. Namely, the applicant in the case at bar did not attempt to move to another state in Mexico before claiming refugee protection in Canada. Furthermore, there is no evidence that any other state—or even city—in Mexico would not have been able to protect her. The applicant even stated that her mother had to move to another city in Mexico after her attacker, Mr. Valencia, uttered threats, and that, following that move, her mother did not receive any more threats.

[13] I am therefore of the opinion that this case more closely resembles *Carrillo*, above (see also *Martinez v The Minister of Citizenship and Immigration*, 2010 FC 1200 and *Fuentes v The Minister of Citizenship and Immigration*, 2010 FC 457).

[14] Furthermore, even though the applicant claimed that the Mexican police were corrupt and accepted bribes, there is no convincing evidence that that was the case here.

[15] It must be noted that the police's refusal to act does not in itself make the state unable to protect its citizens. The applicant was required to do more than simply raise the police's inaction (see the Federal Court of Appeal decision in *Kadenko v The Minister of Citizenship and Immigration*, [1996] FCJ No 1376, 206 NR 272).

[16] When the applicant contacted the competent authorities and refused to attend a confrontation hearing, she was directed to a shelter for battered women. A lawyer, a psychologist and a social worker were involved in her case. All of this shows the Mexican state's willingness to deal with her case.

[17] The applicant apparently left the shelter against the advice of the professionals, a fact she purportedly failed to declare in her Personal Information Form narrative.

[18] All of this confirms the well-foundedness of the respondent's opinion that the panel was justified in giving more weight to the documentary evidence that organizations were devoted to protecting women in the State of Veracruz, that there were laws protecting women in Mexico and that the country is making a real effort to protect women (*Biachi v The Minister of Citizenship and Immigration*, 2006 FC 589 at paragraphs 13-14).

[19] It is important to recall, as the respondent's maintains, that assessing the evidence and the effectiveness of the protection a citizen is able to obtain in his or her country of origin is up to the

panel, as a specialized tribunal. It is not this Court's role to take the place of the panel in that respect *(Navarro v The Minister of Citizenship and Immigration*, 2008 FC 358 at paragraph 18).

[20] Regarding the adequacy of reasons, according to *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708:

> Reasons need not include all the arguments or details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result. If the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[21] I am of the view that this obligation was met in this case. The panel provided detailed reasons that make it possible to specifically identify which elements its decision was based on. The applicant's mere disagreement with the panel's factual findings is not equivelent to an error of procedural fairness (*Sidhu v The Minister of Citizenship and Immigration*, 2012 FC 515).

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[22] For the above-mentioned reasons, the application for judicial review is dismissed.

[23] I concur with counsel that there is no question for certification arising.

JUDGMENT

The application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board that Maria Isabel Ruiz Coto and Leslye Josefina Montero Ruiz were not "Convention refugees" or "persons in need of protection" under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC (2001), c 27, is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1136-12
STYLE OF CAUSE:	Maria Isabel RUIZ COTO, Leslye Josefina MONTERO RUIZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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