

CANADA / JUDGMENT

MA8-12212

COURT

Refugee Protection Division

DECIDED

2 March 2010

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Immigration and Refugee Board Refugee Protection Division Commission de l'immigration et du statut de réfugié Section de la protection des réfugiés RPD File No. / No de dossier de la SPR : MA8-12212, MA8-12213 Private Proceeding Huis clos Claimant(s) Demandeur(e)s d'asile XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX Date(s) of Hearing Date(s) de l'audience February 25, 2010 Place of Hearing Lieu de l'audience Montréal, Quebec Date of Decision Date de la décision March 2, 2010 Panel Tribunal Me Alain Bissonnette Claimant's Counsel Conseil du demandeur d'asile Me Odette Desjardins Tribunal Officer Agent du tribunal Cristian Jadue Designated Representative Représentant désigné XXXXX XXXXX XXXXX XXXXX Minister's Counsel Conseil du ministre Thérèse Lépine (Filing of documents) [1]

INTRODUCTION

- [1] XXXXX XXXXX XXXXX XXXXX, the principal claimant,¹ and XXXXX XXXXX XXXXX XXXXX XXXXX, her minor daughter, who are both citizens of Mexico, are claiming refugee protection under sections 96 and 97 of the Immigration and Refugee Protection Act (the Act), alleging a well-founded fear of persecution for reasons of their membership in a particular social group, and alleging that they are personally subjected to a risk to their lives or to a risk of cruel and unusual treatment or punishment.
- [2] At the start of the hearing, the principal claimant was named the designated representative for her minor daughter for the purpose of her claim for refugee protection. SUMMARY OF ALLEGED FACTS
- [3] The principal claimant alleged that she experienced a childhood in Mexico that was violent and in which she was mistreated. Her father was an alcoholic and was physically and psychologically abusive toward every family member. She also alleged that her father left the family home around XXXXX 1991.
- [4] The principal claimant alleged that in XXXXX 1993, she became romantically involved with XXXXX XXXXX She also alleged that in XXXXX 1996, when she was pregnant, her father reappeared and became furious with her because she was pregnant without being married. She also alleged that when her daughter was born in XXXXX 1996, Mr. XXXXX abandoned them.

- [5] The principal claimant alleged that in XXXXX 2006, her minor daughter told her that her grandfather, the principal claimant's father, had touched her inappropriately. She also alleged that she confronted her father about this, that they argued and that he hit her. She also alleged that she then contacted the police, and that her father was detained for physical aggression, but that she could not prove that her father had touched her minor daughter inappropriately.
- [6] The principal claimant alleged that in XXXXX 2006, she and her mother moved in order to get away from her father and his negative influence. She also alleged that in XXXXX 2007, her father showed up at their home, asked for forgiveness and promised to change his behaviour and not to consume alcohol anymore. She also alleged that her mother accepted and returned to live with him.
- [7] The principal claimant alleged that, starting in XXXXX 2008, because of scheduling restrictions, she had to leave her minor daughter with her parents. She also alleged that in XXXXX 2008, her father starting drinking alcohol again. She also alleged that her minor daughter told her that her grandfather was harassing her and so, consequently, she no longer left her daughter with her parents.
- [8] The principal claimant alleged that on XXXXX, 2008, her daughter told her that two people wearing masks had tried to rape her, but failed because someone knocked on the door and scared her aggressors away. She also alleged that she had called the police. Officers came and asked her some questions and asked her to file a complaint at the police station. She also alleged that her daughter told her that one of the individuals was a friend of her grandfather's. This was reported to the police and they started to investigate this individual, but he disappeared from the village.
- [9] The principal claimant alleged that she and her daughter became the subject of jeers from the village. She also alleged that when she left work one day, she was followed by a man who told her to withdraw her complaint or she and her daughter would suffer the consequences. She also alleged that, at that time, she decided to leave her country with her daughter because their lives were in danger.
- [10] The claimants left Mexico for Montréal by airplane on XXXXX, 2008. They claimed refugee protection in Canada XXXXX days later.

ANALYSIS

- [11] Given the copies of the passports submitted by the claimants as evidence,² the panel is satisfied as to their identity.
- [12] The credibility of the principal claimant's allegations and the possibility of an internal flight alternative are the determinative issues in this case.

- [13] With the assistance of the principal claimant's lawyer, and that of the Tribunal Officer, the panel ensured that the hearing was held in a calm and comforting environment, and limited the interruptions and questions that could be perceived as intimidating or aggressive. As such, the panel encouraged the testimonies of the principal claimant and her minor daughter.³
- [14] Before arriving at findings of fact and evaluating the credibility of the claimants' allegations, the panel read Guideline 4: Women Refugee Claimants Fearing Gender-related Persecution ⁴ as well some Federal Court decisions that deal directly with this issue.⁵ In light of this information, the panel is aware that extreme caution is required when reviewing the actions of women who are victims of domestic violence and that, in assessing these actions, specific knowledge must be used in order to attain a just and fair understanding, and that in order to acquire this specific knowledge, it is necessary to discard myths and stereotypes about abused women.⁶ The panel is also aware that, when reaching conclusions about the credibility of a woman who is alleging that she is the victim of domestic violence, the panel must be sensitive, knowledgeable and understanding about the reality that women face in these situations,⁷ and must apply a standard of what is reasonable that incorporates the experience of female victims of domestic violence.⁸ The panel must also endeavour to understand the evidence as a whole and in context⁹ and, if the panel doubts the credibility of a female claimant, the panel should rely on reasons that are based on evidence and logic and should then present these reasons in a clear manner.¹⁰
- [15] There were many questions at the hearing that dealt with the credibility of the principal claimant's allegations regarding the events that took place starting in XXXXX, 2008. When asked to express the fear that she had about returning to live in Mexico today, the principal claimant clearly indicated that she feared her own father's domestic violence and did not make any reference to the unknown individuals who allegedly tried to sexually abuse her minor daughter on XXXXX, 2008, or to the individuals who allegedly followed her a few days later. When asked to explain why she feared her father, the principal claimant replied that she herself had witnessed how her father abused her mother all her life and that she had confronted him in order to defend her mother. She also stated that when she was an adolescent, she had been harassed and that one of her father's uncles had tried to rape her, but that she did not talk about it. She also stipulated that she would not want her daughter to go through today what she, herself, lived through when she was an adolescent. When asked to explain whether her father would really want to rape her daughter, the principal claimant replied that he does not fear it when he is sober, but that it is a different matter when he is inebriated. Considering all the testimony from the claimants, the panel is of the opinion that the principal claimant has a real fear regarding her father's behaviour when he is inebriated. However, the fear that was previously alleged regarding individuals who allegedly threatened them starting on XXXXX, 2008, was not restated or corroborated at the hearing. Consequently, the panel is of the opinion that the claimants' credibility on this issue is undermined.

- [16] When asked at the hearing whether she had thought about going to settle elsewhere in Mexico, such as Mexico City, Monterrey, Puebla or Veracruz, before coming to Canada, the principal claimant initially replied that she had not thought about it because her father is a XXXXX who works elsewhere and that he knows many areas, and that she would not like that. When asked to explain how her father would be able to find them if they went to live in one of these cities, the principal claimant replied that he would eventually find out from his wife, the principal claimant's mother.
- [17] The first question to consider when looking at the possibility of an internal flight alternative is whether there is an area in the country where the claimants would not be subjected to persecution or to a risk to their lives.¹¹ The claimants have the burden of demonstrating that they could not benefit from an internal flight alternative in another part of Mexico.¹² During her testimony, the principal claimant clearly expressed that she wanted to get as far away from her father as possible. However, the panel is of the opinion that she did not establish that her father would be willing to search for them throughout Mexico in order to possibly abuse her daughter, or that he would be capable of finding them in one of the cities mentioned previously. Furthermore, the documentary evidence clearly indicates that there are, particularly in Puebla, resources and legal processes for people who, like the principal claimant and her minor daughter, fear being subjected to domestic and family violence.¹³ When asked whether she could have accessed these services, the principal claimant replied that it would be difficult for her because she does not want to create problems for her mother and because single mothers are not well perceived in Mexico. In light of the principal claimant's testimony, the panel is of the opinion that, if she was called upon to protect her minor daughter from actual threats from her own father, she could certainly call upon the psychiatric and legal resources that exist in Mexico, particularly for the violence prevention and crisis intervention.¹⁴ In light of all the testimony from the claimants and considering the documentary evidence regarding the resources that are available for the prevention of family violence and for crisis intervention, particularly in Puebla, the panel is of the opinion that they did not establish that they could not benefit from any internal flight alternative in Mexico, notably by going to Mexico City, Monterrey, Puebla or Veracruz.
- [18] The second question must now be addressed: whether it would be objectively unreasonable or severe to expect the claimants to move to another part of Mexico, either Mexico City, Monterrey, Puebla or Veracruz, before claiming refugee protection abroad.¹⁵ As such, the threshold should be set very high, and the claimants must present actual and concrete evidence of the existence of conditions which would jeopardize their life and safety in temporarily relocating to a safe area.¹⁶ Other than her fear of having difficulties in finding work because of her age and her difficult economic situation, the principal claimant did not provide any evidence that there are obstacles that prevented her and her minor daughter from settling elsewhere in Mexico. The principal claimant is now 38 years old. She has good work experience and has supported herself and her daughter up until now. She has not provided any document to support her fear of not being able to find work in Mexico City, Monterrey, Puebla or Veracruz, because of her age or the economic situation. Consequently,

the panel concludes that it is not objectively unreasonable or too severe to expect the claimants to move to Mexico City, Monterrey, Puebla or Veracruz before claiming refugee protection abroad. Consequently, the claimants have an internal flight alternative in their country.

CONCLUSION

- [19] The panel determines that the claimants are not "Convention refugees" under section 96 of the Act, or "persons in need of protection" under section 97 of the Act.
- [20] For these reasons, their claims for refugee protection are rejected. Alain Bissonnette Me
Alain Bissonnette IRB translation March 2, 2010 Original language: French Date REFUGEE
PROTECTION DIVISION / VICTIM OF VIOLENCE / SEXUAL ABUSE / AGENT OF
PERSECUTION / FATHER / INTERNAL FLIGHT ALTERNATIVE / FEMALE / DAUGHTER /
FEMALE / NEGATIVE / MEXICO 1 [This footnote refers strictly to the original French version
of the decision.] There is no consensus on the use of the term *demandeure* in a claim for
refugee protection. Relying on the evolutionary nature of the French language and growing
trend towards the use of *professeure* to represent the feminine of *professeur*, I am of the
opinion that the use of *demandeure* in the context of a claim for refugee protection
presented before an administrative tribunal is more appropriate than the word
demanderesse, which is generally used in the context of a confrontational legal proceeding.
2 The copy of the passport is part of the immigration documents filed as Exhibit A-2. 3
Thereby applying Guideline 4: Women Refugee Claimants Fearing Gender-related
Persecution, issued by the Chairperson of the Immigration and Refugee Board (IRB), and
taking into consideration the UN High Commissioner for Refugees, Guidelines on
International Protection No. 1: Gender-Related Persecution Within the Context of Article
1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7
May 2002, HCR/GIP/02/01, particularly the procedural issues listed under paragraph 36 of
that documents. 4 Cited in Note 3. 5 Particularly the following decisions: *Griffith v. Canada*
(Minister of Citizenship and Immigration), IMM-4543-98, Campbell, July 14, 1999. *Cho v.*
Canada (Minister of Citizenship and Immigration), IMM-4029-99, Gibson, August 9, 2000.
Pantas v. Canada (Minister of Citizenship and Immigration), IMM-9213-03, Russell, January
19, 2005; 2005 FC 64. *Chacon Fernandez v. Canada* (Minister of Citizenship and
Immigration), IMM-7100-04, Dawson, August 18, 2005; 2005 FC 1132. *Joseph v. Canada*
(Attorney General), IMM-1981-05, Shore, February 16, 2006; 2006 FC 165. *Gama Perez v.*
Canada (Minister of Citizenship and Immigration), IMM-3661-05, Campbell, April 3, 2006;
2006 FC 425. *Myle v. Canada* (Citizenship and Immigration), IMM-7075-05, Shore, July 13,
2006; 2006 FC 871. *De Araujo Garcia v. Canada* (Citizenship and Immigration), IMM-5987-05,
Campbell, January 24, 2007; 2007 FC 79. 6 *Griffith*, paragraphs 20 to 24, and *De Araujo*
Garcia, paragraph 24. 7 *Griffith*, paragraph 25; *Chacon Fernandez*, paragraph 16. 8 *Griffith*,
paragraph 28, and *De Araujo Garcia*, paragraph 27. 9 *Myle*, paragraph 15. 10 *Myle*,
paragraphs 1 and 15, and *Pantas*, paragraph 86. 11 *Rasaratnam v. Canada* (M.E.I.), 1992 1 F.C.
706 (C.A.) and *Thirunavukkarasu v. Canada* (Minister of Employment and Immigration),

1994 1 F.C. 589. 12 Yanez Alfaro v. Canada (M.C.I.), F.C. IMM-5397-05, Beaudry, April 10, 2006; 2006 F.C. 460, paragraph 22. 13 A-1: National Documentation Package - Mexico, October 2, 2009; Document 5.7: Research Directorate, Immigration and Refugee Board of Canada, Mexico: Protection and resources provided to women victims of domestic violence in the state of Puebla (2005-June 2007), MEX102545.FE, 3 pp. 14 Idem. 15 Rasaratnam v. Canada (M.E.I.), 1992 1 F.C. 706 (C.A.) and Thirunavukkarasu v. Canada (Minister of Employment and Immigration), 1994 1 F.C. 589. 16 Campos Navaro v Canada (M.C.I.), F.C. IMM-3158-07, de Montigny, March 17, 2008; 2008 F.C. 358, paragraph 20.

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Prepared on 25 October 2026 · Esheria