

Date: 20070207

Docket: IMM-3514-06

Citation: 2007 FC 127

Ottawa, Ontario, February 7, 2007

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

OFELIA ISAIAS GOMEZ DE LEON

Applicant

and

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mrs. Gomez de Leon is a citizen of Venezuela. Her claim for refugee protection was joined with that of her daughter, Marianela Del Carmen Leon De Mujica, her daughter's husband, Carlos Eduardo Mujica Mujica, and her grandson, Eduardo José Mujica Leon. Mrs. Gomez de Leon's son-in-law, Mr. Mujica, was the principal claimant. Mrs. Gomez de Leon, her daughter and her grandson all claimed that their fear of persecution resulted from their membership in the social group composed of Mr. Mujica's family members. All four individuals had lived together in Venezuela.

[2] The gist of Mr. Mujica's claim was that he owned a business in Venezuela that sold and maintained medical equipment. In the course of trying to collect an account for equipment sold to a hospital, he was told he would have to pay a bribe to the hospital administrator. He refused, and complained to the director general of the hospital. When that complaint met with no success, he tried to complain to the

general director of the department of health. The general director's office would not grant Mr. Mujica an appointment. Mr. Mujica then left, advising that he would have no choice but to report the incident to the office of the Prosecutor of the Republic. Later that day, Mr. Mujica received a phone call from his wife who told him that their house had been searched by individuals dressed in police uniforms. The officers had pushed Mr. Mujica's wife and forced her and her mother onto the couch while they searched the house. The officers then left, taking with them some documents. Later, Mr. Mujica was kidnapped at gunpoint as he returned home. He was taken to a remote location, beaten, and told that evidence had been found in his house that linked him to anti-government activities and a coup being organized against the government. His kidnappers threatened that if he continued his activities he and his family would be liquidated.

[3] Mr. Mujica and his wife testified before the Refugee Protection Division of the Immigration and Refugee Board (Board). The Board found their evidence to be credible. Mrs. Gomez de Leon did not testify. The Board accepted that she suffers from Alzheimer's disease. She was represented at the hearing by her daughter, Mr. Mujica's wife, acting as her designated representative.

[4] In very brief reasons, the Board accepted that Mr. Mujica, his wife and his son were Convention refugees. However, the Board rejected the claim of Mrs. Gomez de Leon. First, the Board noted that Mr. Mujica's two brothers, his sister and his son remained in Venezuela, but they had not been questioned or harmed. (In making this finding the Board acknowledged that Mr. Mujica was not questioned about harm to his siblings, but noted that both he and his wife testified that his son had not been harmed because he "is living on his own"). Second, the Board found that Mr. Mujica and his wife had not been persecuted on account of their daughter's activities. Mr. Mujica and his wife testified that their daughter had been actively associated with the opposition to the government in Venezuela and fled to Canada, seeking and obtaining refugee status. Yet, while calls were made to her parents' home after she left Venezuela asking where she was, neither Mr. Mujica nor his wife were harmed by her persecutors. On the basis of these considerations the Board found that Mrs. Gomez de Leon did not face more than a mere possibility of persecution.

[5] The parties did not address in oral argument the appropriate standard of review. In her written submissions, the Minister argued that the standard of review to be applied is patent unreasonableness. What essentially is at issue in this case is the Board's assessment of the evidence and its factual conclusion that Mrs. Gomez de Leon would not be in danger as a result of her familial relationship with Mr. Mujica. I am prepared to apply the standard of patent unreasonableness to the review of that fact-based conclusion.

[6] A patently unreasonable decision is one that is "clearly irrational" or "evidently not in accordance with reason". See: *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, at paragraph 52.

[7] It is settled law that one does not qualify as a Convention refugee simply because a relative is being persecuted. There must be a nexus or connection between the persecution levied against one family member and the persecution, or fear of persecution, faced by other family members. Thus, Mr. Mujica and his wife did not

become Convention refugees because of the well-founded fear of persecution their daughter faced as an opponent of the government. Family members only belong to a social group for the purpose of refugee protection where there is evidence of persecution (or a well-founded fear of persecution) against the family members as a social group.

[8] In the present case, the Board accepted that Mr. Mujica's wife and son have a well-founded fear of persecution because of their relationship with him, although no reasons were given for that finding. The Board gave no reason for rejecting the evidence of Mr. Mujica's wife that she believed that her mother would be threatened or harmed "[b]ecause she is part of our family". The Board inferred that Mrs. Gomez de Leon was similarly situated to Mr. Mujica's siblings and son, but apparently ignored the evidence of Mr. Mujica and his wife that their son was safe because he lived separate and apart from them. Mrs. Gomez de Leon, by comparison, lived with Mr. Mujica and his wife. The Board also inferred that Mrs. Gomez de Leon was similarly situated to her daughter and son-in-law, as parents of an opponent to the government. However, there was no evidence that any threats made against the daughter included threats that her family would be harmed. Nor was there evidence that Mr. Mujica and his daughter feared the same agent of persecution.

[9] In my view, the Board's inferences were flawed for these reasons.

[10] The Board's ultimate conclusion may have been one open to it on the evidence. However, the Board reached its decision on the basis of inferences that were not properly grounded in the evidence. It failed to refer to any of the documentary evidence before it which may have shed light upon the likelihood of Mrs. Gomez de Leon being perceived to be a member of Mr. Mujica's family and subject to threats as her daughter testified. As such, the decision of the Board is, in my view, clearly irrational and not in accordance with reason. It follows that the application for judicial review will be allowed.

[11] Counsel posed no question for certification and I agree that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed and the decision of the Refugee Protection Division of the Immigration Refugee Board dated June 6, 2006 is hereby set aside.
2. The claim for refugee protection is remitted to a differently constituted panel of the Refugee Protection Division for redetermination.

“Eleanor R. Dawson”

Judge