

Federal Court



Cour fédérale

Date: 20150203

Docket: IMM-6546-13

Citation: 2015 FC 132

Ottawa, Ontario, February 3, 2015

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**MARIA BRIGITTE DIAZ CASTRO
JULIETTE JOHANA ESPITIA DIAZ
BRIGGETTE LORENA BALLESTEROS DIAZ
MARIANA ESPITIA DIAZ
JUAN ALEJANDRO MONTOYA ESPITIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of the Refugee Protection Division's [RPD] decision dismissing the Applicants' refugee protection claim on grounds of credibility and state

protection. The Applicants are the principal Applicant, Maria Brigitte Diaz Castro, her daughter, her niece and her niece's children.

II. Background

[2] The principal Applicant's claim was based on her fear of the Revolutionary Armed Forces of Columbia [FARC]. She claimed that when she returned to manage the family farm in 2010 (which had been abandoned in 2005), she was threatened by the FARC, who demanded 30 million Colombian dollars. When the money was not paid, the FARC returned to threaten her and her nephew, who lived and worked on the farm.

[3] The principal Applicant fled to Baranquilla. The nephew fled to Bogota but returned to the farm once or twice a week. After a further threat from FARC, the nephew left the farm.

[4] The principal Applicant went to the prosecutor in Baranquilla who told her to go to the Immediate Reaction Unit [URI]. The URI told her to go to the GAULA. The GAULA officer advised her to file the complaint with the local authorities who had jurisdiction over the matter. The Applicants took no further action other than to flee to the United States and come to Canada.

[5] The Applicants filed their refugee protection claim in Canada. The RPD denied the claim and the matter was appealed to the Refugee Appeal Division [RAD] as well as being subject to this judicial review.

The RAD denied jurisdiction over the appeal by reason of the Canada-USA Safe Third Country Agreement. The judicial review of the RAD decision was denied.

[6] In the present matter, the RPD found:

- a) that because there were inconsistencies in the Applicants' POE documents, the fear of the FARC was not credible; and
- b) that the Applicants had not rebutted the presumption of state protection because the principal Applicant waited eight months to go to authorities; the nephew did not seek state protection; the principal Applicant had not been denied state protection but had merely been told to file with the appropriate authorities; and neither the daughter nor the niece sought state protection despite relying on incidents of threats and physical assaults.

[7] In the principal Applicant's case, she relied in part on the RPD decision to grant a sister's refugee claim – the sister had been at the family farm in 2005. In oral argument in this Court, counsel raised the prospect that another sister had been granted refugee protection. However, counsel put nothing before the Court to support this argument. In the circumstances it was improper to raise the matter and the Court cannot consider that matter further.

III. Analysis

[8] It is common ground that the standard of review for both issues is reasonableness. Importantly the determinative issue is state protection.

A. *Credibility*

[9] The RPD's conclusion on this issue was unreasonable. The RPD criticized the principal Applicant because on her Declaration (IMM 5669), she had not been clear as to whether she was working at the farm or in a restaurant in 2012.

[10] However, in Section 12 of the same document, the principal Applicant gave greater detail which addressed the issue of her occupation and location at the relevant time. The RPD made no reference to this evidence. That evidence was highly relevant as it represented a complete and contemporaneous rebuttal to the RPD's finding. Therefore, the credibility finding cannot stand.

[11] However, the error in the credibility finding has no impact on the state protection analysis. This is not a case where a credibility conclusion taints or influences the issue of state protection.

B. *State Protection*

[12] I cannot find anything unreasonable in the RPD's state protection analysis. The RPD considered that the presumption in favour of state protection is more difficult to rebut where the country is, as is Colombia, a democracy. The principal Applicant's delay in seeking state protection was inconsistent with a real fear of harm and her subjective reluctance to engage state organizations was insufficient to counter the presumption. She was not denied state protection; she chose not to engage the relevant state protection authorities – or at least it was reasonable to reach that conclusion.

[13] The first sister's situation and her evidence at the RPD hearing was general and of little assistance. Her circumstances were different; her timeframe was six years earlier. Further, the principal Applicant had not put the matter into her narrative and in response to the Member raising the matter of others having been threatened, chose not to rely on her sister's situation in her own case.

[14] Given those conditions, the RPD cannot be criticized for not analyzing the first sister's situation or for not relying upon it.

[15] As mentioned earlier, the Applicants' counsel improperly tried to raise the matter of a second sister's refugee status. The excuse for improperly raising the matter was that counsel had been instructed to do so.

[16] Whatever the instructions may have been, counsel is responsible for the conduct of the case and such instructions should be refused. To knowingly proceed in a manner acknowledged to be inappropriate is not permitted and is inconsistent with counsel's obligations as an officer of the Court.

If the evidence of the second sister's situation was so important, there are procedures which ought to have been followed to put the matter properly before the Court.

IV. Conclusion

[17] This judicial review will be denied. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is denied.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6546-13

STYLE OF CAUSE: MARIA BRIGITTE DIAZ CASTRO, JULIETTE JOHANA ESPITIA DIAZ, BRIGGETTE LORENA BALLESTEROS DIAZ, MARIANA ESPITIA DIAZ, JUAN ALEJANDRO MONTOYA ESPITIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: PHELAN J.

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APPEARANCES:

Dov Maierovitz FOR THE APPLICANTS

Nur Muhammed-Ally FOR THE RESPONDENT

SOLICITORS OF RECORD:

Doc Maierovitz FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario