

Federal Court



Cour fédérale

Date: 20150227

Docket: IMM-6560-13

Citation: 2015 FC 250

Vancouver, British Columbia, February 27, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CARLOS RAMIREZ RODAS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Defendant

JUDGMENT AND REASONS

[1] This is an application for leave and for judicial review of the Refugee Protection Division [RPD] decision concluding that Mr. Ramirez Rodas is neither a Convention refugee nor person in need of protection. His claim for protection was joined with that of his spouse, Marion Restrepo Mejia. Both claims were denied on the basis of credibility. In addition, the claim of Ms. Restrepo Mejia was also denied on the basis that she had an internal flight alternative in

Venezuela. The court only granted leave to Mr. Ramirez Rodas and dismissed his spouse's application for leave.

Background

[2] Mr. Ramirez Rodas is a citizen of Colombia and his spouse is a citizen of both Colombia and Venezuela. Ms. Restrepo Mejia was employed by an airline in Columbia and had access to her employer's airplanes.

[3] The evidence of the applicants was that in November 2012, they met another couple, Alberto and Adriana. Alberto invited them to his farm for a get together on January 26, 2013. When they first arrived, they were the only guests. Alberto received a phone call and then invited the applicants to look around. While they were in the stables, a man entered carrying a briefcase. He introduced himself as a member of the Revolutionary Armed Forces of Colombia - People's Army [FARC] and told them that they needed to help FARC "carry out a plan to put pressure on the government." The man opened his briefcase, showing them that it contained a weapon and money, which he said was in exchange for Ms. Restrepo Mejia's participation. His plan was for her to take explosives into the airport and onto one of her employer's airplanes. She would then hand them over to two FARC members purporting to be passengers.

[4] The applicants refused to participate. When they refused to accept the money, the man threatened them with his gun and warned them that they had no choice, regardless of whether they took the money. He told them everything would be ready in a month. Ms. Restrepo Mejia asked for more time to plan a way to collaborate with them. The man refused and told her that if

they didn't cooperate, they would die. She insisted that he should give them extra time since new security measures were being implemented.

[5] The man told them that he would contact them again in a month and warned them not to alert authorities. He showed them pictures of tortured people and told them "that's what happened to those who said too much."

[6] On February 7, 2013, Ms. Restrepo Mejia went to the police anti-narcotics office at the airport to check and update a manual. This was in the course of her regular work. After she left, she was approached in the office parking lot by Alberto. He questioned her about why she was with the police, told her that she and her husband were being watched closely, and threatened her. Meanwhile, Mr. Ramirez Rodas was beaten and forced into a car by three individuals while leaving the bank. He was told that he was going to be killed because of his wife's actions. The assailants forced him to call his wife and she told him what happened at the airport. Hearing "what really happened," the men released Mr. Ramirez Rodas but warned him again not to go to the authorities. This is when the applicants decided to seek refugee protection in Canada and they resigned from their jobs the next day.

[7] The applicants stopped working on February 15, 2013, and soon thereafter Alberto came to their home demanding to know if they had quit their jobs since they had not been around. He threatened Ms. Restrepo Mejia with a weapon and told her to tell her spouse to remember what had happened to his father. He had been murdered by the FARC. They left their home the next

morning and went into hiding at a relative's home while they figured out how to leave the country.

[8] They fled Colombia on March 6, 2013, traveling first to the United States on visitors' visas obtained in September or October 2012. They stayed in the United States for approximately three months before entering Canada. They made a claim for refugee protection in Canada on June 12, 2013, alleging a fear of persecution by the FARC in Colombia and Venezuela.

[9] The applicants claim that they did not seek state protection because they feared reprisals and did not think protection would be adequate. They did not think it was safe to go elsewhere in Colombia because there is a FARC presence everywhere. Mr. Ramirez Rodas claims that both his father and brother were murdered by FARC and that one of his cousins has been missing for a few years.

[10] In assessing the credibility of the applicants, the Board noted that Mr. Ramirez Rodas stated at the hearing that FARC had a history with his family: his father and uncle had been threatened and murdered by FARC for failing to comply with extortion demands, his brother was killed in 1994, and his cousin disappeared and FARC demanded money for his release. The Board Member did not accept his explanation that this was not included in the Basis of Claim [BOC] narrative because he thought he only had to talk about his case. The Board Member noted that the BOC narrative referred to Mr. Ramirez Rodas' "most beloved beings" being murdered by FARC, but there were no details about their names, relationship to him, or the

circumstances of their murders. Moreover, there was no reference to his cousin. The Board Member found these omissions to be relevant and material because they “describe very serious past and continuous threats and persecution to [Mr. Ramirez Rodas’s] family from FARC.” The Board Member did not accept the death certificates for Mr. Ramirez Rodas’s brother and father, an affidavit from his mother, and a newspaper article as credible and trustworthy evidence that FARC was responsible for those deaths. The Board Member drew a negative credibility inference against Mr. Ramirez Rodas and found that these allegations were made in an effort to bolster the claim.

[11] Secondly, the Board Member drew a negative credibility inference against Ms. Restrepo Mejia for failing to include several incidents that demonstrated unethical police actions in her BOC narrative. The Board Member found these incidents to be relevant and material as they influenced the applicants’ decision not to seek state protection.

[12] The Board Member also found aspects of Ms. Restrepo Mejia’s story implausible, particularly that she had completely unsecured access to the airplanes without being searched at a security checkpoint, and that the airline and pilots “would not have a more sophisticated system of receiving urgent and pertinent information concerning flight routes and navigation maps” than waiting for her to deliver printed manuals. The Board Member concluded that this was “outside the realm of what reasonably could be expected, especially in this age of heightened security awareness concerning air travel.” The Board Member also found it implausible that Ms. Restrepo Mejia would be seen going to the anti-narcotics office on February 7, 2013, since it is “located within the airport and she does not know if it is accessible to the public.”

[13] The Board Member drew a negative inference from the applicants' delay in leaving Colombia, despite having valid visitor's visas to the United States:

The panel finds that the claimants' actions are not indicative of those with a genuine fear of persecution, rather that they took the time to give notice and resign from their workplaces, to arrange their belongings and to get ready for their trip to the United States.

[14] Finally, the Board Member drew a negative inference against Ms. Restrepo Mejia because she failed to disclose that she was a citizen of Venezuela until after the respondent filed a Notice of Intent to intervene.

[15] For all of these reasons, the Board Member concluded, on the balance of probabilities, that the applicants' material allegations were not credible.

Issues

[16] Mr. Ramirez Rodas raised three issues:

1. Did the RPD err in its assessment of credibility?
2. Did the RPD err in its assessment of subjective fear?
3. Did the RPD err by ignoring relevant documentary evidence?

Analysis

A. Credibility

(1) Omission of Mr. Ramirez Rodas's Family History

[17] Mr. Ramirez Rodas submits that the Board Member erred in finding that his BOC narrative did not specifically refer to his family member's history with FARC, since the very details she notes were in fact included in the BOC. Further, he submits that these details were peripheral to his claim because these experiences were not what caused him to seek refugee protection, so particular details did not have to be included (See e.g. *Akhigbe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249 at para 16, 112 ACWS (3d) 930 (FC); *Khalifa v Canada (Minister of Citizenship and Immigration)*, 2004 FC 369 at para 18, 129 ACWS (3d) 978; *Naqui v Canada (Minister of Citizenship and Immigration)*, 2005 FC 282 at paras 22-24, 270 FTR 177; and *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101 at paras 18-19, 154 ACWS (3d) 1183 [*Feradov*]).

[18] The respondent submits that the omitted details were relevant because they were used to bolster the applicants' fear for their lives and it says that the evidence does not show that the FARC was responsible for the deaths. It is submitted that on this view, the Board Member's finding that these assertions were made to bolster their claim is supported.

[19] It is clear that the Board Member misstated the evidence - Mr. Ramirez Rodas expressly stated in his BOC narrative that his father and brother had been murdered by FARC and that his cousin had disappeared. This was recognized by the Board Member at the hearing when Mr. Ramirez Rodas was questioned. On this basis, the Board Member's credibility finding related to the family history is unreasonable and made without regard to the material before the RPD.

[20] Further, Mr. Ramirez Rodas testified that his family members had been extorted because they owned land and their non-compliance with those demands resulted in their deaths. This suggests that these incidents are not connected to the 2013 incidents that form the basis of the refugee claim, which are linked to his wife's employment. The incidents with his family are not "material or key allegations of persecution," the omission of which would be a reasonable basis for concern. As in *Feradov*, the BOC narrative was "clearly not intended to be an encyclopaedic recitation of the evidence" and it was "written as a very general summary of the central aspects of his claim." In *Feradov*, Justice Barnes concluded that the RPD should not have been concerned about the absence of collateral details.

[21] The Board Member rejected the documentary evidence submitted regarding the deaths of Mr. Ramirez Rodas's brother and father, concluding that it had no probative value with regard to showing that the FARC was responsible for their deaths. No reasons were provided for their dismissal. However, these documents were critical to Mr. Ramirez Rodas's evidence regarding his family history. He testified that the police investigations of the deaths did not come to anything and that it was not safe for them to tell the police that FARC was involved due to the risk of reprisals. If this sworn evidence is presumed to be true, it is difficult to understand what more credible evidence the applicants could have obtained.

[22] This was the primary credibility inference that was drawn against Mr. Ramirez Rodas, and thus it is safe to say that it must have been a key factor in the assessment of his credibility. However, since this finding was considered cumulatively with the Board Member's findings against his spouse, it is not possible to know the effect that it had in the Board Member's

analysis and the ultimate credibility finding: *Huerta v Canada (Minister of Citizenship and Immigration)*, 2008 FC 586, 167 ACWS (3d) 968. This alone renders the decision unreasonable as described in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 and warrants sending the matter for redetermination.

(2) Implausibility Findings

[23] The Board Member's implausibility findings only led to negative inferences against Ms. Restrepo Mejia. Nevertheless, they are still relevant to this application because they are tied to the factual basis of Mr. Ramirez Rodas' alleged fear of persecution.

[24] Mr. Ramirez Rodas submits that the Board Member's finding about Ms. Restrepo Mejia's access to the airplanes was unreasonable because it is speculative. It is submitted that the Board Member did not disclose any evidence or specialized knowledge about Colombian airlines in general or regarding new, low-cost airlines like that which employed Ms. Restrepo Mejia.

[25] The respondent responds that the Board Member's finding is reasonable because she was entitled to rely on common sense and rationality in her assessment of the evidence and it is common knowledge that there is heightened security awareness in air travel.

[26] While the assessment of credibility is the heartland of the RPD's discretion, the RPD is often in no better position than the reviewing court to draw inferences based on the implausibility of the claimant's story based on common sense, rationality and judicial knowledge: *Giron v Canada (Minister of Citizenship and Immigration)* (1992), 143 NR 238 at

239, 33 ACWS (3d) 1270. The court in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, 208 FTR 267 held that:

Plausibility findings should be made only in the clearest of cases, i.e. if the facts as presented are outside the realm of what could reasonably be expected or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant.

[27] I agree with the applicant that the Board Member's implausibility findings on this issue are unreasonable. This was a subjective assessment of the evidence and the Board Member does not clearly identify the facts that form the basis for her conclusion, only citing a vague "heightened security awareness." As such, the assessment of what is plausible is mere speculation.

B. *Subjective Fear*

[28] Mr. Ramirez Rodas submits that the Board Member erred in her finding about the perceived delay in leaving Colombia because she failed to consider that the incidents with FARC were cumulative acts. The respondent submits that the Board Member gave them an opportunity to explain the delay and that her conclusion was reasonable given their explanation.

[29] The applicants claimed that they were first threatened on January 26, 2013. On February 7, 2013, Ms. Restrepo Mejia went to the police anti-narcotics office and both applicants were violently threatened. On February 19, 2013, Ms. Restrepo Mejia was threatened after they stopped going to work. Each of these incidents is arguably linked to the original threats and warnings they had received.

[30] Delay in leaving the country of origin is relevant to credibility and it may provide sufficient grounds to dismiss a claim in the right circumstances, particularly if there is no reasonable explanation: *Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 923 at para 28; and *Duarte v Canada (Minister of Citizenship and Immigration)*, 2003 FC 988 at para 14, 2003 FCT 988. However, it has been held that delay in leaving a county is not decisive: *Caicedo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1092, 195 ACWS (3d) 233 [*Caicedo*].

[31] The claim for protection was based on a number of incidents that culminated in an event which they argue forced them to leave (i.e. Alberto threatening Ms. Restrepo Mejia at home and referring to the murder of Mr. Ramirez Rodas's father). In such circumstances, the issue of delay from the first of such acts ought not to be considered indicative of a lack of subjective fear for the reasons expressed in *Ibrahimov v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1185 at paragraph 19:

Cumulative acts which may amount to persecution will take time to occur. If a person's claim is actually based on several incidents which occur over time, the cumulative effects of which amount to persecution, then looking to the beginning of such discriminatory or harassing treatment and comparing that to the date on which a person leaves the country to justify rejection of the claim on the basis of delay undermines the very idea of cumulative persecution.

[32] The facts of this case are remarkably similar to those of *Caicedo*, where a Colombian applicant feared persecution by FARC after being threatened due to her political activities. She delayed leaving the country for six weeks after receiving the first threat, even though she already had a valid visa to enter the United States. The RPD concluded that she would have left right away if she had been genuinely afraid. Justice Near found this to be unreasonable:

With all due deference to the Board, taking six weeks to arrange to permanently leave your family, home and country while experiencing escalating threats does not seem to me to be unduly unreasonable. Especially when we consider that the PA did take other reasonable steps in line with the threat similar to sequestration – she stopped doing volunteer work, going to the party office, changed her telephone number and fled as soon as she decided that was her only option.

[33] Here, the applicants went into hiding for approximately 26 days after receiving the first threat at the farm and fled Colombia approximately two weeks after that. This does not seem an undue delay given the circumstances, particularly given their explanation that they needed to borrow money from relatives in order to leave the country. They also took reasonable steps to deal with the threat by trying to buy themselves some extra time and placate their oppressors before coming to the conclusion that they would have to leave the country.

C. *Documentary Evidence*

[34] Mr. Ramirez Rodas submits that because the Board Member misdirected herself on the credibility issues, she erred by ignoring relevant documentary evidence that demonstrates that the applicants faced a serious possibility of persecution in Colombia.

[35] There may be some merit in this submission since the evidence is, in part, consistent with the applicants' testimony regarding Mr. Ramirez Rodas's family members and the police corruption in Colombia. However, as the findings above are a sufficient basis for allowing this application, and since the claim for protection must be redetermined, there is little value in exploring this allegation in detail.

[36] For these reasons, the application must be allowed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to read as follows:

CARLOS RAMIREZ RODAS

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

2. The application is allowed;
3. The decision of the RPD relating to Mr. Ramirez Rodas is set aside and his claim is remitted to a differently constituted panel for determination; and
4. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6560-13

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