

Federal Court



Cour fédérale

Date: 20160217

Docket: IMM-3334-15

Citation: 2016 FC 215

Ottawa, Ontario, February 17, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**SANDRA MILENA BUILES
MELISSA ASUAD BUILES**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a decision of the Refugee Protection Division [RPD] in which it determined that the Applicants (Sandra – wife; and Melissa – daughter) were not refugees or persons in need of protection. The RPD had found Juan (husband) to be a refugee.

For the reasons herein, the Court has found the decision to be unreasonable and the judicial review will be granted.

II. Background

[2] Juan Alejandro Asuad, Sandra Builes and Melissa Builes are citizens of Colombia.

[3] Mr. Asuad was a self-employed litigator practising civil and criminal law. He was what Canadians might call a civil rights lawyer – an area of involvement since his student days. He was also involved in reclaiming family land stolen by fraudulent documents. Additionally, he was seeking compensation for the deaths of his father and brother – the father having been kidnapped and killed.

[4] Mr. Asuad's wife, Sandra, was a university psychologist involved in child development centres in areas under the influence of armed gangs.

 Melissa is their minor daughter – 12 years old at the relevant time.

[5] On February 27, 2015, two men threatened Mr. Asuad. They told him that they knew where he lived and that he had a daughter, and warned him to stop being a snitch and a disturber. Mr. Asuad did not know who these people were or on whose behalf the threats were made.

[6] Immediately after the threats Mr. Asuad reported the incident to the Office of the Prosecutor. The following week he reported the incident to the Ombudsman, the *Personeria*, the Justice Hall and the Administration Department for Attention and Reparation to Victims.

No action was taken and the institutions informed Mr. Asuad that they did not have the infrastructure to provide security.

[7] Thereafter, Mr. Asuad and the Applicants made their way to Canada and filed their refugee protection claims.

[8] The RPD found Mr. Asuad to be a credible and trustworthy witness. They accepted the facts in his Basis of Claim and his oral testimony.

[9] The RPD examined the nature of his practice in furtherance of the administration of justice. They found that the country documents establish that lawyers involved in similar work (human rights, state corruption, drug trafficking and land disputes) had also received similar threats.

[10] The RPD also found that the documentary evidence established that state protection was not likely to be effective for lawyers involved in human rights advocacy, land restitution and certain criminal cases. The RPD found a well-founded fear and granted Mr. Asuad refugee protection.

[11] In respect of Sandra and Melissa, the RPD concluded that, since the threat was against Mr. Asuad to force him to stop work and since he was now in Canada - “the assailants have no good reason to pursue the issue further.” On that basis, the RPD held that Sandra and Melissa could be returned to Colombia without risk.

III. Analysis

[12] The sole issue is the reasonableness of the RPD's conclusion that the Applicants would not be at risk if returned to Colombia.

The standard of review is reasonableness.

[13] The RPD's decision is wholly unreasonable, based on rank speculation and inconsistent with the evidence.

[14] The Applicants' claim is largely derivative because the risk is through their association with Mr. Asuad.

[15] The RPD knew that the agents of persecution were unknown, yet they speculated that since Mr. Asuad was in Canada, his family would not be at risk. There is no evidence to suggest that these unknown persons would be satisfied with Mr. Asuad's Canadian refuge.

It is equally plausible that since these agents were believed to merely wish Mr. Asuad to stop his activities (an assumption made without evidence), threatening his family would be the most certain way to keep him dormant even from afar.

[16] As noted in *Londono Soto v Canada (Citizenship and Immigration)*, 2008 FC 354, 166 ACWS (3d) 343, determinations on the plausibility of who will be attacked and when must be made with caution because of the difficulty of predicting who will be targeted and for what level of involvement.

[17] The RPD speculated, without any basis, as to the agents of persecution's motives, means and future intentions. They assumed that, if they were right about motive (to stop human rights work), they would behave sensibly and rationally toward the Applicants. There is no evidence to support any of this.

[18] The evidence shows that family members of human rights lawyers have been targets of persecution. The evidence shows that, at least for these people, there is no effective state protection.

[19] Before the RPD sends someone back to the area of risk (the natural consequence of its negative decision), it must have a sound basis for its forward looking analysis of risk to the returnee. They owe at least that much to the wife and child of a husband/father who had legitimate grounds for his fear where there is no effective state protection available to them.

[20] The decision makes a veiled reference to the prospect of the Applicants being sponsored by Mr. Asuad. While that may be a reasonable prospect (perhaps intended to soften the harshness of the decision), it is an irrelevant consideration.

[21] The RPD's decision is unreasonable in all the circumstances.

IV. Conclusion

[22] This judicial review will be granted, the decision quashed and the matter referred back to a different member for a new determination.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter is to be referred back to a different member for a new determination.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3334-15

STYLE OF CAUSE: SANDRA MILENA BUILES, MELISSA ASUAD
BUILES v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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