

Federal Court



Cour fédérale

Date: 20190506

Docket: IMM-4960-18

Citation: 2019 FC 588

Toronto, Ontario, May 6, 2019

PRESENT: Mr. Justice Campbell

BETWEEN:

**EDNA LUISA TURCIOS SANTOS DE
DOMINGUEZ (A.K.A EDNA LUISA TURCIOS
SANTOS)
CANDIDA FAUSTINA ARRIAGA MEDINA
ANDREA SOFIA DOMINGUEZ TURCOIS
KATHERINE MARCELA DOMINGUEZ
(A.K.A KATHERINE MARCELA
DOMINGUEZ TURCIOS)
MARIO ELIAS DOMINGUEZ ARRIAGA
MARIO ANDRES DOMINGUEZ TURCIOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants in the present Application are a family of citizens of Honduras who claim refugee protection particularly pursuant to s. 97 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 (*IRPA*) on the basis of subjective and objective fear of personalized risk of extortion should they be required to return to Honduras. By a decision of the Refugee Protection Division (RPD) dated September 5, 2018, the Applicants were found not to be persons in need of protection pursuant to s. 97 of *IRPA*.

[2] For the reasons that follow, I find that the decision under review was rendered in reviewable error.

[3] The Applicant family consists of the Principal Applicant, her husband [the Male Applicant], their three children and the Male Applicant's mother. The Applicants' claim for protection based on personalized risk arises from the following evidence.

[4] The Male Applicant and his mother co-owned a pharmacy. He alleged that on January 13, 2017, he received a call to his cell phone, insulting him and asking about money. He attempted to report the incident to the police, but was refused. He alleged that about a month and a half later, he received another phone call to his cell phone from a man identifying himself as a member of the gang MS-13. The person identified the Male Applicant's family members, including two of his three children, knew where they lived, where the Male Applicant worked and where the Principal Applicant worked. The gang member demanded the Male Applicant pay a weekly fee. He stated that if the Male Applicant went to the police, he would be killed. Shortly after receiving this threatening phone call, the family left Honduras. The Applicants stated that after they left, men went to the Principal Applicant's place of employment, as well as the area around the pharmacy, and were asking about the Applicants' whereabouts.

[5] It is an important feature of the present Application that the RPD did not make any negative credibility findings, and, thus, the evidence advanced by the Applicants' is to be taken by the RPD as the truth.

[6] The RPD rejected the Applicants' claim on a finding that all residents of Honduras face risk of extortion and, therefore, the Applicants do not meet the test under s. 97(1)(b)(ii) of the *IRPA*. The RPD provided the following rationale for rejecting the claim:

[32] However, the claimant testified that his situation was not generalized because not everyone receives a death threat. I do not accept this proposition because extortion, by definition is the practice of obtaining something, especially money, through force or threats. In any event, it is personal targeting that distinguishes an individualized risk from a generalized risk. Where a person is specifically and personally targeted for death by a gang in circumstances where others are generally not, then, he or she is entitled to protection.

[33] I acknowledge that the male claimant testified that, during the telephone call, the man who alleged to be a member of MS-13 advised that they had identified his family members, knew where he lived, where he worked and where his wife worked. However, the fact that the male claimant's identity became known to MS-13, does not mean his risk is not faced generally by others in Honduras. Extortion threats are made through social engineering. Personal information is sometimes obtained through social media, the Internet, or a victim's family member. In this case, there was no great pattern of personal targeting to show that the claimants will be subjected to a greater risk than the risk faced by the Honduran population in general. The claimants are in the position many Hondurans find themselves in. In this case, the male claimant, in essence, received one phone call demanding money.

[Emphasis added]

[7] Thus, by the emphasized wording of paragraph 32, the RPD set a test for when a risk of extortion becomes a personalized risk warranting protection. However, in paragraph 33 the RPD found that the Applicants did not meet the test stated in paragraph 32 because "there was no

great pattern of personal targeting to show that the claimants will be subjected to a greater risk than the risk faced by the Honduran population in general”. With respect to this statement, I find that the credible evidence that the Applicants provided certainly goes towards establishing a pattern of personal targeting which meets the test set by the RPD. In particular, the fine details of the extortion suffered by the Applicants go to establish an actual personalized risk in operation. In my opinion, because no explanation was provided by the RPD to clarify why the Applicants did not meet the expected test, I find that the RPD’s rationale for rejecting the Applicants claim is unintelligible.

[8] As a result, I find that the decision under review is unreasonable.

JUDGMENT in IMM-4960-18

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for determination by a different decision-maker.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4960-18

STYLE OF CAUSE: EDNA LUISA TURCIOS SANTOS DE DOMINGUEZ (A.K.A EDNA LUISA TURCIOS SANTOS), CANDIDA FAUSTINA ARRIAGA MEDINA ET AL. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 24, 2019

JUDGMENT AND REASONS: CAMPBELL J.

DATED: MAY 6, 2019

APPEARANCES:

Deanna Karbasion FOR THE APPLICANTS

Kareena R. Wilding FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Loebach FOR THE APPLICANTS
Barristers and Solicitors
London, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario