Federal Court  Cour fédérale

Date: 20190801

Docket: IMM-829-19

Citation: 2019 FC 1037

Vancouver, British Columbia, August 1, 2019

PRESENT: Madam Justice St-Louis

BETWEEN:

CARLOS HORACIO SALCEDO SANCHEZ
KARLA ALEXANDRA SALCEDO CONGOLINO
FRANCIA ELENA CONGOLNO DE SALCEDO

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES & CITIZENSHIP AND MINISTER OF PUBLIC SAFETY

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants, Mr. Carlos Horacio Salcedo Sanchez, his wife Mrs. Francia Helena Congolino De Salcedo, and their 26-year-old daughter, Ms. Karla Alexandra Salcedo Congolino, seek judicial review of the decision rendered by the Refugee Protection Division

(RPD) on December 18, 2018. The RPD rejected their claim for refugee protection, concluding that they are neither Convention refugees nor persons in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

II. Background

[2] The Applicants are citizens of Colombia. In addition to Karla Alexandra, Mr. Salcedo Sanchez and Mrs. Congolino De Salcedo have seven other children: five live in Canada, having been granted refugee status, while two live abroad.

[3] Carlos, Jaminton, John and Kevin have been granted refugee status based on Section 96 of the Act, their race as Afro Colombians having been recognised as the nexus. On the other hand, Wanda was granted protection under Section 97 (1) of the Act, race having not been recognised as a nexus in her case.

[4] On June 20, 2017, Mr. Salcedo Sanchez and his daughter left Colombia for the United States, and on July 23, 2017, Ms. Congolino De Salcedo joined them there. On August 14, 2017, they travelled to Canada by taxi, entered at a point-of-entry in British Columbia, and claimed refugee protection pursuant to sections 96 and subsection 97(1) of the Act.

[5] As per Mr. Salcedo Sanchez's Basis of Claim (BOC) form, upon which his spouse and daughter base their claims, the Applicants fear the BACRIM, a paramilitary group active in

Colombia, because of their son Carlos' failure to comply with extortion threats in October 2013.

III. RPD decision

[6] On December 18, 2018, the RPD rejected the Applicants' claim. The RPD first determined that the Applicants were not Convention refugees under section 96 of the Act because their claim had no nexus to one of the Convention grounds. The RPD found that the reason the Applicants alleged being targeted was in connection with the October 2013 extortion demand by criminals to their son Carlos, who was trying to set up a business in Buenaventura. The RPD considered the issue of race, highlighted by counsel. However, it did not find that the allegations in this regard indicated that the son Carlos, who was the person initially targeted in the criminal extortion demands, was identified as a target based on race, but that it was based on his role as a small business owner.

[7] The RPD then examined the Applicants' claim under section 97, whereby they need to establish, on a balance of probabilities, that it is more likely than not that they face a risk to life or risk of cruel and unusual treatment or punishment in Colombia from the BACRIM who targeted their son Carlos. The RPD stated that the key issue was the evidence regarding the circumstances of the three Applicants between the time of the inquiries and attacks when criminals were searching for Carlos in May 2014, and the Applicants' departure from Colombia in June/July 2017.

[8] The RPD found that inconsistencies and omissions in the Applicants' evidence indicated that they were not credible in their allegations about subsequent attempts to find the parents and siblings of Carlos after he was himself attacked, and that the Applicants had not met their burden.

[9] The RPD based its finding on inconsistencies between the Applicants' initial statutory declarations, their BOC, and their testimonies, as well as on the Applicants' unsatisfactory explanations of those inconsistencies.

[10] The BOC the Applicants signed on August 29, 2017 did not mention any problem between the fall of 2014 and the beating of the security guard in June 2017. Their statutory declaration of August 14, 2017 did not mention the beating of the guard, but referred to engagements they had which precluded them from leaving Colombia. In his testimony before the RPD, Mr. Salcedo Sanchez referred to death threats he received in Cali, in May 2017, from two men on motorcycles; to notes left to his children in Colombia; to threats his daughter Karla received in Cali at some point before May 2017; and to another document with threats left at the final apartment where they had lived.

[11] Ultimately, the RPD did not find that the Applicants' explanations satisfactorily account for the serious omissions of evidence from the statutory declaration and from the BOC narrative, that Mr. Salcedo Sanchez's alleged memory issues were not substantiated and that the Applicants were in fact attempting to bolster their claim after their submissions at the port of entry by adding additional alleged encounters that did not occur. The RPD also found that

the Applicants' evidence about their activities over the past years indicated that they were not being actively sought by the BACRIM.

[12] Finally, the RPD examined whether there was residual evidence, based on the Applicants' profiles, to establish the basis for a refugee claim. The RPD recognized that country documents refer to problems of discriminatory treatment of Afro Colombian people. It noted however, that the claimants did not advance allegations of fear of severe and sustained mistreatment outside of their allegations about the targeting from the BACRIM, that the Applicants themselves testified to this effect, and thus determined that there was no sufficient residual evidence based on the Applicants' profiles as Afro Colombians to establish the basis for a refugee claim.

[13] On February 5, 2019, the Applicants filed an application for leave and judicial review against the RPD's decision.

IV. Position of the parties

[14] The Applicants did not challenge the RPD's credibility findings. They challenge the decision on the two following grounds: (1) failure of the RPD to consider material personal evidence and exhibit evidence before it that bore on the issue of the section 96 claim, nexus on the basis of race or imputed political opinion, and failing to consider the possibility of mixed motive; and (2) failure to consider material evidence on the residual claim of the Applicants on their risk profile.

[15] The Applicants submit that the standard of review is reasonableness, and that the Court can interfere if the RPD misstated or ignored relevant evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 [*Cepeda-Gutierrez*]).

[16] In relation to the nexus issue, the Applicants argue that the RPD failed to address the issue, and to consider the following material evidence: (1) the document issued in 2014 by the Colombian Centre for Information and Orientation for Victims in Colombia, confirming that the Applicants are victims of forced displacement; (2) the findings, in previous RPD decisions relating to their family members, that Carlos was the only businessman in his area to be targeted for extortion; that he was targeted for his race; and that Afro-Colombians are most at risk of being targeted by paramilitary groups; and (3) the threatening note of January 2014, identifying the family as military targets.

[17] In relation to the residual risk profile issue, the Applicants argue that the RPD failed to consider the fact that (1) in 2014, the Colombian Centre for Information and Orientation for Victims in Colombia recognized the Applicants as victims of forced displacement; (2) the paramilitary operations of "social cleansing" are targeted towards "undesirables" like the Applicants; (3) the Applicants had been targeted by the BACRIM until 2014; (4) the Applicants received a note from the BACRIM identifying them as military targets; (5) their testimony.

[18] The Applicants submit that, if the Tribunal has misstated the evidence or where important evidence is not mentioned specifically and analyzed in the agency's reasons, then the Court is more willing to infer from the silence that the agency made an erroneous finding of fact

"without regard to the evidence" and that the Tribunal is to regard the totality of the evidence before it (*Cepeda-Gutierrez*; *Giron v Canada (Minister of Employment and Immigration)* (1992) 143 NR 238).

[19] The Ministers agree that the RPD's decision should be reviewed on the standard of reasonableness, as all the issues raised relate to matters of mixed fact and law (*Gutierrez v Canada (Citizenship and Immigration)*, 2018 FC 4 at paras 22–25).

[20] The Ministers argue that the RPD's decision was reasonable. They submit that a claimant must establish a personalized risk and that there was no evidence before the RPD that the Applicants were personally targeted for being Afro-Colombian (*Banguera Palacios v Canada (Citizenship and Immigration)*, 2011 FC 950 at paras 20–21). In response to the Applicants' argument that the RPD failed to consider evidence of their race, the Applicants submit that the RPD's conclusion on the lack of nexus was reasonable, given that the RPD considered country documents, heard the wife and daughter's testimonies that they did not experience difficulties as Afro-Colombians, and noted the racial slurs.

[21] The Ministers submit that, in any event, the determinative issue for the RPD was credibility and the Applicants do not take issue with any of the RPD's credibility findings. They submit that the Applicants are urging the RPD to accept their claim on the decisions granting refugee protection to the other family members, but that there is no legal requirement for the RPD to follow findings of fact from previous decisions (*Gutierrez* at paras 53, 58; *McNally v Canada (National Revenue)*, 2015 FC 767 at para 36; *Siddiqui v Canada*

(Citizenship and Immigration), 2007 FC 6 at para 17). They point out that, in this case, the Applicants were found to be not credible and their allegations differed from those of their other family members.

[22] The Ministers conclude that the Applicants are asking the Court to reweigh the evidence, which is not the Court's role in judicial review (*Navarro Linares v Canada (Citizenship and Immigration)*, 2010 FC 1250 at para 49).

V. Discussion

[23] I agree with the parties that the standard of reasonableness applies to the RPD's findings of fact and of mixed fact and law (*Matsika v Canada (Citizenship and Immigration)*, 2019 FC 602 at para 11).

[24] It is well-established that the RPD does not need to mention every piece of evidence in its decisions (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16; *Jareno Gonzalez v Canada (Citizenship and Immigration)*, 2019 FC 49 at para 28; *Cepeda-Gutierrez*). Although "a failure to mention compelling evidence on a crucial point, or evidence on such a point that contradicts an officer's conclusions, may constitute a reversible error" (*Torres v Canada (Citizenship and Immigration)*, 2019 FC 150 at para 26), this is not the case here.

[25] As discussed at the hearing, the RPD did address the motive of race in its reasons, and its conclusion is reasonable given the evidence. The documents that the Applicants allege were not

considered by the RPD do not contradict the RPD's conclusions. The Applicants insist on the impact of the document issued in 2014 by the Colombian Centre for Information and Orientation for Victims in Colombia, but that document only identifies the Applicants as victims of forced displacement, and does not refer to any potential Convention grounds (Certified Tribunal Record at 387).

[26] Furthermore, there is no legal requirement for a board member to follow another member's factual findings (*Guttierez* para 53-58).

[27] Finally, despite the information contained in the country documents, the Applicants testified that they did not experience any persecution due to being Afro Colombians, and the threatening notes do not speak either to the effect that the Applicants might be targeted for a Convention ground (Certified Tribunal Record at 412).

[28] In conclusion, the Court finds the decision reasonable given the record before the RPD, the law, and the jurisprudence.

JUDGMENT in IMM-829-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question is certified.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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