

Federal Court



Cour fédérale

Date: 20230526

Docket: IMM-4595-22

Citation: 2023 FC 736

St. John's, Newfoundland and Labrador, May 26, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

BELSY CRISTINA SARMIENTO HERRERA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Belsy Cristina Sarmiento Herrera (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), denying her claim for refugee protection.

[2] The Applicant is a citizen of Colombia. She worked there as a social leader, primarily providing humanitarian aid to people displaced by armed conflict. She alleged a fear of persecution from the Revolutionary Armed Forces of Colombia (the “FARC”).

[3] In 1995, the Applicant left Colombia and went to the United States of America. She did not seek refugee protection in that country. In 2020, fearing the change in immigration policies introduced by President Trump, she came to Canada and claimed protection.

[4] The RPD found the Applicant to be credible and accepted her explanation for failing to seek protection in the United States, the first country she entered after leaving Colombia. However, it found that the Applicant was no longer at risk from the FARC due to her long absence from the country and the change in country conditions during her absence.

[5] The Applicant now argues that the RPD erred by failing to apply subsection 108(4) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), that is whether compelling circumstances exist such that refugee protection should be conferred.

[6] The Minister of Citizenship and Immigration (the “Respondent”) submits that the RPD did not err in failing to consider subsection 108(4) since it had not found the Applicant to be a refugee, within the meaning of the Act.

[7] The decision of the RPD is reviewable on the standard of reasonableness, following the directions in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[8] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra* at paragraph 99.

[9] I do not accept the submissions of the Applicant that the RPD “implicitly” found her to be a Convention refugee, because it had found her evidence to be credible. Credible evidence from an applicant may satisfy the subjective element of the test for Convention refugee status, following the decision in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 (S.C.C.).

[10] However, a finding that a claimant’s evidence is “credible” is not enough to show that a claim for Convention refugee status is established.

[11] It is for the decision-maker, in this case, the RPD to determine that a claimant has met the legal test to be found a Convention refugee. That status does not depend upon the self-assessment of a claimant. The RPD’s credibility finding in this case is not equivalent to the finding of Convention refugee status.

[12] The RPD also referred to the objective evidence about country conditions. It found that FARC dissidents and prominent defenders of human rights continue to be at risk from the FARC. However, the RPD concluded that the FARC would not view the Applicant as a person with such a profile.

[13] Upon considering the evidence before the RPD and the parties' submissions, both written and oral, I am satisfied that the decision meets the applicable standard of review and there is no basis for judicial intervention.

[14] The application for judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-4595-22

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

There is no question for certification.

“Elizabeth Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4595-22

STYLE OF CAUSE: BELSY CRISTINA SARMIENTO HERRERA v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 26, 2023

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MAY 26, 2023

APPEARANCES:

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