Date: 20080215

Docket: IMM-888-07

Citation: 2008 FC 192

BETWEEN:

CAMPO ELIAS RIVERA
BLANCA ROSA PENA DE RIVERA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON J.

INTRODUCTION

[1] These reasons follow the hearing at Toronto on the 12th of February, 2008 of an application for judicial review of a decision of the Refugee Protection Division (the "Board") of the Immigration and Refugee Board wherein the Board determined the Applicants not to be Convention refugees or persons otherwise in need of protection equivalent to refugee protection. The decision under review was delivered orally at the close of the Applicants' hearing before the Board on the 13th of February, 2007.

BACKGROUND

[2] The Applicants are husband and wife and citizens of Colombia. In August of 2002, their principle residence was in Bogotá but they had a country house in the municipality of Guarinosito, department of Caldas. They describe the region of their country house at that time as being a "red zone" dominated by armed guerrilla groups.

[3] While at their country house on the 25th of August, 2002, the Applicants were required by members of one of the guerrilla groups to attend a meeting. The Applicants refused to attend. Rather, they returned to Bogotá and never again returned to the Guarinosito area and their home there.

[4] Having failed to cooperate with the guerrillas, the Applicants feared for their safety, even in Bogotá. They felt they were being watched. They were aware of other property owners who were kidnapped after failing to attend guerrilla meetings as required. In the narrative to their Personal Information Form, they wrote:

> …
> …we cannot even go to the park with our grandchildren without fears.
>
> It is this type of dangerous situation even in Bogotá that causes our fears to increase.
> …
> We know that we cannot obtain any real protection from the authorities as they are not able to deal with all the violence in Columbia [sic].
> …

[5] In May of 2004, the male Applicant's half-brother who had, on occasion, gone to check on the Applicants' country home, was murdered. Shortly, thereafter, the Applicants left Colombia.

They arrived in Canada on the 23rd of July, 2004, having sojourned in the United States. Their claim for protection in Canada followed.

THE DECISION UNDER REVIEW

[6] After briefly reciting the factual background to the Applicants' claim, essentially without analysis, the Board concluded with respect to the Convention refugee aspect of the claim:

> Certainly, nothing specific happened to them [the Applicants] personally between August 2002 and July 2004. They were anxious, but as the documentary evidence shows, all Colombians were anxious about the revolutionary forces in their country in particular.
>
> In light of the proceeding, I must conclude that the claimants were not subjected to persecution in their country of origin within the meaning of section 96 of the Act.
>
> Indeed, despite the claimant's testimony – the panel being well aware of the situation in Colombia – if the guerrillas had targeted the claimant since 2002, he would undoubtedly have suffered direct consequences, which is not the case in the matter at hand.

[7] The Board disposed of the Applicants' claim to Convention refugee-like protection under section 97 of the *Immigration and Refugee Protection Act*[1] in equally brief reasons. In each case, the Board reached its conclusion essentially without analysis.

[8] Finally, and once again in very brief terms, the Board concluded that the Applicants had not rebutted the presumption in favour of state protection for them if they were required to return to Colombia.

[1] S.C. 2001, c. 27.

ANALYSIS

[9] At the close of the hearing before me, I advised counsel that I would allow this application for judicial review and indicated that I found the Board's reasons to be entirely inadequate in that they were devoid of analysis and thus failed to meet the Board's obligation to provide "written reasons" for its decisions where a claim is rejected by it[2]. Having reconsidered the materials before me following the hearing, I reach the same conclusion, that is, that this application for judicial review must be allowed, but I now choose to rely on a more substantive issue, that being the failure of the Board to apply the appropriate test for determining whether or not the Applicants should succeed on their claim to Convention refugee status.

[10] I reiterate one paragraph from the Board's reasons earlier quoted:

> In light of the proceeding, I must conclude that the claimants were not subjected to persecution in their country of origin within the meaning of section 96 of the Act.

The foregoing brief paragraph is the sole basis provided for rejection of the Applicants' Convention refugee claim.

[11] To succeed on a Convention refugee claim, it is not necessary for claimants such as the Applicants to establish that they were subjected to persecution in their country of origin. Rather, it is only necessary that claimants establish that there are "good grounds" or a "reasonable chance", or even a "serious possibility" that they will be subjected to persecution if returned to the country

[2] See: Refugee Protection Division Rules, subsection 61(2), SOR/2002-228.

against which they claim protection. Past persecution is simply not a condition precedent to a successful claim.

[12] In *Adjei v. Canada (Minister of Employment and Immigration)*[3], the following oft-quoted brief paragraph appears at page 683:

> What is evidently indicated by phrases such as "good grounds" or "reasonable chance" is, on the one hand, that there need not be more than a 50% chance (i.e., a probability), and on the other hand that there must be more than a minimal possibility. We believe this can also be expressed as a "reasonable" or even a "serious possibility", as opposed to a mere possibility.

[13] Here, the Board simply did not address the issue of the forward-looking nature of the test for Convention refugee status. In the result, the Board erred in law in rejecting the Applicants' Convention refugee claim.

CONCLUSION

[14] Based upon the foregoing considerations, this application for judicial review will be allowed. The decision under review will be set aside and the Applicants' application will be referred back for reconsideration and redetermination. While counsel for the Applicants raised other issues, in light of the foregoing, I need not address them in these reasons.

CERTIFICATION OF A QUESTION

[15] At the close of the hearing of this matter, counsel requested an opportunity to review my reasons and to make submissions on certification of a question. These reasons will be distributed

[3] [1989] 2 F.C. 680 (F.C.A.).

and counsel will have ten (10) days from their date to file and serve any submissions they wish to make on certification of a question. Only thereafter will an Order disposing of this matter be issued.

"Frederick E. Gibson"

JUDGE

Ottawa, Ontario
February 15, 2008

FEDERAL COURT

SOLICITORS OF RECORD

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