

Date: 20080310

Docket: IMM-2479-07

Citation: 2008 FC 329

Ottawa, Ontario, March 10th, 2008

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

RAMIRO ENRIQUE MORA ZAPATA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Romero Enrique Mora Zapata claimed refugee protection in Canada on the basis of his fear of persecution in Colombia from the terrorist group known as FARC. A panel of the Immigration and Refugee Board dismissed his claim for a lack of credible evidence. Mr. Mora Zapata argues that the Board failed to appreciate the evidence he tendered in support of his application and wrongly faulted him for failing to provide more. He asks me to order a new hearing before a different panel of the Board. I agree that the Board erred in its treatment of the evidence and must, therefore, allow this application for judicial review.

I. Issue

[2] Was the Board's conclusion supported by the evidence?

II. Analysis

[3] I can overturn the Board's decision only if I find that it was out of keeping with the evidence before it.

1. Mr. Mora Zapata's Account of Events

[4] Mr. Mora Zapata was shot in the leg in 1997. He was working as a taxi driver in Medellin. One day, two men asked him to drive them to a pool hall where they shot and killed a number of people inside. Days later, two men appeared at his mother's home. He was not there, but the men noticed his taxi parked outside the pool hall across the street from his mother's home. They entered the hall, asked Mr. Mora Zapata for his driver's licence and identity card. He believed they were undercover police officers. The men left, but soon thereafter four masked men entered the pool hall and began shooting. Mr. Mora Zapata hid under a pool table, but was shot at close range in the leg. He was left for dead. The other men in the hall were killed. He hoped that they were the main targets. He did not believe the shooters were really after him. After he recovered from his wound, he started driving his cab again.

[5] Mr. Mora Zapata was shot in the stomach in August 1999. The bullet lodged in his spine. At that point, he began to understand that he was a target of the terrorist group known as FARC. On the day he was shot, FARC sent a letter of condolence to his mother. The note stated that members of the group thought they had killed him in 1997, and now they were determined to finish the job or they would lose face. He understood that the two men he had taken to the pool hall in 1997 were members of a group called AUC. They had carried out an attack on FARC members and, at that point, FARC thought that Mr. Mora Zapata was involved with the AUC because he had provided the transportation. He believed he was identified by the colour of his taxi and the license plate. After a lengthy convalescence, he left Colombia in the spring of 2000.

[6] Mr. Mora Zapata was shot in the face in July 2006. He was the victim of an armed robbery in the United States. At that point, he decided to come to Canada. He wondered whether FARC had reached across the border to kill him in the United States. He had not made a refugee claim in the United States because he knew that most Colombians were turned down. He arrived in Canada on August 27, 2006.

2. The Board's Decision

[7] The Board accepted that Mr. Mora Zapata had been shot a number of times. He had shown the Board his numerous scars. However, the Board dismissed Mr. Mora Zapata's claim for the following reasons:

- Mr. Mora Zapata had not provided a copy of the condolence note sent to his mother in 1999. She had destroyed it.
- He did not present any corroborating documentary evidence showing that he had transported members of the AUC.
- None of the documentary evidence for Colombia referred to the fact that people take note of the colour or licence plate numbers of taxis.
- FARC is known to kill people involved in rival groups. If FARC really suspected Mr. Mora Zapata, he would not have been able to live peacefully in Medellin between 1997 and 1999.
- The fact that Mr. Mora Zapata did not leave Colombia until May 2000 showed that he was not genuinely afraid of FARC.

3. Discussion and Conclusion

[8] In my view, the Board asked too much of Mr. Mora Zapata in terms of the documentary evidence it expected him to provide. Mr. Mora Zapata explained that his mother was terribly upset when she received the condolence note so she burned it. I am not sure how he could have provided written proof of who had been in his cab in 1997. Nor is it likely that one would find a specific reference in the documentary evidence to the fact that cab drivers can be identified by their cars and license plates.

[9] In addition, Mr. Mora Zapata explained that FARC thought they had killed him in the 1997 shooting. He did not realize he was a target until 1999. To my mind, this was a reasonable explanation for the fact that he did not encounter any difficulties in the intervening years and went back to driving his taxi when he was able to do so. The Board did not explain why his account of events was so implausible that it could not be given any credit.

[10] Finally, Mr. Mora Zapata said that it took him a long time to recover from the 1999 shooting. He did not feel he had the strength to leave until the following spring. Again, the Board did not explain why this testimony was unbelievable.

[11] I find, therefore, that the Board's conclusion was not justified by the evidence and must allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2479-07

STYLE OF CAUSE: ZAPATA v. MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: February 27, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 10, 2008

APPEARANCES:

Dariusz Wroblewski

FOR THE APPLICANT

Ricky Tang

FOR THE RESPONDENT

SOLICITORS OF RECORD:

JOEL ETIENNE
Toronto, ON

FOR THE APPLICANT

JOHN H. SIMS, Q.C.
Deputy Attorney General of Canada
Toronto, ON

FOR THE RESPONDENT