

**Date: 20080819**

**Docket: IMM-151-08**

**Citation: 2008 FC 954**

**Ottawa, Ontario, August 19, 2008**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**AMANDA ROCIO BARRERA TORRES  
JOSE MAURICIO MUNOZ MARTA  
ESTEBAN MUNOS BARRERA  
MARIA FERNANDA MUNOZ BARRERA**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), following a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated December 11, 2007. The panel determined that the applicants were not Convention refugees or persons in need of protection within the meaning of sections 96 and 97 of the Act.

## ISSUES

- [2] The applicants raised two issues in this matter:
- (a) Did the panel err in determining that the applicants lacked subjective fear?
  - (b) Did the panel err in finding that the applicants had an internal flight alternative (IFA) in Cartagena or San Pedro, in Colombia?
- [3] For the reasons that follow, the application for judicial review will be allowed.

## FACTUAL BACKGROUND

[4] The applicants are all citizens of Colombia. The applicants' claim is based on the story of the principal female applicant. The female applicant worked as a credit manager at a commercial financing company named Finsocial, in the city of Bogota. She was responsible for the promotion, approval and financing of credit and loans to assist small farmers.

[5] The problems began on July 16, 1999, when she was detained by members of the Revolutionary Armed Forces of Colombia (FARC). These members ordered the applicant to stop all credit promotion on behalf of Finsocial and they sexually assaulted her before releasing her.

[6] The female applicant explained the situation to her employer, without revealing the sexual assaults, and her employer allowed her to cease her credit and loan promotion functions.

[7] On July 22, 1999, her husband was arrested during an ambush while he was driving his car. Unidentified men told him that his wife had to resign from her position with Finsocial. The female applicant resigned that very day. The male applicant contacted the police on July 23, 1999, and accused the FARC members of being responsible for the incident. The police contacted the male applicant on July 26, 1999, to ask him why he was accusing the FARC members. The applicant told them about the events of July 16, 1999.

[8] After the report to the police, the applicants received a call from a member of the FARC who told them that they would be considered military targets. The applicants hid at the home of a friend and from there they decided to leave Columbia. The female applicant left her country on August 16, 1999, the male applicant with his child on September 13, 1999.

[9] The applicants went to the United States, they filed a refugee claim in April 2001 which was dismissed by an immigration officer in July 2004 because the claim had not been filed within the time limit of one year from the date of their arrival, as provided under American law. This decision was confirmed by an immigration judge in the United States on December 12, 2005.

### **IMPUGNED DECISION**

[10] The panel dismissed the application on two grounds. First, it determined that the failure to claim refugee status is inconsistent with a subjective fear of persecution. The panel gave the following reasons in support of its decision:

- (a) It considered the fact that the applicant had left Colombia a month after having been detained by the FARC members, despite the fact that she had a valid passport and visa to travel to the United States. The panel also considered that the applicant left Colombia more than seven weeks after being arrested by the FARC members. The panel noted that the applicant also had a passport and visa valid until May 2004. The panel therefore determined that the applicants could have left Colombia immediately after the incidents.
- (b) The panel considered that the applicants had not claimed refugee status in the United States within the one-year time limit because of their own negligence. In light of the gravity of the allegations of persecution, the panel determined that the applicants' failure to claim refugee status as soon as they arrived in the United States indicated that there was a lack of subjective fear.
- (c) The panel noted that the applicants had not left the United States after their claim was refused. They only arrived in Canada on February 18, 2006.

[11] Second, the panel determined that the applicants had an internal flight alternative (IFA) for the following reasons:

- (a) It considered the documentary evidence regarding guerrilla and paramilitary groups in Columbia. The panel pointed out that extortion, kidnappings and assassinations were a serious problem.
- (b) It determined that the IFA was the determinative issue of the claim. In its opinion, the balance of probabilities was such that the FARC members would have no

interest in pursuing the applicants in cities like Cartagena or San Pedro. Further, the members would not have any information about the applicants' residence or employment.

(c) He stated that the documentary evidence indicated that individuals corresponding to certain profiles are likely to be persecuted, but that these profiles do not correspond with those of the applicants. The panel also considered that the incidents on which the claim was based occurred over eight years ago.

(d) Finally, the panel considered the age, health, level of university education, work experience and language ability of the applicants and determined that it would not be unreasonable for them to avail themselves of the IFA.

## **ANALYSIS**

### *Standard of review*

[12] The appropriate standard of review in this case is the standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraphs 55, 57, 62 and 64). According to the Supreme Court, the factors to consider are: the existence of justification, transparency and intelligibility within the decision-making process. The outcomes must be defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

### *Did the panel err in determining that the applicants did not have subjective fear?*

[13] The stenographer's notes (page 16, tribunal record) establish without the shadow of a doubt that the decision-maker informed the applicants at the hearing that the time limit for leaving the

country was not a genuine issue. The Court considers that criticizing the male applicant for taking too long to leave the country is an error in the written decision.

[14] As for the time limit for claiming protection in the United States, the applicants provided an explanation for having failed to meet the deadline prescribed by regulation in American law. In fact, the panel did not take into account the explanation offered, i.e. waiting for the implementation of the program (Temporary Protected Status) that the American government was supposed to decree to protect Colombian nationals seeking protection in the United States.

[15] It must be stated that the decision-maker did not challenge the applicants' credibility anywhere in the decision.

*Did the panel err in determining that the applicants have an IFA in Cartagena or San Pedro, in Columbia?*

[16] The applicants allege that it is unreasonable to find that the FARC members would not be interested in pursuing the applicants to the cities of Cartagena or San Pedro. They allege that the documentary evidence indicates the contrary. They also submit that this evidence directly contradicts the statements of the panel to the effect that the passage of time is a factor that would change the vengeful tendency of the FARC. They argue that it was the panel's responsibility to explain why it preferred other evidence when the documentary evidence favourable to the applicants was more abundant. The applicants argue that the panel unreasonably divided the evidence. In their opinion, it refused to consider that the applicants have an objective fear solely on the basis of a document summarily listing certain individuals targeted by the FARC.

[17] The applicants primarily rely on the following passages of the document “Responses to Information Requests (RIR)” COL41770.E, from the research centre of the Immigration and Refugee Board (page 99, applicant’s record):

Furthermore, according to a number of sources, the FARC, ELN and AUC have a significant presence in Colombia's urban centres, including Bogotá (ibid.; Georgetown University 30 June 2003; AI USA 9 July 2003). For example, in the view of the Georgetown University adjunct professor,

Each [of these groups] has instituted a strategy of creating urban militias connected to their regular armed fighters. Indeed the FARC may have as many as 12,000 urban militias, highly concentrated in Bogotá and Medellín but also in many of the medium sized urban centers such as Bucaramanga and Villavicencio.

...

... According to the Georgetown University adjunct professor, both the guerrillas and paramilitary groups

often employ highly sophisticated data bases and computer networks. An individual who is threatened in one area of the country will not be notably safer by relocating to another. Depending on the nature and reasons for the threat, the victims can be pursued relentlessly. There are countless stories of men and women receiving threats in Bogotá or Medellín after relocating from another area and attempting to live anonymously in the big city. Many have been killed after seeking refuge in another part of the country. There are also cases of people leaving the country for a period of months or years, and then being killed after returning. Memories are long and data is systematically recorded and analysed (30 June 2003).

[18] The respondent submits that it was reasonable for the panel to determine that there was an IFA and that it was justified in refusing protection to the applicants. Specifically, the respondent states that the panel is presumed to have considered all of the evidence.

[19] In my opinion, the panel did not consider the fact that the applicants had filed complaints against the members of the FARC. Yet the documentary evidence indicates that individuals who find themselves in like situations are exposed, sought after and persecuted by the FARC. It was therefore unreasonable to exclude the applicants as persons targeted by members of the FARC.

[20] No question was proposed and this matter does not contain any.

**JUDGMENT**

**THE COURT ORDERS** that the application for judicial review be allowed. The matter is referred for redetermination by a differently constituted panel. No question is certified.

“Michel Beaudry”

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Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

**FEDERALCOURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-151-08

**STYLEOF CAUSE:** **AMANDA ROCIO BARRERA TORRES**  
**JOSE MAURICIO MUNOZ MARTA**  
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**MARIA FERNANDA MUNOZ BARRERA**  
**and**  
**MINISTER OF CITIZENSHIP**  
**AND IMMIGRATION**

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** August 13, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Beaudry J.

**DATE OF REASONS:** August 19, 2008

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