Federal Court  Cour fédérale

Date: 20101117

Docket: IMM-1030-10

Citation: 2010 FC 1114

Ottawa, Ontario, this 17th day of November 2010

Before: The Honourable Mr. Justice Pinard

BETWEEN:

Lucas VELEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a member of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the "Act") by Lucas Velez (the "applicant"). The Board determined that the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act.

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[2] The applicant is a Colombian citizen, from Medellin, Colombia. Prior to his departure from Colombia, he worked for the logistics arm of a paper products company and was in charge of supporting the Ecuadorian market for their products. His responsibilities included organizing the movement of delivery trucks to and from Ecuador.

[3] The applicant alleges that in July 2007, a man came to his workplace and introduced himself as a member of the Revolutionary Armed Forces of Colombia (FARC). The man demanded the use of the company's trucks to deliver unnamed goods across the Ecuadorian border. The man informed the applicant that he would be returning in several months to organize the use of the trucks. The applicant was fearful for his life and applied for a Canadian visa.

[4] The applicant claims that five weeks after the first incident, the same FARC man came to his apartment and informed him that the trucks and drivers would be needed soon. The applicant was told that he would have to organize a meeting between FARC and the drivers within two months.

[5] The applicant quit his job, informing his boss that he was going to Canada to study French in Montreal, and left Colombia on October 2, 2007. He applied for refugee status in early January 2008.

[6] The Board's decision was made on January 20, 2010, and received by the applicant on February 12, 2010.

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[7] The Board found the applicant not to be credible with regard to the well-foundedness of his fear of FARC. The Board further found that even if credibility were not in issue, the applicant had a viable internal flight alternative in Bogota. The Board found, based on the documentary evidence, that FARC no longer has much support in big cities, and therefore would not be able to track the applicant within Bogota. The Board cited in support of this finding the changes between a 2005 UN High Commissioner for Refugees report and a 2008 UN High Commissioner for Human Rights report, as well as two International Crisis Group reports. The Board found that it would be reasonable for the applicant to live and work in Bogota.

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[8] There are two issues in this application:

a. Did the Board err in its credibility finding?
b. In the alternative, did the Board err in finding an internal flight alternative in Bogota?

[9] The parties agree that the standard of review applicable to a Board member's findings on credibility is reasonableness, as it is a question of fact, to which deference is owed by the Court, as per *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, paragraphs 47, 53, 55 and 62; also *Canada*

(Minister of Citizenship and Immigration) v. Khosa, [2009] 1 S.C.R. 339, paragraphs 52 to 62; and *Malveda v. Minister of Citizenship and Immigration*, 2008 FC 447, paragraphs 17 to 21.

[10] The parties also agree that the standard of review applicable to the finding of an internal flight alternative is reasonableness, as it is a mixed question of fact and law, to which deference is owed, as per *Singh v. Minister of Citizenship and Immigration*, 2009 FC 158, paragraph 17, citing *Dunsmuir*.

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[11] Dealing first with the internal flight alternative issue, the Board, in finding that Bogota would be an acceptable internal flight alternative for the applicant, relied in part on the supposed difference between a 2005 UN High Commissioner for Refugees report, which stated that groups such as FARC "have the capacity to track down victims throughout Colombia," and a 2008 UN High Commissioner for Human Rights report, which did not contain this paragraph. The Board determined that the paragraph had been removed because it was no longer accurate.

[12] In the recent case *Diaz v. Minister of Citizenship and Immigration*, 2010 FC 797, at paragraphs 30 to 32, Justice Russell Zinn quashed a Board decision that relied on this very 'difference' between the two reports. Justice Zinn noted that the reports were prepared by different organisms, with different commissioners and different mandates, and stated that to conclude that a paragraph had been removed for the 2008 report was "perverse". Therefore, the Board member was erroneous in relying on this report in support of his conclusion.

[13] The respondent notes, however, that unlike in *Diaz*, the Board in this case relied on more than just the UN reports in making its internal flight alternative finding. Extensive reference was made to two International Crisis Group ("ICG") reports. The applicant argues that the Board drew extracts from the ICG reports to support its conclusions regarding the reduction of FARC's activities in urban centres, while ignoring portions of the reports that lead to the opposite conclusion. The applicant cites cases that criticize Board members who rely only on chosen passages while ignoring contradictory evidence in the documentation, such as *King v. Minister of Citizenship and Immigration*, 2005 FC 774, at paragraph 22, and *Lewis v. Minister of Citizenship and Immigration*, 2009 FC 282, at paragraph 9.

[14] In my opinion, however, the Board member did not ignore the passages that the applicant labels 'contradictory'. I agree with the respondent that the additional passages of the ICG reports cited in the applicant's memorandum, as well as the passages of the Immigration and Refugee Board's own Colombia Documentary Package of 2009 cited by the applicant, are all capable of supporting the Board's conclusion that FARC "no longer has the ability to track an individual from one area to another, due to surveillance by government security forces and their ability to interrupt communications". The Board did not conclude, as the applicant alleges, that FARC has no activity at all in urban centres, but merely that it is unlikely that FARC would be able to track the applicant within Bogota. While the documentary evidence cited by the applicant points to the existence of violence perpetrated by FARC in Bogota, it does not lead to the conclusion that FARC would be capable of tracking the applicant within Bogota. On the basis of the documentary evidence cited by both sides, the Board's finding appears to be "within the range of possible, acceptable outcomes" as required by *Dunsmuir*, above.

[15] The applicant also argues that the Board should have considered a July 2009 Board decision finding that there was no internal flight alternative in Bogota for people who have been targeted by FARC. The applicant notes that the Board in that case relied on the same 2005 UN High Commissioner for Refugees report referred to in this case, and argues that while Board decisions are not binding, they are persuasive, and in the interests of preserving the perception of justice, the Board in this case should have explained why it disagreed with the conclusion reached in that case.

[16] In my opinion, however, the cases are distinguishable, as in this case the Board relied on other country documentation to reach its decision, including several reports released in 2009. Furthermore, as the respondent notes, this Court has previously found that each Board decision turns on its own facts, and the Board is not required to reconcile every previous decision (as per Justice Paul Crampton in *Michel v. Minister of Citizenship and Immigration*, 2010 FC 159, at paragraph 43).

[17] As I find, therefore, that it was reasonable for the Board to find that an internal flight alternative was available to the applicant, this is determinative in this case and it is not necessary to deal with the applicant's credibility issue.

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[18] Consequently, the application for judicial review is dismissed.

[19] No question is certified.

JUDGMENT

The application for judicial review of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Board dated January 20, 2010 is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-1030-10
STYLE OF CAUSE:	Lucas VELEZ v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 13, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	November 17, 2010

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