Federal Court  Cour fédérale

Date: 20101124

Docket: IMM-1713-10

Citation: 2010 FC 1177

Ottawa, Ontario, November 24, 2010

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

WILSON ARRENDONDO RENGIFO, MARIA CAMILA ARREDONDO TORO, ISRAEL ALEJANDRO MANZO BARRERA A.K.A. ISRAEL ALEJANDR MANZA BARRERA, JUAN PABLO ARREDONDO TORO, AYDA ROSA TORO GRAJALES AND MATIAS MANZO ARREDONDO A.K.A. MATIAS MANZA ARRDONDO, BY HIS LITIGATION GUARDIAN ISRAEL ALEJANDRO MANZO BARRERA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants, an extended family of six persons, are citizens of Colombia (except for a grandson who is a citizen of the United States and a son-in-law who is a citizen of Mexico). The

family arrived in Canada in June 2008 from the United States. They claim protection pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) on the basis of their claimed fear of the paramilitary force known as the United Self-Defence Forces of Colombia (Autodefensas Unidas de Colombia, referred to as AUC).

[2] In 1999, the Principal Applicant alleges that he received threats from the AUC because of his membership in the Movimiento Politico Union Patriotica (the Patriotic Union), a Colombian political party. The Applicants left Colombia in 1999 for the United States where they remained until 2008. The Applicants hesitated to claim asylum. By the time the Applicants began collecting the necessary documentation and a relative filed a denunciation with the Colombian police, the limitation period for their asylum claim had expired. The Principal Applicant claims that he continues to be a target of the AUC.

[3] In a decision dated February 24, 2010, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Board) considered the claims of the extended family (except for the grandson, whose claim was dealt with in a separate decision of the same date). The Board concluded that the Applicants are neither Convention refugees nor persons in need of protection. The Board found that the Applicants did not have a credible well-founded fear of persecution. In particular, the Board did not find it credible that the AUC would continue to threaten the Principal Applicant after he ceased activity with the Patriotic Union, and that the nine-year stay in the United States, without claiming asylum, impugned the credibility of the Applicants. In the alternative, the Board found that the Applicants have a viable internal flight alternative in Bogota. The Board also

concluded that the son-in-law, who was a citizen of Mexico, was neither a Convention refugee nor a person in need of protection.

[4] In this application, the Applicants seek judicial review of the decision, except as it relates to the Mexican son-in-law and the grandson.

[5] The Board's decision is reviewable on the standard of reasonableness. On this standard, the Court should not intervene where the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47; see also *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339).

[6] The Board's finding that it was not probable that the AUC continued to threaten the Principal Applicant after he discontinued his community work is reasonable. The Applicant was unable to put forward any convincing evidence that he had been consistently targeted by the AUC, or that other members of the Patriotic Union had been targeted by the AUC, in particular. As the Board noted, the burden of proof is on the balance of probabilities. Given the lack of consistent evidence, it was reasonable to conclude that it was more likely than not that the Principal Applicant was not an ongoing target of the AUC.

[7] I do not agree with the Applicants that the Member contradicted himself with regards to the Applicants' failure to claim asylum in the United States. The Board found that the denunciation was only filed after the Principal Applicant began seeking documents to substantiate his claim in the

United States. The Board also observed that the Principal Applicant did not begin to collect such documents until the deadline to file for asylum had passed, indicating a lack of subjective fear. There is nothing contradictory about these findings. The Board's adverse credibility finding regarding the Applicants' nine-year stay in the United States without seeking asylum was also reasonable. Failure to claim Convention refugee status at the first available opportunity has often been held to be an indication of lack of credibility (*Fernando c. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 759, [2001] F.C.J. No. 1129), as it exhibits a lack of urgency.

[8] The Board's finding regarding the lack of contact the AUC made with the Applicants, or their family, is reasonable. The Board noted that the AUC made no contact with the Applicants' family before or after they left Colombia. Given the alleged filing of a denunciation, this was a reasonable observation for the Board to make in the course of determining whether the Applicant was truly facing a continued threat.

[9] Regardless of how certain the Applicant may be of who threatened him and who murdered other members of Patriotic Union, it remained open to the Board to weigh the likelihood of a threat against the Applicant on a balance of probabilities. In view of the fact that the Applicant had no proof that the AUC had murdered any particular Patriotic Union member, the finding is reasonable.

[10] Finally, the Board's conclusion regarding an internal flight alternative in Bogota is reasonable. The documentary evidence to support that finding is thoroughly reflected in the Board's reasons

[11] During his capable oral submissions, counsel for the Applicants put forward alternative approaches and conclusions that could have been drawn from the record. However, the fact that the decision maker could have interpreted the evidence in a different manner does not mean that the decision was unreasonable. As stated by the Supreme Court in *Khosa*, above at paragraph 59:

> Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome. [Emphasis added.]

[12] I am satisfied that, in this case, the decision of the Board falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[13] Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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