

Federal Court



Cour fédérale

**Date: 20110308**

**Docket: IMM-4089-10**

**Citation: 2011 FC 265**

**Ottawa, Ontario, March 8, 2011**

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

**BETWEEN:**

**INGRID ZAMIRK DIAZ JARMA  
ANDRES JOSE VILLA VILLA  
OSCAR ANDRES VILLA DIAZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The applicants, Andres Jose Villa Villa, his wife Ingrid Zamirk Diaz Jarma and their minor son Oscar, are Columbian citizens who claimed protection on the basis of threats related to extortion attempts. They seek judicial review of a decision by the Immigration and

Refugee Board that the applicants had failed to establish a nexus to a Convention Refugee ground and that the risk faced by the applicants was not personalized. For the reasons that follow, this application is dismissed.

**BACKGROUND:**

[2] The adult applicants are medical doctors from Barranquilla, Columbia. In 2007 and 2008, Dr. Villa received several phone calls from an unidentified caller demanding money. As a result, he took a number of measures to protect himself and his family including transferring from the hospital where he worked, changing his cell phone, seeking police protection and sending the son to his grandmother's. In November 2008, having received another threatening phone call, he approached the authorities again and was advised they could do nothing without evidence to identify the perpetrators. He sought advice from a lawyer who told him to lodge a complaint with the Prosecutor General's Office because the lawyer believed that the extortionists were members of Aguilas Negras ("Black Eagles"), a resurfacing paramilitary group.

[3] On March 23, 2009, the applicants received a funeral card and a threatening letter at their home which stated that the three applicants were already dead. The parents left their jobs and their home. They sent for their son, and the three applicants fled Columbia on March 28, 2009, transiting the United States to come to Canada. They did not make their refugee claim in the United States, as Dr. Jarma's sister has lived in Canada for several years and advised them to make their claim here. Because she is a resident here, having succeeded in a refugee claim in 2001, they benefited from an exception to the Safe Third Country Agreement

**DECISION UNDER REVIEW:**

[4] The Board found the applicants' claim that the threats were from the Aguilas Negras was not credible, but rather that the extortionists were common criminals targeting the applicants because of their perceived wealth. The Board held that even if the threats came from the Aguilas Negras, the applicants had failed to demonstrate a nexus between the persecution and imputed political opinion because the Aguilas Negras had devolved into a criminal gang and are no longer a paramilitary group, as they once were. Accordingly, the Board determined that the applicants were not Convention refugees.

[5] Having considered the explanation that the applicants relied on advice to wait until they arrived in Canada to make their claim, the Board found that the applicants' failure to make their refugee claim during the five days they spent in the United States indicated a lack of subjective fear.

[6] Finally, the Board concluded that extortion of the wealthy was on the rise in Columbia and that any risk the applicants would face in Columbia would be a generalized risk, which excluded them from IRPA para. 97(1) (b) protection.

**ISSUES:**

[7] The applicants concede that if there is no Convention nexus, they have no claim to protection against a generalized risk of crime under s.97. They contend that the objective evidence

pointed to a different conclusion with regard to the motives behind the extortion threats. The sole issue, therefore, is whether the Board misapprehended or ignored evidence that contradicted its conclusions.

#### **ANALYSIS:**

[8] The questions in this matter are factual, calling for a reasonableness standard of review: *Canada (Citizenship & Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 and *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

[9] The applicants submit that the Board ignored evidence in finding that the Aguilas Negras were not responsible for the threats and that the panel's reasons lack a meaningful analysis of the documentary evidence they provided. Further, they submit that the Board erred in determining that, even if the threats were from the Aguilas Negras, they did not arise from imputed political opinion. The applicants argue that they provided documentary evidence that the Aguilas Negras continue to operate as a paramilitary group rather than a mere criminal gang. It is sufficient that one of the motives for the persecution be a Convention ground, even if there are additional non-Convention reasons for the persecution such as mere criminality: *Sopiqoti v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 95, 34 Imm LR (3d) 126.

[10] There was a significant amount of documentary evidence before the Board to the effect that extortion of the wealthy is on the rise in Columbia. The evidence also pointed to the continued

existence, even resurgence, of groups such as the Aguilas Negras in several parts of the country. From my reading of the decision, the panel member did not ignore this evidence.

[11] At the hearing before the Board, the applicants' counsel acknowledged that the threats either came from the Aguilas Negras or from "some criminal organization that involves itself in extortion. It's either one or the other." He conceded that, if the Board found that the extortionists were not members of the Aguilas Negras, there was no nexus to a Convention ground. Counsel went on to argue that the evidence established that the threats came from the Aguilas Negras. That evidence consisted of Dr. Villa's account of what the Columbian lawyer told him and a drawing of what appears to be a black eagle on one of the threats. The lawyer was not certain that the threats were from the Aguilas Negras, but only suspected that they were. The extortionists never identified themselves when they called Dr. Villa.

[12] In light of the lack of evidence, it was reasonably open to the Board to conclude that the threats did not come from the Aguilas Negras. While it was not strictly necessary for the Board to make a finding as to the source of the threats to impute a political motive, the Board's determination that the threats came from a criminal gang was not unreasonable. The finding is supported by considerable documentary evidence in the record about the rise in extortion attempts against the wealthy in Columbia by criminal gangs.

[13] As stated in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, 83 ACWS (3d) 264 at paragraph 17, the Board's burden of explanation increases with the relevance of the evidence in question to the disputed facts. The presumption that the Board has reviewed all of the evidence before it or a blanket statement to that effect will not suffice when the

evidence omitted from any discussion in the reasons appears squarely to contradict the Board's finding of fact. But, that is not the case here. There is no direct evidence to contradict the Board's finding. The documentary evidence indicates that certain of the former paramilitary groups, including the Aguilas Negras, have turned to crime to support themselves. The fact that they may bear resentments against elements of Columbian society does not establish that they are pursuing a political agenda, as they did during the conflict that formerly divided that country.

[14] The evidence supports the Board's conclusion that even if the extortionists are members of the Aguilas Negras, the attempted extortion was based on the applicants' perceived wealth and not on imputed political opinion. Indeed, there is no evidence in the record of the applicants' political opinion, imputed or otherwise. Some of the evidence provided by the applicants shows that individuals and groups that are politically active and in the public eye such as journalists, human rights workers and politicians, have been targeted. The applicants do not fit this description.

[15] The applicants rely on a news article regarding a doctor from Barranquilla who was gunned down as he left the hospital. The report states that the motives for the killing and the identity of the perpetrators remained under investigation. There is no evidence to link this killing to any group or to suggest that it occurred because of the deceased's politics or refusal to submit to extortion. As this evidence did not contradict the Board's conclusions, it was not necessary to refer to it in the panel's reasons.

[16] The applicants argue that they will be targeted by the Aguilas Negras if they are returned to Columbia because they denounced the group to the authorities. There is no evidence in the record to

support this assertion. The applicants left numerous family members behind in Columbia and there is no evidence that the Aguilas Negras have gone after these family members in pursuit of the applicants or in retaliation for the denunciation.

[17] I agree with the applicants that it was unreasonable for the Board to draw a negative inference from their failure to claim refugee protection in the United States. The authorities cited by the panel member in his decision all dealt with cases of prolonged delay and for which the claimants had failed to provide a reasonable explanation. That was not the case here. While the reasonableness of the explanation for failing to claim in a safe third country is a factor to be taken into consideration, a delay of a few days while in transit should not normally undermine a claim of subjective fear: *Mendez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 75, 307 FTR 48.

[18] The negative inference which the Board drew from the applicants' failure to claim at the first opportunity in a safe third country was not, however, material to its decision. It made that finding only after concluding that there was no nexus to a Convention ground and that the risk faced by the applicants was a general one. The inference was not required to support either finding.

[19] In the result, the Board's decision fell within the range of acceptable outcomes defensible on the facts and the law and this application must be dismissed. No serious questions of general importance were proposed and none will be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed. No questions are certified.

“Richard G. Mosley”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4089-10

**STYLE OF CAUSE:** INGRID ZAMIRK DIAZ JARMA  
ANDRES JOSE VILLA VILLA  
OSCAR ANDRES VILLA DIAZ

and

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 28, 2011

**REASONS FOR JUDGMENT:** MOSLEY J.

**DATED:** March 8, 2011

**APPEARANCES:**

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