

Federal Court



Cour fédérale

Date: 20110630

Docket: IMM-6481-10

Citation: 2011 FC 804

Toronto, Ontario, June 30, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

EDELMIRA NIETO VELASQUEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Edelmira Nieto Velasquez seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board. The Board accepted that Ms. Nieto Velasquez had been threatened by members of the Revolutionary Armed Forces of Colombia (or “FARC”) in the past, but found that there were locations within Colombia where she could now live safely.

[2] For the reasons that follow, I am not persuaded that the Board’s decision was unreasonable. As a consequence, the application for judicial review will be dismissed.

Analysis

[3] The Board accepted that Ms. Nieto Velasquez and her then-husband had owned hotels in the town of Pereira. During the mid-1990's, she had been approached by FARC members who wanted her to provide them with information regarding hotel guests. She refused to do so. The Board further accepted that in 1998, Ms. Nieto Velasquez was attacked and threatened by FARC, leading her to flee Colombia the next day.

[4] Ms. Nieto Velasquez spent the next 11 years in the United States before coming to Canada in 2009 and applying for refugee protection. In rejecting Ms. Nieto Velasquez's claim, the Board found that she had a viable internal flight alternative (or "IFA") in either in Bogota or Barranquilla.

[5] The burden is on the individual seeking refugee protection to establish on a balance of probabilities that there is a serious possibility of persecution throughout the country, including the area which is alleged to afford an IFA: see *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, 140 N.R. 138 (F.C.A.).

[6] There are two parts to the test for determining whether a viable IFA exists: firstly, the Board must be satisfied that there is no serious possibility that the claimant will be persecuted in the proposed IFA; secondly, the conditions in the proposed IFA must be such that it is not unreasonable for the claimants to seek refuge there: see *Thirunavukkaransu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, [1993] F.C.J. No. 1172.

[7] Ms. Nieto Velasquez argues that the Board erred in its evaluation of the extent of FARC's activities in urban areas of Colombia. In particular, she says that the Board erred in finding that there was no evidence that FARC had carried out any terrorist activities in large urban centres in recent years apart from one car bombing in Cali. Ms. Nieto Velasquez says that by overlooking evidence regarding ongoing terrorist activities perpetrated by FARC in Colombia's cities, its finding that Ms. Nieto Velasquez could live safely in either Bogota or Barranquilla was unreasonable.

[8] There are two difficulties with this argument.

[9] The first is that the Board was not persuaded that Ms. Nieto Velasquez would be of any on-going interest to FARC in any event, given that she had been away from Colombia for 13 years, she was no longer involved in the hotel business, and members of her family still involved in the hotel business in Colombia had not been harmed. This was a reasonable finding, one that by itself was sufficient to dispose of Ms. Nieto Velasquez's refugee claim.

[10] The second difficulty with Ms. Nieto Velasquez's argument is that when the reasons of the Board are read as a whole, it is clear that the Board was aware that there was more than a single recent incident of terrorist activity perpetrated by FARC in Colombian cities. Paragraph 11 of the Board's reasons refer to a 2009 report which states that "several attacks with explosives" had been launched by FARC in cities such as Bogota, Cali, Buenaventura and Neiva. Paragraph 12 refers to recent attempts by FARC to penetrate cities, and paragraph 15 refers to random terrorist attacks in Colombia's cities.

[11] It is also noteworthy that Ms. Nieto Velasquez did not even suggest in her testimony that she would face a risk from FARC in either Bogota or Barranquilla. Her concerns about living in either city related to her ability to earn a living and the fact that she would be away from her family in Pereira.

[12] Ms. Nieto Velasquez also argues that even if she was no longer at risk because of her past problems with FARC, the Board should have had regard to the risk that she would face as a middle-class woman living in Colombia. Not only was this argument not advanced before the Board, Ms. Nieto Velasquez's own evidence does not support a finding that she would now be perceived as middle class. Moreover, the evidence regarding the risks faced by women in Colombia relied upon by Ms. Nieto Velasquez refers specifically to problems faced by women teachers who refused to follow FARC's directions as to what should be taught, or women who had deserted from FARC. Neither profile fits Ms. Nieto Velasquez's situation.

[13] Finally, Ms. Nieto Velasquez argues that she faces a risk in Colombia because "it is possible" that she would be flagged at a road-side checkpoint if she tried to reach Bogota. Not only is more than a mere possibility of persecution required, it is not even clear why Ms. Nieto Velasquez would have to pass through a road-side checkpoint if she returned to Bogota by air.

Conclusion

[14] For these reasons, the application for judicial review is dismissed.

Certification

[15] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6481-10

STYLE OF CAUSE: EDELMIRA NIETO VELASQUEZ v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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AND JUDGMENT:** Mactavish J.

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APPEARANCES:

Christina M. Gural

FOR THE APPLICANT

Amy King

FOR THE RESPONDENT

SOLICITORS OF RECORD:

CHRISTINA M. GURAL
Barrister and Solicitor
Vaughan, Ontario

FOR THE APPLICANT

MYLES J. KIRVAN
Deputy Attorney General of Canada

FOR THE RESPONDENT