

Federal Court



Cour fédérale

Date: 20110711

Docket: IMM-5096-10

Citation: 2011 FC 861

Ottawa, Ontario, July 11, 2011

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**JAIRO IVAN VARELA POSADA
JAIRO ALEXANDER VARELA ANGARITA
SANTIAGO VARELA ANGARITA
SAMUEL VARELA CAMACHO
MARIA AMPARO CAMACHO MEDINA
KEVIN SANTIAGO PENA CAMACHO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns a decision of the Immigration and Refugee Board (Board) in which the Applicants' claim was dismissed due to credibility concerns and the failure to rebut the presumption of state protection.

II. BACKGROUND

[2] The refugee claim for the Colombian family was based on the wife's circumstances. Her narrative was that her laptop computer used in her stockbroker business was stolen. Shortly thereafter the wife received threats from FARC demanding production of the clients' financial records.

[3] These threats were reported to the police who suggested that she change her telephone number which she did. However, FARC contacted her again at the new number, a fact not reported to the police.

[4] Finally, the Applicants claimed that their son was the victim of an attempted kidnapping; another incident not reported to the police.

[5] The Board made a number of negative credibility and plausibility findings in part based on the absence of supporting evidence.

[6] The Board found that even if the claim was credible, the Applicants had failed to establish that state protection was adequate. This conclusion was based on a detailed review of the documentary evidence regarding FARC. The Board also considered the availability of state

protection, and the efforts that had been made by the Colombian government to address FARC activities.

[7] Significantly, the Board noted the failure of the Applicants to follow up with police even where the police indicated a willingness to investigate. The Board concluded that the Applicants had not made serious efforts to access state protection.

III. ANALYSIS

[8] There is no issue that the standard of review, both for credibility findings and state protection, is reasonableness (*Hassan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1136). It is also accepted that credibility findings in particular are subject to considerable deference.

[9] Whatever the merits of the Applicants' submissions on credibility and plausibility may be, and there are some, the Court cannot reweigh the evidence. There was a reasonable basis for the Board's conclusions.

[10] Moreover, even if the Applicants were correct on this first issue, there is a major difficulty with their failure to seek state protection.

[11] The Board's findings on this second issue are not coloured by the credibility/plausibility findings. The state protection analysis stands on its own.

[12] There is nothing unreasonable in the Board's conclusion that the Applicants did not sufficiently engage state protection; particularly where there had been evidence of the police's willingness to assist. There is no evidence that state protection would not have been available if it had been sought.

IV. CONCLUSION

[13] Therefore, this judicial review will be dismissed. There is no certified question.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5096-10

STYLE OF CAUSE: JAIRO IVAN VARELA POSADA
JAIRO ALEXANDER VARELA ANGARITA
SANTIAGO VARELA ANGARITA
SAMUEL VARELA CAMACHO
MARIA AMPARO CAMACHO MEDINA
KEVIN SANTIAGO PENA CAMACHO

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 7, 2011

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

DATED: July 11, 2011

APPEARANCES:

Mr. D. Clifford Luyt FOR THE APPLICANTS

Ms. Ladan Shahrooz FOR THE RESPONDENT

SOLICITORS OF RECORD:

MR. D. CLIFFORD LUYT FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

MR. MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario