Federal Court Cour fédérale

Date: 20120710

Docket: IMM-4252-11

Citation: 2012 FC 868

Ottawa, Ontario, July 10, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SANDRA INES LOAIZA RIOS
AILYN CARDONA LOAIZA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Throughout these reasons for judgment and judgment, the applicant refers to Sandra Ines Loaiza Rios as she is the primary applicant and most of the facts and findings in the decision relate to her claim specifically. The applicant is the designated representative for her daughter, Ailyn Cardona Loaiza, who is referred to as the minor applicant when the facts or findings relate specifically to her claim. The minor applicant was assessed in a separate portion of the decision due to the minor applicant's citizenship in the U.S.A. The applicants refers to both claimants.

[2] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the Board), dated May 26, 2011, wherein the applicants were determined to be neither Convention refugees within the meaning of section 96 of the Act nor persons in need of protection as defined in subsection 97(1) of the Act.

[3] This conclusion was based on the Board's finding that Sandra Ines Loaiza Rios (the applicant) was excluded from refugee protection on the basis of a lack of credibility, failure to claim protection elsewhere, state protection and the availability of an internal flight alternative. The Board also specifically analyzed the minor applicant and found her to be excluded from refugee protection because, as a citizen of the U.S.A., there was no evidence to demonstrate that she was in need of refugee protection with relation to that country.

[4] The applicant requests that the Board's decision be set aside and the matter be referred back for redetermination.

Background

[5] The applicant is a citizen of Columbia and her daughter, the minor applicant, was born in the U.S.A. on February 10, 2004 and is a citizen of that country. The applicant fears returning to Columbia because of threats made by the Revolutionary Armed Forces of Columbia (FARC) to the applicant's father and family.

[6] The applicant claims that around March 1998, the FARC started extorting her father who owned and operated two bakery stores. In December 2000, the applicant claims that her mother, a nurse, was forced to treat wounded FARC members. By the end of 2001, the FARC increased the extortion amount and in March 2002, her father decided that her mother and brother should leave the country because he would not pay the increased amount. The applicant's brother and mother left for the U.S.A. in March 2002. The applicant's father was unable to obtain a visa to enter the U.S.A. so he sold one bakery, closed the other and went into hiding.

[7] The applicant remained in Columbia while living with her common law spouse and was not aware of the family's difficulties with the FARC until her brother and mother had left the country.

[8] In September 2002, the applicant received two phone calls asking for her father's whereabouts and noticed cars parked outside her house for extended periods of time with people inside. One morning, the applicant states that a car followed her on her way to college and she noted that the passenger in the car was holding a handgun. She attempted to report the incident to the police, but because there was no harm done to anyone, the police would not investigate or file a report.

[9] After these incidents, the applicant travelled to Boston on October 7, 2002 to join her mother and brother. Later that month, her common law spouse, who was still in Columbia, received a letter addressed to the applicant. The letter was from the FARC stating that she, her father, mother and brother had been declared military targets by the organization. The applicant's common law spouse was unable to secure a visa to the U.S.A. so the two terminated their relationship.

[10] While in the U.S.A., the applicant moved several times, including to Greenville, South Carolina where she lived with the father of the minor applicant until September 2004. This relationship ended and the applicant returned to Boston in September 2006 to live with her mother. In March 2007, she began living with a common law spouse who had promised to marry her after he received his American permanent residence status. However, after receiving his status, she was informed in November 2009 that her common law spouse intended instead to sponsor his pre-existing wife and child who were still in Columbia.

[11] The applicant's mother and brother came to Canada on October 10, 2007 to claim refugee protection. She decided to join them and on November 19, 2009 the applicants arrived in Canada and claimed refugee protection.

[12] The applicant claimed in her Personal Information Form (PIF) that she did not apply for asylum in the U.S.A. during her time there because she feared that the U.S. immigration officials would arrest her, detain or deport her to Columbia and take the minor applicant away to be adopted by an American couple. She states that her delay in coming to Canada was because she was awaiting official custody and support for her daughter and because she was waiting for her most recent common law spouse to marry and sponsor her.

[13] The applicant also claimed in her PIF that she fears reprisals from the FARC in retaliation for her father's failure to continue paying extortion money.

[14] The hearing of the applicant's refugee claim was held on March 11, 2011.

Board's Decision

[15] The Board released its decision on May 26, 2011.

[16] The Board began by noting that it was satisfied that the applicant is a Columbian citizen and that the minor applicant is a U.S. citizen, but that it believes none of the allegations made by the applicants beyond those facts. The Board concluded that there were credibility issues in areas central and material to the applicant's claim.

[17] The Board did not believe that the applicant's father would not tell her that he was in trouble with the FARC. The Board based this on the fact that she was still living in Columbia, her father had sent her mother and brother out of the country, sold his business and gone into hiding. The Board concluded from this that was implausible.

[18] The Board made several findings of implausibility and credibility regarding specific events or pieces of evidence:

The applicant did not leave Columbia for six months after her mother and brother.

On a balance of probabilities, if the FARC had been seeking to harm her, they would have done so during that time when she remained in Columbia after her mother and brother had left.

On a balance of probabilities, the applicant was not followed by a car with an armed passenger because if she had been followed, the car would have continued to follow her or attempted to follow her again.

The applicant was unable to remember the date the car had followed her. On a balance of probabilities, she should have remembered this date because it was traumatic and she claimed to have made a police report. Also, she was able to remember other dates so she should have remembered this one due to its nature.

On a balance of probabilities, she was not told by the police that they could not make a report of the car incident because she had not been harmed.

The applicant was unable to produce the letter which declared that her family had been named as targets by the FARC because her former common law spouse had lost it.

The applicant stated that she did not know what asylum was for a time in the U.S., however, she also stated that she did not file for asylum in the U.S. because her mom told her that it was unlikely that she would be successful.

[19] The Board therefore found that the applicant lacked credibility and therefore she lacked subjective fear in her claim.

[20] The Board also found that it was reasonable for the applicant to have sought protection in the U.S. during her seven years in that country if she had genuinely feared for her life. The Board rejected her explanation that she feared being detained and having the minor applicant taken away and adopted as an unreasonable explanation. The Board noted that the applicant was young, but educated and had lived on her own since living in Columbia, therefore if she feared Columbia, she would have taken some steps to legitimizing her status in the U.S. over her seven years in that country.

[21] The Board quotes several cases to support its entitlement to consider the failure to claim status in other countries against the applicant's credibility: *Ilie v Canada (Minister of Citizenship and Immigration)*, 88 FTR 220, [1994] FCJ No 1758 at paragraph 15; *Assadi v. Canada (Minister of Citizenship and Immigration)*, 70 ACWS (3d) 892, [1997] FCJ No 331 at paragraph 14.

[22] The Board rejected the applicant's argument that the acceptance rate for Columbians for political asylum is lower than Canada and filing a claim would have made it easier for them to be arrested and deported. The Board cites *Bedoya v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 505, [2007] FCJ No 680 at paragraph 22 for the proposition that lower success rates in a different country is not a valid excuse for not seeking refugee protection.

[23] The Board also concluded that a viable internal flight alternative (IFA) existed and is available to the applicant in Bogota. The Board applied the two-pronged test as laid out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, [1991] FCJ No 1256 (FCA) at paragraphs 4 to 7 and found that notwithstanding the applicant's testimony to the contrary, she could live peacefully away from the FARC in Bogota.

[24] The Board also determined that the applicant's efforts to seek state protection in Columbia were inadequate to rebut the presumption of adequate state protection. The Board considered the applicant's claim that she had made a police report regarding the car that followed her, but that the police did not take a report. However, the Board preferred the publicly accessible documents that Columbia would be reasonably forthcoming with state protection if the applicants returned there.

[25] The Board then made findings specific to the minor applicant, who had the applicant appointed as the designated representative. The Board accepted that the minor applicant is a citizen of the U.S.A. and by virtue of her mother's citizenship in Colombia, may be eligible for citizenship in that country as well. In any case, the Board found that there was no evidence before it to establish that the minor applicant was a Convention refugee or in need of protection with respect to the U.S.A.

Issues

[26] The applicant submits the following four issues:

1. Did the Board err in the interpretation and application of the definition of a person in need of protection as defined by Section 97 of the Act?

2. Did the Board err by basing its decision on an erroneous finding of fact made without regard for the material before it?

3. Did the Board err by not having a reasonable regard for the evidence before it?

4. Did the Board err by ignoring or misinterpreting evidence?

[27] I would rephrase these issues and reorganize the arguments of the parties so as to conform to the following order:

1. What is the appropriate standard of review?

2. Did the Board err in its credibility findings?

3. Did the Board make an unreasonable finding that a viable IFA is available to the applicants?

4. Did the Board err with its findings of fact with respect to the existence of subjective fear?

Applicants' Written Submissions

[28] The applicant argues that the Board's credibility finding was not based on contradictions or inconsistencies in her testimony, but rather on the behaviour of the applicant's father that the Board found to be unreasonable. By impugning the credibility of the applicant based on what a third party did or did not do, the Board erred.

[29] The Board stated that the applicant's father's failure to warn the applicant "makes no sense" (see decision at paragraphs 17 and 18). The applicant argues that just because something may appear to be unreasonable does not necessarily render it implausible. The Board therefore speculated that there would be no reasons for what the father did and the applicant argues that speculation is not a valid basis for a determination or a valid basis upon which to impugn the credibility of the applicant. The applicant cites *Ibarra-Lerma v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1611, [2004] FCJ No 1952 at paragraph 9; *Escobar v Canada (Minister of Citizenship and Immigration)*, 75 ACWS (3d) 518, [1997] FCJ No 1436 at paragraph 7; and *Ukleina v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1292, [2009] FCJ No 1651 at paragraph 8.

[30] The applicant points out that the Board misstated the facts at paragraph 17 of the certified tribunal record by finding that:

> …on a balance of probabilities, the claimant did not leave Columbia with her brother and mother because she wanted to finish college; as soon as she finished college, she left Columbia…However, the applicant's PIF states that she only completed two semesters of her studies before leaving.

[31] The Board found at paragraph 22 that "…she has no persuasive evidence to corroborate her story." The applicant argues that the Board erred by impugning the credibility of the applicant on the basis of an absence of corroborative documentation, although the police declined to make a report so she could not possibly have a report to submit. The applicant suggests that this same error applies to the Board's finding with regard to the letter received by the applicant's former common law spouse from the FARC. The applicant cites *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at 305, [1979] FCJ No 248 (FCA) [*Maldonado*]; *Ahortor v Canada (Minister of Employment and Immigration)*, 65 FTR 137, [1993] FCJ No 705; and *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1034, [2005] FCJ No 1281 at paragraph 7) for the proposition that testimony should be believed and not rejected based solely on a lack of corroborative evidence.

[32] In reply, the applicants argue that the Board based its determination on credibility, in part, on an absence of corroborative documentation, instead of the proper test: an absence of a reasonable explanation for the lack of corroborative documentation (see *Osman v Canada (Minister of Citizenship and Immigration)*, 2008 FC 921, [2008] FCJ No 1134 at paragraphs 37 to 39; *Taha v Canada (Minister of Citizenship and Immigration*), 2004 FC 1675, [2004] FCJ No 2039 at paragraph 9).

[33] In their further memorandum of argument, the applicants add that it was unreasonable for the Board to expect the applicants to have the letter from the FARC. The applicants explained at the hearing that the applicant has not been in contact with, nor does she know the whereabouts of, the ex-boyfriend.

[34] The Board found at paragraph 28 that the applicant "made absolutely no attempts to try to legitimize her status in the US." The applicant argues that this was an error as the evidence before the Board noted that she had been waiting for her most recent common law spouse in the U.S.A. to obtain his U.S. permanent resident status, marry her and sponsor her application.

[35] The applicants submit that the Board found Bogota to be a valid IFA for the applicants on the basis that state protection is available in that city. However, the applicants argue that there was contradictory documentary evidence from highly reputable sources, such as the Ombudsman's office in Columbia and the United Nations High Commissioner for Refugees, before the Board. The applicants note that the Board made no mention of this evidence and ignored it, thereby committing an error. The applicants cite *Orgona v Canada (Minister of Citizenship and Immigration)*, [2001] FCT 346, [2001] FCJ No 574 at paragraph 31; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ No 1425 at paragraph 17; *Gilvaja v Canada (Minister of Citizenship and Immigration)*, 2009 FC 598 at paragraph 39, 81 Imm LR (3d) 165; *Campos Quevedo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 297 at paragraph 8, 97 Imm LR (3d) 291.

Respondent's Written Submissions

[36] The respondent submits that questions of credibility, state protection and IFA concern determinations of fact and mixed fact and law, which are reviewable on the standard of reasonableness. The respondent reminds the Court that the Board is owed deference. As long as the Board's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, its conclusions should not be disturbed. The respondent relies on *Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1114, [2010] FCJ No 1468 at paragraphs 9 and 10; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 59; and *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47.

[37] The respondent submits that the Board's negative credibility finding is reasonable. First, the respondent argues that the applicant's argument that her credibility was impugned based on her father's actions is flawed. Therefore, the respondent argues, the Board's finding was not based on the motivations of the alleged actions of her father, but rather on the believability of the narrative that she presented, finding her story so incredible as to be unbelievable.

[38] The respondent argues that as the primary finder of fact, the Board is entitled to reject uncontradicted evidence and make reasonable findings based on implausibilities, common sense and rationality; in this case the inferences drawn are not so unreasonable as to warrant the Court's intervention. The respondent relies on *Sinan v Canada (Minister of Citizenship and Immigration*, 2004 FC 87, [2004] FCJ No 188 at paragraph 11; *Abdul v Canada (Minister of Citizenship and*

Immigration), 2003 FCT 260, [2003] FCJ No 352 at paragraph 15; and *Aguebor v Canada (Minister of Employment and Immigration)*, (1993) 160 NR 315, [1993] FCJ No 732 at paragraph 4 (FCA).

[39] The respondent argues that an applicant's testimony may be rebutted by a failure to produce documentary evidence to confirm that testimony, especially when the applicant is found not to be credible (*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593, [1995] SCJ No 78 at paragraph 47; *Maldonado* above; and *Owusu v Canada (Minister of Employment and Immigration)*, 55 ACWS (3d) 820, [1995] FCJ No 681 at paragraph 4). In this case, the respondent argues that it was not unreasonable for the Board to require some evidence that she was being followed by the FARC (such as the threatening letter), considering that she remained in Columbia without being harmed for six months after her mother and brother fled. Also, the respondent argues the Board did not require the production of a police report. In the circumstances, the Board expected evidence to show that refusing to file reports was a common practice with the Columbian police.

[40] The respondent argues that the Board's statement that the applicant wanted to finish college (while she only finished two semesters) is immaterial and has no impact on the determinative reasons of the decision.

[41] The respondent submits that the Board's conclusion that Bogota was an available IFA was reasonable. The respondent argues that the Board examined the evidence and noted that the FARC is mostly confined to rural and remote areas and their choice to pursue relocated individuals depends on their value (noting that the applicant does not fall within a high value category).

[42] The respondent argues that the Board applied the correct test for a viable IFA from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, [1991] FCJ No 1256 (FCA) at paragraph 10. Satisfaction that on a balance of probabilities there was no serious possibility of the applicant being persecuted there and that in her specific circumstances, it was not unreasonable for her to seek refuge in Bogota. The respondent notes recent jurisprudence where decisions finding Bogota as a viable IFA in circumstances similar to the applicants' were found to be reasonable by the Court (see *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 227, [2011] FCJ No 266 at paragraph 19; and *Cardenas v Canada (Minister of Citizenship and Immigration)*, 2010 FC 537, [2010] FCJ No 642).

[43] The respondent also argues that in analyzing the IFA, the Board did not ignore any evidence in its analysis at paragraphs 41 to 48 of the decision. The Board acknowledged that the evidence on Bogota was mixed, but that the majority of the evidence supports the Board's conclusion that in the circumstances of the applicants, it was not unreasonable to expect that they could return to Bogota without fear of persecution or risk to life. The respondent argues that the applicants' arguments reflect disagreements with the manner in which the Board assessed the evidence, which does not constitute an error. The respondent reminds the Court that there is a presumption that the Board weighed and considered all of the evidence unless the contrary is shown (see *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 134; and *Hassan v Canada (Minister of Employment and Immigration)*, 147 NR 317, [1992] FCJ No 946 (FCA)).

[44] Finally, the respondent argues that it was reasonable for the Board to reject the applicants' evidence regarding her failure to claim asylum in the U.S.A. and to determine that her actions were

not consistent with her stated subjective fear of persecution. The respondent submits that the failure to claim refugee status in a foreign state or to delay a claim in Canada is an important factor which the Board is entitled to consider in assessing the applicant's subjective and objective fear of persecution (see *Alvarez Cortez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 770 at paragraph 20; and *Huarta v Canada (Minister of Citizenship and Immigration)*, (1993) 157 NR 225 (FCA)).

Analysis and Decision

[45] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[46] The respondent correctly states the law that questions of credibility, state protection and IFA concern determinations of fact and mixed fact and law, which are reviewable on the standard of reasonableness (see *Velez* above at paragraphs 9 and 10; *Khosa* above, at paragraph 59; and *Dunsmuir* above, at paragraph 47).

[47] In reviewing the Board's decision on the standard of reasonableness, the Court should not intervene unless the Board came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above at

paragraph 47; and *Khosa* above, at paragraph 59). As the Supreme Court held in *Khosa* above, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraphs 59 and 61).

[48] **Issue 2**

Did the Board err in its credibility findings?

In this case, the Board provided a very detailed, lengthy and well-balanced decision that considered all the facts and evidence before it and ultimately came to a reasonable decision that was well within the possible, acceptable outcomes on these facts and the law. The Board's conclusions with regard to the applicant's credibility were reasonable.

[49] The Board pointed to several problems with the narrative as laid out by the applicant. A major problem with her story, as found by the Board, was that she was unaware that the family had any trouble with the FARC until her mother explained the problem to her, after her mother and brother had arrived in the U.S.A. At paragraph 17 of the decision:

> The panel does not believe that the claimant's father was threatened that, if he did not pay extortion, his family would be harmed; he stopped paying the extortion, sold his business and sent away two members of his family (his wife and his son), but he did not tell his daughter who was still in Columbia that she was in danger of being harmed by the FARC because he had stopped paying them extortion. Instead, he sold what he owned, went into hiding leaving his daughter unaware and exposed to the dangers of the FARC. It makes no sense to this panel that he would send his wife and son away to the US for their safety, then go into hiding for his own safety, but not say anything to his daughter, so she could seek safety.

[50] The applicants argue that this is pure speculation and unreasonable. I prefer the characterization by the respondent that the Board was not questioning the motivations of the applicant's father, but rejecting the believability of her story because it was so incredible. The jurisprudence on this point is aptly explained by Madam Justice Judith Snider in *Abdul* above, at paragraph 15:

> The Board is entitled to make reasonable findings based on implausibilities, common sense and rationality, and is entitled to reject uncontradicted evidence if not consistent with the probabilities affecting the case as a whole (*Aguebor*, supra; *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] FCJ No 415 (C.A.) (QL)). While the Board may reject even uncontradicted testimony, the Board cannot ignore evidence explaining apparent inconsistencies and then make an adverse credibility finding (*Owusu-Ansah v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 442 (C.A.) (QL)). Where the Board finds a lack of credibility based on inferences, including inferences concerning the plausibility of the evidence, there must be a basis in the evidence supporting the inferences (*Miral v. Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 254 (TD) (QL)).

[51] In the present case, the Board was careful to explain the basis for its conclusion on the believability of the applicant's story. The Board noted at paragraph 19 that the applicant remained in Columbia for six months without being harmed although the FARC knew her whereabouts. The Board also noted that the FARC did not continue to follow her after the apparent incident where her car was followed by an armed individual. The Board then notes that she could not remember when she was followed by the car although it would have been a traumatic event. Finally, the Board's conclusion on the believability of this story is only one part of her overall story which, as noted below, had no corroborating evidence to support it.

[52] The applicants and the respondent together with the Board in its detailed citations, note the relevant jurisprudence on whether a decision maker can demand corroborating evidence: was it reasonable for the Board to expect that the applicant could and should have supplied corroborating evidence and whether it was open to the Board to draw a negative inference from the failure to produce any (see *Lopera v Canada (Minister of Citizenship and Immigration)*, 2011 FC 653, [2011] FCJ 828, which relied on *Ortiz Juarez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 288, 146 ACWS (3d) 705). *Lopera* above, states at paragraph 31 that: "Whether corroborative evidence can reasonably be demanded depends upon the facts of each case."

[53] In this case, it was reasonable for the Board to expect some corroborating evidence to support her claims, especially in light of the implausibilities discussed above. The Board noted at paragraph 22 of the decision not only that it was unreasonable to not have a police report to corroborate the fact that she complained of being followed, but also that there was no evidence to demonstrate that the police did not make reports in those situations. The Board then noted at paragraph 23 of the decision that the applicant did not have a reasonable explanation for why she did not obtain the letter that was sent to her former common law spouse in Columbia by the FARC.

[54] As I noted above, the applicants submit an argument in the further memorandum of argument which includes a quote from the hearing. The quote referred to concerned the Board questioning the applicant on whether she is in contact with the father of the minor applicant. The applicant then argues that this is evidence that she could not have supplied the note from the FARC supposedly received at her residence in Columbia after she fled. The applicant is confusing two relationships. The facts of this case are that she had one common law spouse in Columbia, the one

who received the letter from the FARC. That relationship ended when she left for the U.S.A. in 2002. The discussion at the hearing concerned the father of the minor applicant, whom the applicant lived with until September 2004, which is not the same man (see certified tribunal record at pages 648 and 649).

[55] I agree with the respondent that the Board's statement at paragraph 17 of the decision (that she wanted to finish college while the evidence shows that she only completed two semesters of college) is a minor point and not an error justifying on its own or cumulatively, the intervention of the Court. While this does appear to be an error, the Board does not actually state that she remained so that she could finish her college degree and may have been referring to the college semester, albeit in unclear language.

[56] In summary, the Board then considered the applicant's story, noted specific reasons for doubting it, asked the applicant for explanations and reasonably rejected those explanations.

[57] **Issue 3**

Did the Board make an unreasonable finding that a viable IFA is available to the applicants?

The Board's determination that Bogota presents a viable IFA available to the applicants was a reasonable determination after it reviewed the circumstances specific to the applicants and applied this to the documentary evidence before it in accordance with the jurisprudence and came to a reasonable determination. The Board's conclusions should not be interfered with on this point.

[58] The applicants essentially disagree with the weighing of the evidence by the Board on this point and state that the Board failed to specifically mention evidence that was contradictory to its findings. The respondent argues that all the evidence was considered by the Board, which ultimately came to the conclusion that in the applicants' specific circumstances, they would not face a risk in Bogota.

[59] The key statements in the decision are at paragraph 41 and paragraph 48:

> [41] Concerning the reach and influence of the FARC in the proposed IFA, the documentary evidence is mixed, depending on who was consulted. Therefore, the panel has had to rely on the circumstances concerning this particular case and in relation to the documentary evidence, consider whether the FARC would choose to continue pursuing a relocated individual. According to the documentary evidence, this would depend greatly on the value of that individual to the FARC. If we are talking about a person of humble origins being relocated to another part of Columbia, it is possible that he or she could live in peace from further FARC harassment. If the relocated individual is a member of the political elite, business class, academia, or professional class and was targeted by the FARC for extortion or coercion to cooperate and provide technical assistance to the FARC, that would render the individual a high-value target to the FARC.
>
> …
>
> [48] In the particular circumstances relating to this claimant, and considering the age of the claimant, the panel does not find it unduly harsh to expect her to move to Bogota before seeking refuge in Canada. The panel does not believe that, on a balance of probabilities, the agent of persecution could locate her in Bogota if she were to move to Bogota. The panel is, therefore, satisfied that it would not be unreasonable, considering all of the circumstances, including those particular to the claimant, to seek refuge in Bogota.

[60] This analysis is reasonable and done in accordance with the jurisprudence on IFAs. I also note that the passages referred to by the applicants in the memorandum of argument concern general

evidence that fails to demonstrate an error by the Board in analyzing the specific circumstances of the applicant.

[61] **Issue 4**

Did the Board err with its findings of fact with respect to the existence of subjective fear?

The applicant argues that the Board erred in assessing subjective fear by stating at paragraph 28 of the decision that she had "made absolutely no attempts to try to legitimize her status in the US". The applicant states that this ignores the evidence that she was waiting for her most recent common law spouse to obtain his U.S. permanent residence status and then sponsor her application. The respondent relies on jurisprudence stating that delay or failure to claim refugee status can be taken into account in assessing subjective fear (see *Alvarez Cortez* above; and *Huarta* above).

[62] The Board reasonably treated the applicants' evidence for two reasons. First, the Board focused its subjective fear analysis exclusively on the applicants' failure to claim asylum in the U.S., at paragraphs 27 and 28 of the decision:

> [T]he claimant went to the US on October 7th, 2002. She remained there until she left on November 19th 2009—seven years. She did not file for asylum because her mother told her that Columbians are not given asylum in the US. She also said that she was young and depended on her mother.
>
> Counsel, in his submissions, stated that the claimant did not file for asylum because she had a child, and if she had filed for asylum, she would have been detained and her daughter would be taken away and adopted by a US couple. The panel finds that the claimant did not offer a reasonable explanation for why she did not apply for refugee protection in the US.

[63] The Board then considered these excuses and rejected each as she was reasonably educated when she arrived in the U.S. and had lived independently from her family in Columbia. The Board concluded at paragraph 28:

> Therefore, the panel finds that it is unreasonable that the claimant made absolutely no attempts to try to legitimize her status in the US. If she was genuinely fleeing Colombia in fear of her life, she should have done so.

[64] Considering the applicant's plan to be sponsored for permanent residency, at this point in the decision, would have actually worked against the applicant. It would have been a further example that she had not acted with any of the sense of urgency that a board can expect a claimant with subjective fear of persecution to have.

[65] Second, the applicant submitted only an explanation that she had planned on applying to be sponsored for U.S. permanent residency. It was reasonable for the Board to not consider this as an actual attempt to legitimize her status in the U.S. No paperwork was submitted and no official steps were taken.

[66] In summary, the Board provided a very detailed, lengthy and well-balanced decision that considered all the facts and evidence before it and ultimately came to a reasonable decision that was well within the possible, acceptable outcomes on these facts and the law.

[67] Consequently, the application for judicial review must be dismissed.

[68] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

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

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 2001, c 27

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont

that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	Toronto, Ontario
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APPEARANCES:

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Manuel Mendelzon	FOR THE RESPONDENT

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