Federal Court  Cour fédérale

Date: 20120823

Docket: IMM-8500-11

Citation: 2012 FC 1010

Ottawa, Ontario, August 23, 2012

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

LUDYS MARIA ECHEVERRIA OLIVARES
RAMON IGNACIO PACHON ALARCON
DANNA CAROLINA PACHON ECHEVERRIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are a family, comprised of a father, Ramon Alarcon, mother, Ludys Olivares, and their minor daughter, Danna. All three are citizens of Colombia who fled that country for Canada in 2010 and upon arrival claimed to be refugees or persons in need of protection, within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act]. They made their claim due to fear that they would be tortured or killed by the Fuerzas Revolucionarias de Colombia or the FARC. In a decision dated October 21, 2011, the

Refugee Protection Division of the Immigration and Refugee Board [IRB or the Board] rejected their claims because it found that the applicants had not successfully rebutted the presumption of state protection. In the present application for judicial review, the applicants seek to have that decision set aside.

[2] While they advance several different arguments as to why the decision ought to be quashed, it is only necessary for me to review one of them, namely, the argument that the RPD committed a reviewable error in mischaracterizing the "profile" or circumstances of Mr. Alarcon relevant to the claimed risk. For the reasons set out below, I have determined that the Board did mischaracterize Mr. Alarcon's profile and that in so doing it committed a reviewable error, which results in the decision being set aside.

[3] In this regard, Mr. Alarcon testified that he worked for a Colombian not-for-profit group of doctors that devoted a large part of its practice to treating victims of terrorism, including victims of the FARC. The group was entitled to seek reimbursement from the Colombian government for treatment afforded to victims of terrorism. Mr. Alarcon's job duties included compiling the necessary information to obtain reimbursements, and thus his role was instrumental in assisting the doctors in treating the victims of terrorism. Mr. Alarcon testified that in late 2009 he was approached by the FARC with demands that he release information about the individuals who had been treated by the group, that he process fraudulent reimbursement requests and that he remit the funds received in respect of the fraudulent requests to the FARC. He refused to do so and in early 2010 was kidnapped and beaten up by the FARC, who renewed their demands. Shortly thereafter, members of the FARC also called Ms. Olivares on her cell phone, indicating they knew she was Mr.

Alarcon's spouse and that if he did not do as they wished the FARC would kill Danna. Following these events, the family relocated within Columbia, but he FARC were able to track them down and renewed their threats. The applicants then fled to Canada and made refugee claims. In its decision, the Board did not doubt the applicants' version of events but, as note, found that they had not rebutted the presumption of state protection as some of the documentary evidence indicated that the authorities in Colombia were capable of protecting individuals generally from the FARC. In so doing, however, the Board noted that the evidence on state protection was divided and also noted that certain groups in Colombian society – including, notably, human rights activists – remained at risk.

[4] In assessing the applicants' claims and the availability of state protection, the RPD characterized Mr. Alarcon as a "billing coordinator", despite his counsel's submission that he was a human rights worker and Mr. Alarcon's evidence regarding the work he did. The Board thus failed to consider whether Mr. Alarcon was a human rights worker or activist, akin to those who may be at risk in Columbia and in respect of whom state protection may not be available. The failure to conduct this analysis is significant because, as the RPD noted in the decision, the voluminous country documentation before it indicated that human rights activists were particularly at risk of persecution and serious harm in Colombia (Decision at para 8, Certified Tribunal Record [CTR] at p 5). Indeed, the May 2010 Report of the United Nations Commissioner for Refugees, entitled *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Columbia,* relied upon by the RPD in its decision, noted that "members of the civil society and human rights activists currently constitute one of the most vulnerable groups in Colombia" and that the "UNHCR considers that human rights activists and members of the civil society advocating

against the violations and abuses of illegal armed groups and the security forces may be at risk on the ground of their actual or imputed political opinion" (CTR at pp 198-190).

[5] While this Court has recently upheld many RPD decisions finding state protection was available to refugee claimants in Columbia (see e.g. *Garavito Olaya v Canada (Minister of Citizenship and Immigration)*, 2012 FC 913; *Pion Tarazona v Canada (Minister of Citizenship and Immigration)*, 2012 FC 605; *Castro Nino v Canada (Minister of Citizenship and Immigration)*, 2012 FC 506; *Hernandez Bolanos v Canada (Minister of Citizenship and Immigration*), 2012 FC 513, 214 ACWS (3d) 553; *Ayala Nunez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 255, 213 ACWS (3d) 451; and *Alexander Osorio v Canada (Minister of Citizenship and Immigration)*, 2012 FC 37, 211 ACWS (3d) 187), in those cases where, like here, the Board failed to properly characterize the applicant's profile, the decisions have been set aside as being unreasonable. For example, in *Osorio Garcia v Canada (Minister of Citizenship and Immigration)*, 2012 FC 366, Justice Barnes overturned a decision in which the RPD reviewed state protection available in Columbia generally but failed to consider the risk to the applicant if she were to return to that country and again became active in socially progressive political or trade union causes. In that case, the applicant had been absent from Colombia for several years, having lived for over a decade illegally in the United States; thus the risk potentially posed to her by reason of her potential activism was arguably much less than that which Mr. Alarcon might face. To similar effect, in *Acevedo Munoz v Canada (Minister of Citizenship and Immigration)*, 2012 FC 86, Justice Simpson set aside an RPD decision in which the Board failed to consider the risk posed to the claimant who, several years prior, had been involved with a youth organization in Colombia, and through its activities had interfered with the FARC's ability to recruit new members. Likewise, in *Arias v*

Canada (Minister of Citizenship and Immigration), 2012 FC 322, I set aside a decision of the RPD, where the Board mischaracterized the applicant as a "lowly clerk", when he was actually a former employee in the judicial system and nephew of a judge, and held that this mischaracterization rendered the Board's decision unreasonable because the documentary evidence indicated that the members of the judiciary and those employed in the judicial system were at greater risk than others in Colombian society.

[6] These decisions are in accordance with the jurisprudence of this Court which holds that RPD decisions which mischaracterize an applicant's profile are unreasonable because in making such a decision the Board fails to consider the evidence before it and to properly evaluate the risk that might be faced by the claimant. As Justice de Montigny noted in *Walcott v Canada (Minister of Citizenship and Immigration)*, 2011 FC 415 at para 44, 98 Imm LR (3d) 216, if the Board "mischaracterize[s] the risk alleged by the Applicant, [it cannot] not properly assess it [and for] that reason alone" he granted the application for judicial review.

[7] Thus, the RPD's failure to appropriately characterize the work Mr. Alarcon did and to consider the country documentation in light of Mr. Alarcon's actual situation and personal circumstances renders its conclusion on state protection unreasonable. Because the other two applicants' claims were derivative of his, the Board's decision in all three cases must be set aside and the applicants' claims will be remitted to the RPD for re-determination by a differently constituted panel of the Board.

[8] No question for certification under section 74 of the IRPA was presented and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review of the RPD's decision is granted.
2. The RPD's decision is set aside.
3. The applicants' refugee claims are remitted to the RPD for re-determination by a differently constituted panel of the Board.
4. No question of general importance is certified.
5. There is no order as to costs.

"Mary J.L. Gleason"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8500-11
STYLE OF CAUSE:	*Ludys Maria Echeverria Olivares et al. v The Minister of Citizenship and Immigration*
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 20, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	GLEASON J.
DATED:	August 23, 2012

APPEARANCES:

Jack Davis	FOR THE APPLICANTS
Nicole Rahaman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Davis & Grice, Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANTS
Myles J. Kirvan, Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT