

Federal Court



Cour fédérale

Date: 20140513

Docket: IMM-6959-13

Citation: 2014 FC 457

Ottawa, Ontario, May 13, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**EVIS NEFTALI CARRANZA BENITEZ
LAZARO ISAI CARRANZA BENITEZ
ABEL JOSUE CRUZ MARTINEZ
EDA ABIGAIL CARRANZA BENITEZ
DIAN ABIGAIL CARRANZA BENITEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Douglas Cryer, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the

Act]. The Board dismissed the Applicants' claim for refugee protection, concluding that they were not convention refugees or persons in need of protection under sections 96 and 97 of the Act.

I. Issues

[2] Was the Board's decision reasonable with respect to considering the evidence before the Board member, in assessing state protection in El Salvador and Mexico and the internal flight alternative available [IFA] for the Applicants, as well as the individual bases for the Applicants' claim?

II. Background

[3] The Applicants consist of Evis Neftali Carranza Benitez [the Principal Applicant, or PA], his brother, Lazaro Isai Carranza Benitez [Lazaro], his sister, Eda Abigail Carranza Benitez [Eda], Eda's husband, Abel Cruz Martinez [Abel], and her daughter, Diane Agibail Carranza Benitez [Diane]. All are citizens of El Salvador except for Diane, who is a citizen of the United States, and Abel, who is a citizen of Mexico.

A. *Personal Information Form Narratives*

[4] All the Applicants except for Abel sign a joint Personal Information Form [PIF] narrative. Their PIF narrative alleges a fear of persecution from the rival gangs Mara 13 and Mara 18.

[5] The El Salvadoran Applicants allege in the PIF narrative that Mara 13 gang members broke into their house and stole things from them on several occasions. The dates on which these incidences occur are not specified, but were after the mother of the El Salvadoran Applicants left El Salvador in 1988. Lazaro also alleges that starting in 1999, Mara 13 members threatened that the PA and Eda would be harmed unless Lazaro joined their gang.

[6] In 1998, Lazaro received temporary protected status in the United States. He failed to receive permanent residence status in the United States but stayed illegally.

[7] In 1998, Eda was harassed by members of the Mara 13 in El Salvador, when they grabbed her necklace and asked her for money. In 1999, she was sexually harassed by members of the Mara 13.

[8] In 2003, Eda went to the United States, where she stayed illegally.

[9] In 1992, the Mara 13 gang beat the PA because Lazaro refused to join their gang. Subsequently, the Mara 13 gang began demanding that the PA join their gang, but he refused. In 2009, the PA was in Moncagua, El Salvador, and was walking home with a friend when members of the Mara 13 stopped them, asked for money and demanded that they join the Mara 13. The PA and his friend refused. The gang members threatened to kill them, but the PA and his friend said they would call the police and fled to a police station. According to the PA, the police did not assist them. However, upon hearing that the police would be contacted, the Mara 13 members fled.

[10] In a supplementary PIF narrative, the PA states that he worked as a pastor in San Salvador from January, 2003, to January, 2009. He states that this work involved preaching to children not to join the Mara 13 and Mara 18 gangs. As a result of this work, there were seven occasions where the PA was approached at his congregation by members of these gangs. They threatened him and attempted to beat him. He did not contact police.

[11] In 2010, the PA left for the United States. He did not apply for asylum.

[12] The PA, Eda, Lazaro and Diane left for Canada on June 1, 2012, as they lacked legal status in the United States and feared being returned to El Salvador.

[13] Abel's PIF narrative alleges that his father left for the United States when Abel was 5 years old. In 2005, when Abel was 15, he joined his father in the United States. His father did not have legal status. Abel states that he is afraid of returning to Mexico and being targeted by criminals or drug cartels. He claims there is no safe place to live in Mexico because of the pervasive presence of gang members.

B. *Testimony*

[14] The PA stated that he did not have faith in the police following the 2009 incident because he believed the police to be aligned with the gangs, and he did not seek recourse from a higher authority because he was afraid. He also claimed that if he returned to El Salvador he would not be safe anywhere in the country because gang leaders have contacts across the country.

[15] Eda stated that she was sexually abused by her uncle when she was seven years old, though she stated that she would not be at risk from him should she return to El Salvador. However, she stated that she would not be safe anywhere in El Salvador because there are gang members throughout the country. She also claimed police would not protect her because they are corrupt.

[15] Lazaro testified that he has a general fear of returning to El Salvador, because he believed the Mara 13 or Mara 18 would pursue him for financial reasons. He also feared that the police would not help him because he is financially successful.

[16] Abel testified that his father was attacked in Mexico prior to leaving for the United States. He filed a police report but the perpetrators were not apprehended. He also testified that when his father returned to Mexico three years ago he was forced by gang members to sell a motorcycle for a low price and that his grandmother was extorted by gang members.

[17] The Board held that the Applicants from El Salvador had not rebutted the presumption of state protection, and there was an IFA in San Salvador. Likewise, the Board denied Abel's claim, on the grounds that he was not credible and that he had not established that he was a person in need of protection. The Board noted that Diane was a minor Applicant and had not advanced a claim against the United States.

[18] The Board found that the Mara 13 or Mara 18 would not harass the El Salvadoran Applicants should they return to their native country. He concluded that there was insufficient

evidence that any gang members would be motivated to persecute them should they return to El Salvador. In particular, the Board found Eda and Lazaro's concerns about returning to El Salvador were hypothetical and speculative. The Board also gave low weight to Eda's claims of sexual abuse by her uncle, as it was not included in her PIF narrative.

[19] Moreover, the Board found that the PA did not rebut the presumption of state protection. In particular, it held that the PA's explanation as to why he only went to the police once was insufficient. The Board acknowledged that there is police corruption in El Salvador, but found that various measures taken by the El Salvador government have reduced police corruption at the operational level. In particular, the Board noted documentary evidence of the active police complaints and disciplinary process. The Board also discussed evidence that police operations have resulted in the arrests of numerous gang members across the country. Based on this, the Board concluded that state protection is adequate at the operational level and that the Applicants' subjective reluctance to engage the police was insufficient to rebut the presumption of state protection.

[20] With regard to Abel, the Board held that his evidence was not credible because there were too many omissions from his PIF narrative that were subsequently raised in his testimony, and his testimony was vague. The omissions included the extortion of his grandmother and the additional incident involving his father following his return to Mexico. The Board was not satisfied with his explanation as to why he did not include the incident about his grandmother in his PIF narrative, and found that he was unable to provide details about the assault against his

father or provide corroborating evidence. Additionally, given the length of time Abel has been absent from Mexico, there is no persuasive evidence that he would be persecuted if he returned.

III. Standard of Review

[21] The standard of review is reasonableness (*Sandoval Mares v Canada (Minister of Citizenship and Immigration)*, 2013 FC 297 at para 29; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 4, 46, 61; *Dunsmuir v New Brunswick*, 2008 SCC at paras 53).

IV. Analysis

[22] Most of the Applicants' arguments amount to a call for this Court to re-weigh the evidence considered by the Board. These arguments are assertions that the conclusions drawn by the Board from the evidence are incorrect. It is not the role of this court to re-weigh the evidence, and there is nothing in my review of the Board's decision which would suggest the Board's conclusions on the evidence were unreasonable. I dismiss the Applicants' arguments regarding the claim of Abel, the viability of San Salvador as an IFA, the lack of a nexus in the claims of Eda and Lazaro, and the finding that the threats by the gangs against the PA did not turn into violence against him.

[23] The remaining issues raised by the Applicants are that the Board ought to have mentioned certain pieces of documentary evidence, and that it erred in its finding regarding the presumption of state protection.

[24] I find that the Board was not unreasonable in failing to mention certain pieces of documentary evidence which did not support its conclusions on state protection. The Board noted documentary evidence of corruption, arbitrary promotions, and insufficient government funding for the police force in El Salvador, as well as the fact there is no uniform code of evidence. It then noted some initiatives which demonstrated efforts by the government to address these problems. The Board need not discuss all pieces of documentary evidence, and its treatment of the evidence was reasonable.

[25] The Applicants also argue that the Board erred in assessing the risk of sexual assault to women in El Salvador, as it did not examine documentary evidence of gender-based violence, notwithstanding its finding that Eda did not face a risk of individualized harm. The Applicants cite *Dezameau v Canada (Minister of Citizenship and Immigration)*, 2010 FC 559 [*Dezameau*] and *Josiile v Canada (Minister of Citizenship and Immigration)*, 2011 FC 39 [*Josiile*] in support of this argument. However, both these cases were in the context of violence against women in Haiti (*Dezameau*, above, at para 18). Given the differences between El Salvador and Haiti relating to gender-based violence, I find these precedents do not apply here.

[26] The Board's conclusion that the presumption of state protection was not rebutted was also reasonable. Cumulatively, the Applicants only report going to the police once, in response to the incident in Moncagua in 2009. In his testimony, the PA gave vague details regarding this incident. The circumstance in which this assistance was sought is unclear, as is how assistance was or was not provided. Beyond this incident, no police assistance was sought by the Applicants. Other than a general scepticism that the police would not assist them, there is no

evidence from the Applicants that they sought police assistance or protection from other sources. In the absence of providing a reasonable justification for not seeking state protection, the Applicants were obliged to seek it (*Castro v Canada (Minister of Citizenship and Immigration)*, 2006 FC 332 at paras 19-20). A subjective reluctance to seek protection is insufficient to rebut the presumption of state protection (*Molnar v Canada (Minister of Citizenship and Immigration)*, 2012 FC 530 at para 92; *Ayala Alvarez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 703 at para 20).

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is to be certified.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6959-13

STYLE OF CAUSE: Benitez et al v MCI

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: MAY 8, 2014

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

DATED: MAY 13, 2014

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