

Federal Court



Cour fédérale

**Date: 20140514**

**Docket: IMM-3480-13**

**Citation: 2014 FC 466**

**Ottawa, Ontario, May 14, 2014**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**MARIA MERCEDES GAITAN COMENARES  
CARLOS ALBERTO SABOGAL MORA  
MARIA JOSE VARGAS GAITAN  
JULIANA VARGAS GAITAN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The claims for protection made by Maria Mercedes Gaitan Colmenares, the principal claimant (her last name is incorrectly spelled in the style of cause), her husband, Carlos Alberto Sabogal Mora, and their daughters, Maria Jose Vargas Gaitan and Juliana Vargas Gaitan, were denied by the Refugee Protection Division. The Board Member stated: “I find that the fear of being targeted by the FARC to be purely speculative.”

[2] I am unable to accept the Applicants' submission that "the Board erred in making unreasonable plausibility findings without a basis in the evidence."

[3] This Court has frequently held that implausibility determinations must be based on clear evidence and a rationalization process supporting the Board's inferences. It has also been held that there are two distinct bases for a finding of implausibility: *Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155, [2012] FCJ No 1252, at para 11. The first is where the allegation is "outside the realm of what reasonably could be expected:" *Valtchev v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1131. The second is where the allegation does not make sense in light of the evidence before the decision-maker. The implausibility in this case, falls within this second category.

[4] The Applicants' claim for protection rested on an allegation that Ms. Colmenares, and therefore her family, were at risk from the FARC as a result of her father having been kidnapped and identified as a military target by the FARC. The evidence was that Ms. Colmenares' father was kidnapped on September 28, 1993, when he was a pilot for a private company that provided helicopter services to the petroleum sector. He was released on November 13, 1993, after a ransom was paid. In 1996, his company was hired to provide services to the Columbian military and the pilots were declared military targets of the FARC. He continued to work between 1996 and 1999, when he retired, having suffered no reprisals from the FARC.

[5] In 2001, Ms. Colmenares says that she and her two daughters received a threatening phone call demanding 100 million pesos. She received other calls telling her they had not forgotten about her father. The family moved to another area in 2002 to escape the threats.

[6] In 2003, again to escape the threats, the family visited Ms. Colmenares' sister in Aruba for two months. When they returned to Columbia, they stayed with Ms. Colmenares' parents. Around this time, Ms. Colmenares pulled her daughters from school and requested a leave of absence from work. In 2003, her parents received a threatening call stating that the FARC had been following them and knew where to find them. Her parents left for the USA.

[7] In 2004, unknown callers contacted the restaurant where Ms. Colmenares worked. Around this time, she and her daughters left for Aruba again for another three months. In 2006, her parents again went to the USA and stayed there for six months, but did not make an asylum claim.

[8] In 2008, Ms. Colmenares was again contacted and told to pay a sum of 500 million pesos and additional calls were made to intimidate the family. Ms. Colmenares changed her daughters' school again and the family moved in with their in-laws.

[9] The Applicants attempted to get visas to the United States but were refused. Unknown persons followed the Applicants when they made a refugee claim at the Canadian Embassy in Bogota. No assessment of the claim was made at the time because the program was no longer available.

[10] In May 2009, the Applicants came to Canada. Since their arrival, they have received calls demanding that payments be made. In 2009, after she left for Canada, Ms. Colmenares' father says that he was contacted by FARC and that he began paying the extortion demands by way of non-perishable food items and non-prescription medications such as aspirin. She says that as a consequence FARC has left her family alone; however, even if true, it does not explain why FARC previously left them alone.

[11] In my view, the finding of the Board that the claims are implausible is reasonable based on the record before it. As the Board recognized, beyond being threatened randomly throughout a 17 year period, neither the Applicants, nor the father had been subject to any reprisal. This is shocking given the following:

1. The documentary evidence consistently emphasizes how capable and willing FARC members are at committing acts of extortion and punishing those who do not comply. Ms. Colmenares' own father acknowledges that "it is known that these groups have no mercy for their victims."
2. Despite having kidnapped Ms. Colmenares' father once already, FARC did not engage him other than by threats at any time following his kidnapping in 1993.
3. Despite having demanded 100 million pesos and subsequently increasing that demand to 500 million pesos, FARC seems content to accept non-perishable foods as payment from Ms. Colmenares' father. This is unbelievable especially given Ms. Colmenares' testimony at the hearing that one of the primary reasons FARC would still be interested in her family are "financial" reasons.

4. In her PIF, Ms. Colmenares admits that her brothers were not targeted, which completely undermines her claim that her family is being targeted because of its connection to her father.
5. No one in her family has received threats since 2010.

[12] In short, it is implausible that Ms. Colmenares is being targeted because of her relation to her father when her brothers are not being targeted and no one in her family has received any reprisal since her father's kidnapping in 1993, despite FARC having an international reputation of being a ruthless organization that does not make idle threats.

[13] While the Applicants are correct in submitting that there is no evidence that the FARC would not accept non-perishable foods as payment, and that they have accepted non-monetary payments such as ammunition in the past, there is simply no logical connection between demanding 500 million pesos, and then accepting non-perishable food items on an "anonymous" basis amounting to 3.7 million pesos, every two or three months. However, this was not a central determination in the overall credibility of the Applicants; rather, this implausibility was used by the Board to reasonably discount the letter from Ms. Colmenares' father.

[14] For these reasons, the Board's decision cannot be set aside. Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** that this application is dismissed and no question is certified.

“Russel W. Zinn”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:**

IMM-  
3480-  
13

**STYLE OF CAUSE:** MARIA MERCEDES GAITAN  
COMENARES ET AL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** MAY 6, 2014

**JUDGMENT AND REASONS :** ZINN J.

**DATED:** MAY 14, 2014

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