Federal Court  Cour fédérale

Date: 20140728

Docket: IMM-6840-13

Citation: 2014 FC 752

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 28, 2014

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

RENE MARTINEZ GRANADOS
ANA LIDIA FLORES DE MARTINEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board (panel or RPD) dated August 30, 2013, that the applicants are not "Convention refugees" or "persons in need of protection" under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act).

[2] The applicants are citizens of El Salvador. They left their country in October 2005 because of death threats, extortion and attacks by members of the Mara 18 group, a criminal gang (Group). The applicants were operating a grocery store in a rural municipality when, in July 2005, members of the Group forced them to pay a monthly extortion fee. The male applicant filed a complaint with the police, but to no avail. The applicants paid the fee until October. However, because their son fell ill, they missed a payment, which led to an attack and new threats. The applicants left their country and entered the United States illegally, via Guatemala and Mexico, in October 2005. They remained there without status until April 6, 2011, the date on which they arrived in Canada.

[3] The panel does not challenge the applicants' credibility or the fact that, since their departure, other members of the family have had problems with the Group. In 2006, the home of the male applicant's mother was set on fire intentionally and his brother was shot. In November 2012, the male applicant's brother was robbed. Finally, the applicants' daughter, a student who still lives in El Salvador, but in a city other than the city in which her parents lived, received a handwritten note stating that she had to begin a relationship with a member of the Group or pay them $15 to pursue her studies.

[4] The panel's finding that section 96 of the Act does not apply in this case is not challenged by the applicants. The remaining issue is the application of section 97. The issue is essentially whether the panel committed a reviewable error by determining that the applicants' prospective risk is generalized and whether there is an internal flight alternative (IFA) in the city of San Salvador. The panel believes that "being a victim of crime and violence is a risk that is

'prevalent' or 'widespread' in El Salvador and is one that is faced generally by all residents of that country." Furthermore, the panel does not believe that the members of the Group from the town that the applicants left in 2005 are still interested in the applicants eight years later. The panel noted that the applicants are no longer operating a business and that between 2006 and 2012, their family members did not suffer any hardship. Also, there is no evidence that the problems experienced by the male applicant's brother or by the applicants' daughter were connected to the applicants' failure to continue to pay the extortion fee. According to the panel, the male applicant's brother was attacked in 2012 because he was a messenger—someone perceived as having money in his possession, while the applicants' daughter received a threatening note because a gang member was interested in her.

[5] There is no need to intervene in this case. The applicants' disagreement is not about the applicable law but instead about the application of those principles and the interpretation of the facts in the record. The panel's decision is reasonable in all respects.

[6] First, note that, in *Prophète v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31, the Federal Court of Appeal stated that in countries where crime is rampant or widespread and where criminals target various groups, the fact that certain groups may be more likely to be victims of crime does not necessarily exclude them from the generalized risk category. What is necesary is that the risk analysis be "individualized". In *Portillo v Canada (Minister of Citizenship)*, 2012 FC 678 at paragraphs 38-39 (*Portillo*), Madam Justice Gleason noted that "[o]n one hand, in several cases similar to the present, the Court has overturned RPD decisions where the claimant had been personally targeted for violence by one of the criminal

gangs operating in Central or South America" (citations omitted), while she also noted the following: "[o]pposite conclusions were reached in the other group of cases, where the Court upheld the RPD's decisions in situations where gangs made threats of future harm to the claimants but the threats were found to be insufficient to place the claimant at any greater risk than others in the country." (citations omitted).

[7] In my view, this is not a case where the *Portillo* principles are determinative of the outcome of the refugee claim. This is not a situation where merchants threatened by a criminal gang leave their country and claim refugee protection a few weeks or months later. It is more than eight years later. Determining person in need of protection status is an exercise that is essentially prospective. Even in accepting that the applicants feared being the subject of reprisals by members of the Group at a certain point in time, that fear does not appear well-founded today if the panel's reasoning, which is not arbitrary or capricious in this case, is accepted.

[8] In fact, in the decision under review, the panel explained that the applicants do not face a personalized risk given the time that has elapsed since the threats, the extortion and the attacks. The applicants' main problem is establishing a causal connection. Yes, there is a generalized risk, but the incidents since 2005 have no apparent connection with the applicants' refusal to pay the extortion fee. The panel justified its reasoning with the fact that there is no evidence in the record that the Group intentionally set the mother's house on fire in 2006 in retribution, which supports the finding of insufficient causality; furthermore, she still lives in the same village and no new incidents have occurred. Regarding the attack on the male applicant's brother in 2012, the panel noted that it occurred "when he was working as a messenger on a motorbike".

Similarly, there is no connection between the note received by the applicants' daughter and their own problems with the Group. Finally, both of the applicants' sons who, like their sister, live in San Miguel, which is two hours from where the applicants lived before, have had no problems with the Group. Because several years have passed since the last sign of interest from the Group, it was not unreasonable to find that the risk was only generalized.

[9] The panel's finding that the applicants face only a "generalized risk" therefore seems to me to be an acceptable outcome in light of the applicable law and the evidence in the record. In this case, the applicants did not demonstrate to the panel's satisfaction that they would still be personally targeted by the Group, after more than eight years, if they were to return to El Salvador, and more particularly, if they were to settle in another part of their country.

[10] Regarding the existence of an IFA, the panel found that the applicants could move to San Salvador. With respect to the first component of the test, even though the applicants argue that the Group has a national presence and that the Group [TRANSLATION] "has the human, financial and physical means and resources to operate throughout El Salvador", there is, however, no evidence that the Group would use such resources to find them. That finding seems reasonable to me. With respect to the second component, the panel considered the specific circumstances of the applicants. It found that the high unemployment rate and the lack of family or friends in San Salvador are not sufficient reasons to render San Salvador unreasonable as an internal flight alternative. In addition, the panel noted that the applicants are young and have work experience in El Salvador, Canada and the United States. I can find no unreasonableness in the panel's finding that the second component of the test was also satisfied.

[11] For all of these reasons, this application for judicial review must be dismissed. Counsel raised no question of law of general importance.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. There is no question for certification.

"Luc Martineau"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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