

Federal Court



Cour fédérale

Date: 20150218

Docket: IMM-8204-13

Citation: 2015 FC 197

Ottawa, Ontario, February 18, 2015

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

**NADIA DANIELA AGUIRRE RUJANA
GERMAN ENRIQUE RIOS RODRIGUEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The applicants seek to set aside of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated November 27, 2013, which found that they were neither Convention refugees nor persons in need of protection pursuant to sections

96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

II. Facts

[2] The applicants, Nadia Aguirre Rujana (the primary applicant) and her spouse, German Rios Rodriguez, are citizens of Columbia. Ms. Aguirre Rujana is 24 years old and Mr. Rios Rodriguez is 28 years old. They claim to have a well-founded fear of persecution by the Revolutionary Armed Forces of Colombia (FARC).

[3] The applicant claims that she and her family are being persecuted because of their prominence in Aipe, Colombia. Her family owns the only gas station in Aipe and are considered affluent and influential. For this reason, her family has been extorted or threatened by the FARC since 1998. The FARC also threatened the applicant's father in 2001 and 2006, and threatened, assaulted or fired at the applicant in Bogota in 2007, in 2012 (twice), and in 2013.

[4] In response, the applicant's father sought protection of the authorities. He made public denunciations against the FARC on the local radio. As a result the FARC targeted the applicant. The applicant suffered from an attempted murder by poisoning from the FARC in 2007. After the attempted murder, the applicant went to the police but the police did not initiate or file a written case report.

[5] The applicant's father went to the army battalion to request protection in 2011. Protection was provided until the army relocated when protection ceased.

[6] In October, 2012, while visiting the applicant's parents in Villavicencio, the applicants received a threatening phone call from the FARC. The applicants once again went to the police to request state protection; however the police told the applicants they did not have sufficient resources to provide protection.

[7] The applicants left Bogota the next month and fled to Sogamoso. However, after approximately a month of being in Sogamoso, two men fired shots at Nadia while she was attempting to leave the house. In response, the applicants once again called the police but were not assisted and instead told to make the request for assistance to the Defence Ministry. The applicants contacted a friend who was employed as a director of human rights in the army; however their request for assistance was denied.

[8] After the incident in Sogamoso, the police accompanied the applicants to the bus terminal and the applicants again returned to Bogota.

[9] The applicant and her family were granted United States visitors visas and left Colombia in February 2013; however the applicant returned to Columbia eight days later to be with the male applicant.

[10] In May 2013, while driving, the applicants were shot at by people in another vehicle. The applicants' lost control of the vehicle and went off the road. The applicants' once again went to the police. It was at this time that the applicants realized that the police were not going to help them, and so they decided to flee to Canada.

[11] In July 2013, the applicants arrived in Canada via the United States. Their refugee claims were rejected by the Board on November 27, 2013.

III. Decision

[12] The Board concluded that the determinative issue was state protection and found that while the applicants did approach the police and filed a report, they did not give the authorities a “reasonable opportunity to investigate”. This is especially so after they were shot at in December, 2012. The police told the applicants to make a request to the Ministry of Defence, and were told it may take months to resolve. The Board explained that the applicants at that point decided to leave the country and made no attempt to make the request to the Ministry of Defence. Further, when the applicants were run off the road in Columbia in May 2013, they approached the police who took a report; however they do not know what investigative steps followed as they left Columbia. Again, the applicants did not give the authorities an opportunity to conduct a meaningful investigation.

[13] The applicants were asked whether they did anything else to seek protection aside from filing police reports and talking to a friend who was the director of human rights in the army. However, the Board reasoned that this did not point to a lack of state protection as talking to a friend is not approaching the state. Further, this incident happened in May 2013, and the applicants left the country in July 2013.

[14] The Board also considered that Colombia is a democratic country, possessing institutions, infrastructures, and legislative tools that are common to most free and democratic countries.

Specifically, there is an independent judiciary, police and army, and other administrative institutions that indicate the state is willing and able to protect its citizens. The presumption of state protection was not rebutted.

IV. Analysis

A. *The standard of review*

[15] The sole issue in this application is whether the Board erred in its assessment of the availability of state protection. Questions as to the adequacy of state protection are questions of mixed fact and law ordinarily reviewable against a standard of reasonableness: *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171.

B. *The admissibility of the applicant's affidavit sworn November 17, 2014*

[16] The affidavit filed by the applicant, and sworn on November 17, 2014, is not in the proper form as required by the *Federal Courts Rules*, SOR/98-106, Rule 80(1) and Form 80A. Counsel who commissioned the affidavit did not write where the affidavit was commissioned, that is, where the applicant was when it was sworn. Further, the affidavit contains opinion evidence and post-hearing evidence. As such, the affidavit is struck in its entirety.

C. *The Board's state protection finding was reasonable*

[17] The Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, established a presumption that states are capable of protecting their own citizens – except in a “situation of complete breakdown of state apparatus.” Therefore, refugee claimants must overcome the presumption of state protection. Generally speaking, refugee claimants must first

seek protection from their home state, unless they provide clear and convincing evidence that state protection would not reasonably have been forthcoming: *Ward; Andrade v Canada (Minister of Citizenship and Immigration)*, 2013 FC 436.

[18] The state protection presumption is particularly strong in the case of democratic nations; however, as there is a wide spectrum of democratic nations, the Board must look further than the mere existence of elections, which are less relevant to the issue of state protection. The focus is on the strength of institutions relevant to state protection, such as the professionalism of the police force, the legal infrastructure including its resourcing, and the independence of the judiciary and defence bar: *Andrade* at para 23; *Sow v Canada (Minister of Citizenship and Immigration)*, 2011 FC 646.

[19] In my view, there is no error in the Board's state protection analysis.

[20] The Board's determinative state protection conclusion relied primarily on the finding that the applicants "failed to give the authorities a reasonable opportunity to investigate." Specifically, the Board relied on the two most recent incidents – when the applicants were shot at in November 2012 and when they were shot at again in May 2013 – to demonstrate that the applicants did not give the authorities a reasonable opportunity to investigate. However, it is contended that the Board failed to consider the evidence of ongoing requests for state protection by the applicant and her father. The applicants had sought state protection since 2007, approximately six years before fleeing Colombia, and the applicant's father had sought state protection for himself and the applicant long before 2007.

[21] In my view, the Board did not limit or constrain its assessment of state protection to only the most recent events. It made an assessment based on the entirety of the claimants narrative, and concluded that the period of time between May and July was insufficient, under the circumstances. While another Board member may have reached a different conclusion on these facts, this conclusion was reasonably open to the member.

JUDGMENT

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

There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8204-13

STYLE OF CAUSE: NADIA DANIELA AGUIRRE RUJANA, GERMAN
ENRIQUE RIOS RODRIGUEZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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