

Federal Court



Cour fédérale

Date: 20170908

Docket: IMM-1040-17

Citation: 2017 FC 812

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 8, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**CARMEN GRISELDA CUBAS LOPEZ
ELMER EDGARDO LOPEZ SOLIZ
KEVIN JOSUE LOPEZ CUBAS
GRACE CAROLINA LOPEZ CUBAS
DANIEL ALEJANDRO LOPEZ CUBAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for leave and for judicial review filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered on

February 8, 2017, by the Refugee Protection Division (RPD or panel) of the Immigration and Refugee Board, whereby the applicants are not refugees within the meaning of section 96 and subsection 97(1) of the IRPA. The grounds of persecution set out in the IRPA were not met.

[2] For the reasons that follow, I find that this application must be dismissed.

II. Facts

[3] The principal applicant, Elmer Edgardo Lopez Soliz; his spouse, Carmen Griselda Cubas Lopez (collectively, “the applicants”); and their three children, Kevin Josue Lopez Cubas, Grace Caroline Lopez Cubas and Daniel Alejandro Lopez Cubas, are citizens of Honduras.

[4] The principal applicant has been a member of the Church of Jesus Christ of Latter-day Saints (the Mormon church) since 1991. He holds an important position in the church and is also responsible for its finances. His work with the church involves interacting with young offenders in certain dangerous neighbourhoods.

[5] In early 2016, the principal applicant was providing counselling to the spouse of a leader of the Mara 18 criminal organization, Alejandro Flores, known as “El Zarco”. She was pregnant and badly abused by El Zarco. On September 8, 2016, she called the principal applicant to inform him that she was leaving El Zarco, as he had advised her.

[6] On September 10, 2016, the principal applicant received a call from El Zarco, accusing him of causing his wife to leave and demanding a high ransom. The principal applicant did not

tell his spouse about that call but discussed it with his superior. He also changed the route he took to work each day.

[7] On September 18, 2016, the principal applicant's spouse received a telephone call at home insisting on the ransom as soon as possible. She was also informed that the family's comings and goings were being observed.

[8] On September 19, 2016, the principal applicant filed a complaint with the local police, who refused to accept it. That same day, the principal applicant and his family abandoned their home to hide at a friend's home. The next day, the principal applicant received another telephone call from El Zarco, advising him that the deadline for the ransom had passed. El Zarco threatened to find him and kill him and his family.

[9] The applicants left the country on October 11, 2016. They arrived in Canada on October 13, 2016, via the United States, and filed a refugee claim.

[10] One final relevant detail is the fact that the applicants' adult son is currently on a religious mission in the United States. He has a temporary two-year visa and is not involved in the refugee claim in Canada. The applicants did not inform him of the threats they had received and did not encourage him to file his own refugee claim.

III. Decision

[11] The RPD dismissed the refugee claim on the ground that the applicants lacked credibility.

The RPD cited several inconsistencies and contradictions in the evidence:

- A. The principal applicant did not inform his spouse about the initial call from El Zarco, even though he knew that El Zarco was a leader of the Mara 18, that he was dangerous and very well known in the region, and that the Mara 18 is highly organized and violent and carries out its threats;
- B. The principal applicant stated that, after the initial call from El Zarco, he was satisfied that a change in his route would be enough because he did not think that El Zarco could identify him, even though he already knew his name and telephone number;
- C. The applicants did not tell their adult son in the United States about the threats they received in Honduras because he was far from the risk and because he was on a religious mission that could not be interrupted by a refugee claim. The RPD did not see any reason for not advising the adult son in the United States and was not satisfied that a refugee claim would have forced him to interrupt his religious mission;
- D. The principal applicant failed to mention before his testimony that the church he worked with had to close its doors because of problems with the Mara 18;
- E. The principal applicant testified that the police refused to accept his complaint under the pretext that this type of denunciation based on threats from unknown numbers is very hard to investigate, even though the principal applicant could identify the perpetrator and the documentary evidence indicates that the Honduran police have a formal process for handling complaints;

- F. Neither the applicants nor the RPD could obtain any information regarding a senior leader of the Mara 18 known as El Zarco, despite his alleged notoriety.

[12] The RPD concluded that each of these credibility issues, individually, was not sufficient to dismiss a refugee claim, but their number and consistency led the RPD to dismiss the applicants' story.

IV. Analysis

[13] The applicants submit that the RPD erred in its analysis of:

- A. The principal applicant's failure to inform his spouse of the initial call from El Zarco;
- B. The change in the principal applicant's route following the initial call from El Zarco;
- C. The failure to advise the adult son in the United States of the threats in Honduras;
- D. The allegation that the police did not accept the complaint filed by the applicants.

[14] The applicants also submit that the RPD erred in its finding that the only corroboration for the documents submitted as evidence is the applicants' testimony.

A. *Standard of review*

[15] There is no debate between the parties that the standard of review regarding the RPD's findings is that of reasonableness.

B. *The principal applicant's failure to inform his spouse of the initial call from El Zarco*

[16] The principal applicant explains that he had been working in Honduras for a long time in a neighbourhood with a lot of crime and that he helped dangerous people. His job required a certain tolerance for threats. He argues that it should not be surprising that he did not inform his spouse of the initial threat from El Zarco because he did not want work-related problems to affect his family and personal life. The principal applicant submits that the panel should have considered his version of the facts.

[17] The panel concluded that the principal applicant's explanation that he did not think that the situation was dangerous was illogical because he knew that El Zarco was a leader of the Mara 18, that he was very well known, that the Mara 18 was highly organized and violent and that it carried out its threats.

[18] In my opinion, the panel's finding in this regard is reasonable. It was open to the panel to weigh the evidence, and it seems quite clear that the panel understood that the environment in which the principal applicant performed his duties was dangerous.

C. *The change in the principal applicant's route following the initial call from El Zarco*

[19] The principal applicant explains that, although the initial call indicated that El Zarco knew his name and telephone number, that did not necessarily mean that the Mara 18 had identified him. The panel did not have enough evidence to arrive at that conclusion. Therefore, the change in the principal applicant's route was a reasonable reaction to the initial telephone call.

[20] Once again, I am of the opinion that the panel's analysis is reasonable. According to the principal applicant's statement of facts, El Zarco stated during the initial call that he also knew that the principal applicant was responsible for the church's finances. It is therefore clear that El Zarco's knowledge was not limited to the principal applicant's name and telephone number.

D. *The failure to advise the adult son in the United States of the threats in Honduras*

[21] The principal applicant explains that his son in the United States had a visa and was not likely to return to Honduras in the near future and, therefore, the applicants did not advise him of their departure from Honduras. The principal applicant also explains that their adult son was committed to continuing his religious mission for two years and that a refugee claim would have interrupted his mission.

[22] The panel considered these submissions, but concluded that the following facts indicated that it was reasonable to expect the applicants to advise their adult son in the United States of the danger: (i) the adult son's status in the United States was temporary (with no guarantee of being extended); (ii) the lack of evidence that the adult son's religious mission was incompatible with a refugee claim; and (iii) the significant danger for the adult son in Honduras.

[23] I am of the opinion that this finding by the panel is supported by the evidence and is reasonable.

E. *The allegation that the police did not accept the complaint filed by the applicants*

[24] The principal applicant testified that the police did not want to accept his complaint under the pretext that it would be very difficult to investigate threats from an unknown number.

[25] The panel did not believe the principal applicant in that regard because the documentary evidence indicates that Honduran authorities accept complaints.

[26] However, the applicants note that the documentary evidence does not indicate that every complaint is accepted by the police. Despite the documentary evidence, it remains possible that the police to whom the principal applicant presented the complaint refused to accept or investigate it.

[27] I agree with the applicants in this regard. I am therefore of the opinion that the panel's finding that this portion of the applicants' allegations lacked credibility is unreasonable.

[28] That being said, I am of the view that this error is insufficient, by itself, to overturn the panel's finding regarding the applicants' general lack of credibility. The several other problems with the applicants' credibility remain valid.

F. *Documentary evidence based on factors outside the applicants' testimony*

[29] The applicants submit that the panel's finding that they relied solely on their own testimony is incorrect, and therefore unreasonable, because they also relied on the testimony of their neighbours, who stated that they personally heard the threats against the applicants made by Mara 18 members.

[30] I do not accept that argument. Firstly, the panel cited a number of credibility issues that led it not to believe the applicants. It is also clear that the panel did not fail to consider the neighbours' testimony. It explicitly refers to that testimony in the decision, indicating that it was insufficient to demonstrate the applicants' allegations or to make their testimony credible.

[31] Regarding the lack of other evidence of El Zarco's existence, the applicants note that the Mara 18 is a criminal organization. The applicants submit that it is not surprising that one of its leaders remains anonymous. I do not accept that argument, either. The principal applicant himself testified that El Zarco is well known. He also testified that El Zarco is known to police. According to the applicants, it is clear that El Zarco is not anonymous. In my view, the RPD was correct to expect that such a leader of the Mara 18 would be referenced in the media or in reports from the government or non-governmental organizations.

V. Conclusions

[32] Although one of the disputed findings by the panel is unreasonable, I am of the opinion that the panel's general conclusion that the applicants lack credibility is reasonable.

Consequently, I find that this application for judicial review must be dismissed.

[33] The parties did not propose any serious questions of general importance to be certified.

JUDGMENT in IMM-1040-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No serious question of general importance is certified.

“George R. Locke”

Judge

Certified true translation
This 30th day of September 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1040-17

STYLE OF CAUSE: CARMEN GRISELDA CUBAS LOPEZ, ELMER EDGARDO LOPEZ SOLIZ, KEVIN JOSUE LOPEZ CUBAS, GRACE CAROLINA LOPEZ CUBAS AND DANIEL ALEJANDRO LOPEZ CUBAS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: LOCKE J.

DATED: SEPTEMBER 8, 2017

APPEARANCES:

Manuel Centurion FOR THE APPLICANTS

Caroline Doyon FOR THE RESPONDENT

SOLICITORS OF RECORD:

Manuel Antonio Centurion FOR THE APPLICANTS
Counsel
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec