Federal Court  Cour fédérale

Date: 20180307

Dockets: IMM-1534-17
IMM-1901-17

Citation: 2018 FC 262

Ottawa, Ontario, March 7, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

Dockets: IMM-1534-17

BETWEEN:

MARINO VICTORIA CARDENAS
VALERIE VICTORIA
RAFI MATTHEW VICTORIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-1901-17

AND BETWEEN:

MARTHA LUCIA GOMEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 1999, the applicants, Mr Marino Victoria Cardenas and his wife, Martha Gomez, fled Colombia with their children out of fear of the Revolutionary Armed Forces of Colombia (FARC). Mr Victoria Cardenas and Ms Gomez failed in their applications for refugee protection, for a pre-removal risk assessment (PRRA), and for permanent residence on humanitarian and compassionate grounds (H&C). This application for judicial review relates to the decision on the applicants' PRRAs. I have rendered a separate decision on the applicants' H&Cs.

[2] In their PRRA applications, the applicants explained that Mr Victoria Cardenas had been targeted by FARC after winning an election against a candidate FARC supported. He received death threats, and an assassination attempt against him resulted in the death of his nephew. Mr Victoria Cardenas fled to the US in 1992; Ms Gomez joined him there two years later. Believing conditions had improved in Colombia, they returned there in 1999. However, FARC was still looking for Mr Victoria Cardenas. FARC members raped Ms Gomez and made clear their intentions to pursue Mr Victoria Cardenas. The family returned to the US. The applicants claim that Mr Victoria Cardenas's brother and a colleague were both subsequently murdered by FARC.

[3] Mr Victoria Cardenas and Ms Gomez lived and worked illegally in the US, using false identity documents. Mr Victoria Cardenas was convicted of identity fraud, as well as impaired driving. Ms Gomez admitted to purchasing false documents and participating in a fraudulent marriage with a US citizen.

[4] In 2009, the applicants came to Canada and claimed refugee protection. Mr Victoria Cardenas was found inadmissible to Canada based on his criminal record, and his apparent intention to remain in Canada permanently (under ss 20(1)(*a*) and 36(1)(*c*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] – see Annex for all provisions cited). Mr Victoria Cardenas was, therefore, excluded from claiming refugee status.

[5] The other applicants' refugee claims were dismissed in 2013 on the basis that they had not demonstrated a lack of state protection in Colombia or an inability to live safely in another part of the country.

[6] In 2016, the applicants filed their PRRA applications. Mr Victoria Cardenas included the children on his; Ms Gomez submitted a separate application. The PRRA officer dismissed both applications, essentially on the same grounds.

[7] The applicants argue that the PRRA officer treated them unfairly and rendered unreasonable decisions. They maintain that the officer relied on evidence that was unavailable to them and discounted their credibility without holding an oral hearing. They also contend that the officer gave undue weight to outdated documentary evidence. Finally, they submit that the officer erred by failing to recognize that there were compelling reasons to allow Ms Gomez to remain in Canada. They ask me to quash the officer's decisions and order another officer to reconsider their PRRA applications.

[8] I can find no basis for overturning the officer's decisions. The officer treated the applicants fairly, and his conclusions were supported by the evidence before him. I must, therefore, dismiss these applications for judicial review.

[9] There are four issues:

1. Did the officer treat the applicants unfairly?
2. Did the officer unreasonably rely on dated evidence?
3. Did the officer unreasonably conclude that the applicants had an internal flight alternative (IFA) in Colombia?
4. Did the officer err in concluding that there were no compelling reasons to allow Ms Gomez to remain in Canada?

II. The Officer's Decision

[10] The officer accepted that Ms Gomez had been raped, but was not satisfied on the evidence that Mr Victoria Cardenas's colleague and his brother were murdered by FARC. The officer concluded that the applicants had not been targeted by FARC since 1999.

[11] With respect to the possibility of an IFA, the officer concluded that the applicants would likely be safe in Bogota or Cartagena, instead of their home town of Roldanillo.

[12] On the issue of state protection, the officer found that, even though there was evidence of violence and human rights abuses in Colombia, there was insufficient evidence showing that the applicants would be targeted, particularly in major cities like Bogota and Cartagena, where

FARC is weaker. The officer acknowledged that returnees to Colombia sometimes face a risk of kidnapping because they are perceived to be relatively wealthy. Again, however, this risk is lower in major centres. According to the officer, the applicants may face discrimination on their return due to their Afro-Colombian ethnicity, but not a risk of torture or death.

III. Did the officer treat the applicants unfairly?

[13] The applicants maintain that the officer relied on a report dated April 2016, while their submissions to the officer were filed over a year earlier. Obviously, they did not have a chance to comment on that report, and the officer's reliance on it was unfair, according to the applicants.

[14] In addition, the applicants argue that the officer was obliged to convene an oral hearing because they had specifically requested one, and the officer's reasons contain veiled credibility findings against them. The applicants say that the officer should have afforded them a hearing before making any adverse credibility findings.

[15] I disagree with the applicants on both of these contentions.

[16] First, the disputed report was publicly available and did not disclose any major change in conditions in Colombia. In fact, the portions of the 2016 document on which the officer relied cited an earlier report from 2013. I see no unfairness arising from the officer's treatment of this evidence.

[17] Second, the officer did not make adverse credibility findings against the applicants. Rather, the officer found there was insufficient proof, for example, that FARC had killed members of the applicants' family. The evidence about those deaths emanated from documents filed by the applicants, not from their own testimony. They did not witness the alleged killings so their credibility was not in issue.

[18] Therefore, I cannot conclude that the officer treated the applicants unfairly.

IV. Did the officer unreasonably rely on dated evidence?

[19] The applicants argue that the officer placed undue reliance on outdated evidence. As mentioned, the officer relied on a report dated April 2016. However, the applicants point out that the officer gave the greatest weight to portions of the report which referenced a 2013 document. According to the applicants, the 2013 report does not accurately describe the persons targeted by FARC, or the current situation in Bogota and Cartagena.

[20] The 2013 report's findings were endorsed in a 2016 report from the Research Directorate. The authors of the 2016 report obviously believed that the information in the 2013 document was reasonably current and accurate. The officer was entitled to take this evidence into account and give it the weight he felt it deserved. I cannot conclude that his approach was unreasonable.

V. Did the officer unreasonably conclude that the applicants had an internal flight alternative (IFA) in Colombia?

[21] The applicants submit that the officer failed to apply the proper test. In particular, they say that the officer failed to assess whether it would be reasonable for them to relocate to a major city. The officer also failed to appreciate, according to the applicants, that Mr Victoria Cardenas fit the profile of persons targeted by FARC, namely, political figures. As such, he would be at risk even in major cities.

[22] Again, I disagree.

[23] The burden fell on the applicants to show that they would be at risk throughout Colombia, or that it would be unreasonable for them to relocate to a place of relative safety. The applicants did not provide the officer with any new evidence on these issues. In any case, the officer did consider that the applicants, being of African descent, might face discrimination in a major city, but concluded that they would likely be safe. The officer did not fail to apply the appropriate test.

[24] Regarding Mr Victoria Cardenas's political profile, the officer found that FARC had not targeted the applicants since 1999. I infer from the officer's reasons that he concluded that it is unlikely that Mr Victoria Cardenas is still regarded as a political figure in Colombia.

[25] I cannot conclude that the officer's analysis of the evidence was unreasonable.

VI. Did the officer err in concluding that there were no compelling reasons to allow Ms Gomez to remain in Canada?

[26] The applicants argue that the officer's consideration of this factor, recognized in s 108(4) of IRPA, was based on a discredited test set out in *Hassan v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 630, which provides relief only for persons subjected to "appalling and atrocious" mistreatment.

[27] I do not agree with the applicants' submission on this issue, for two reasons.

[28] First, the relief offered by this provision is available only to persons previously found to be refugees. Ms Gomez was unsuccessful in her refugee application. Second, no new evidence was provided to the officer on this issue, so he was bound to accept the previous decision of the Refugee Protection Division on the same question.

[29] I can see no error in the officer's conclusion.

VII. Conclusion and Disposition

[30] The applicants have not shown that the PRRA officer treated them unfairly, arrived at unreasonable conclusions, or otherwise erred in his analysis. Therefore, I must dismiss these applications for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-1534-17 AND IMM-1901-17

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are dismissed.

2. No question of general importance is stated.

3. The style of cause is amended, with immediate effect, by removing "THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP" and substituting "THE MINISTER OF CITIZENSHIP AND IMMIGRATION" as the Respondent.

"James W. O'Reilly"
Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27	*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27
Obligation on entry	Obligation à l'entrée au Canada
20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,	**20** (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :
(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence;	a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;
Serious criminality	Grande criminalité
36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36** (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :
…	[…]
(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.	c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.
Rejection	Rejet
108 (1) A claim for refugee protection shall be rejected,	**108** (1) Est rejetée la demande d'asile et le

and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

…

(e) the reasons for which the person sought refugee protection have ceased to exist.

…

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

demandeur n’a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

[…]

e) les raisons qui lui ont fait demander l’asile n’existent plus.

[…]

(4) L’alinéa (1)e) ne s’applique pas si le demandeur prouve qu’il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu’il a quitté ou hors duquel il est demeuré.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-1534-17 AND IMM-1901-17
DOCKET:	IMM-1534-17
STYLE OF CAUSE:	MARINO VICTORIA CARDENAS, VALERIE VICTORIA, RAFI MATTHEW VICTORIA v THE MINISTER OF IMMIGRATION REFUGEES AND CITIZENSHIP
AND DOCKET:	IMM-1901-17
STYLE OF CAUSE:	MARTHA LUCIA GOMEZ v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 27, 2017
JUDGMENT AND REASONS:	O'REILLY J.
DATED:	MARCH 7, 2018

APPEARANCES:

Subodh Singh Bharati Tyler Goettl	FOR THE APPLICANTS
Neeta Logsetty	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Subodh S. Bharati Barrister and Solicitor Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT