

Federal Court



Cour fédérale

Date: 20190311

Docket: IMM-3371-18

Citation: 2019 FC 279

Ottawa, Ontario, March 11, 2019

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**ANDREA MILENA PLATA VASQUEZ
DANIELLE ANDREA CHAPARRO PLATA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Andrea Milena Plata Vasquez and her daughter, Danielle Andrea Chaparro Plata, sought a pre-removal risk assessment (PRRA) before being returned to their country of origin, Colombia. The PRRA officer found that the applicants had provided insufficient evidence

showing that they would be at risk of serious harm in Colombia, or that they could not obtain state protection there.

[2] The applicants argue that both of the officer's conclusions were unreasonable. They also contend that, in the circumstances, the officer was obliged to hold an oral hearing, or, alternatively, to provide reasons for denying their request for an oral hearing. The applicants ask me to overturn the officer's decision and order another officer to conduct a fresh PRRA.

[3] I am satisfied that the officer should have held an oral hearing because, in effect, he found the applicants not to be credible. I will allow this application for judicial review on that basis. While I also have concerns about the officer's analysis of the merits of the application, I need not address them because a new PRRA is required in any case.

II. The officer's Decision

[4] The Refugee Protection Division found that state authorities in Colombia provided adequate protection against the Revolutionary Armed Forces of Colombia, and dismissed the applicants' refugee claim in 2015.

[5] The applicants returned to Colombia in 2016 but faced new threats, causing them to return to Canada in 2017. They applied for a PRRA soon after their return.

[6] The officer considered the new sources of risk. These included assaults and threats both in Bogota and Yopal, kidnapping by agents of the Ejercito de Liberacion Nacional (ELN), and

aggression by gang members in Bogota at the church where Ms Plata provided counselling to youths.

[7] The officer relied on Ms Plata's statutory declaration. In it, Ms Plata described the events that supported the PRRA:

- In 2013, the church was robbed by gang members who took hostages, including Ms Plata's daughter.
- Ms Plata was assaulted and robbed while working as an Uber driver in Bogota. She decided to move to Yopal, where her brother lived.
- Ms Plata and her daughter were kidnapped near her brother's country house. They were held hostage for approximately ten days until they were rescued by government agents.
- Ms Plata worked with youths at her church, attempting to persuade them to cease their gang activities. Gang members disapproved of her efforts.
- A member of one of the worst gangs in the area told her pastor that gang members wanted to get rid of her. That evening, gang members waited for her at her home. She was not harmed, however, because one of the members asked the others not to hurt her. The gang members passed along a message that she would be killed if she did not leave.
- Ms Plata asked her pastor to provide a supporting letter. He did so, confirming that Ms Plata had been leader of the Youth Ministry at the church. However, the pastor did not corroborate the alleged threats against Ms Plata. According to Ms

Plata, the pastor omitted those particulars out of fear of reprisal from the gang members.

[8] In respect of the last incident, the officer noted that Ms Plata left out a number of details, including the name of the gang, the number of gang members involved, the time of day, the words used in the threat, whether there were witnesses other than the pastor, and whether the police were notified. The officer concluded that Ms Plata's statement was vague, lacking in details, and uncorroborated. He concluded that the applicants had not provided evidence that would justify a different conclusion from that of the RPD.

[9] The officer also concluded that state protection was available to the applicants. This was confirmed by the fact that state forces had rescued the applicants from their ELN kidnappers. In addition, the officer found that there had not been a material change of circumstances in Colombia that would justify an outcome different from the RPD's decision.

III. Did the officer err in failing to hold an oral hearing?

[10] The Minister maintains that the officer simply found that there was insufficient evidence to support the applicants' claim for protection. There was no need, therefore, to hold an oral hearing.

[11] I disagree. The officer discounted the value of Ms Plata's statutory declaration due to a lack of precision and corroboration only in respect of the gang-related incident. The officer did not comment on the other events she had recounted, except to say that the fact that she and her

daughter had been rescued from their kidnappers showed that state authorities were capable of protecting them. In effect, the officer concluded that Ms Plata's evidence as a whole lacked credibility. In the circumstances, the officer should have held an oral hearing before reaching that conclusion.

[12] I also note that the applicants had specifically requested an oral hearing. The officer denied the request without reasons. That, in itself, could justify allowing this judicial review: *Montesinos Hidalgo v Canada (Citizenship and Immigration)*, 2011 FC 1334 at para 21.

[13] Accordingly, the officer should have afforded the applicants an oral hearing before dismissing their PRRA.

IV. Conclusion and Disposition

[14] The officer found the evidence relied on by the applicants to lack credibility. The officer should not have dismissed their application without holding an oral hearing. Accordingly, I must allow this application for judicial review and order another officer to reconsider the applicants' PRRA. Neither party proposed a question of general importance to be certified, and none is stated.

JUDGMENT IN IMM-3371-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed. No question of general importance is stated. The matter is referred back to the Board for reconsideration by another officer.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3371-18

STYLE OF CAUSE: ANDREA MILENA PLATA VASQUEZ, DANIELLE
ANDREA CHAPARRO PLATA V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 6, 2019

JUDGMENT AND REASONS: O'REILLY J.

DATED: MARCH 11, 2019

APPEARANCES:

Clarisa Waldman FOR THE APPLICANTS

Meva Motwani FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lorne Waldman Professional Corporation FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Deputy Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario