Federal Court  Cour fédérale

Date: 20200211

Docket: IMM-3234-19

Citation: 2020 FC 236

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 11, 2020

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

NEISSER GIANFRANCO MORA ALCCA
RODRIGO ENRIQUE MORA ALCCA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are two brothers who are minors. They are Peruvian nationals. Their mother, a single parent, organized their departure from Peru to Canada, where they arrived to stay with an aunt who has been living here for several years. The applicants' mother, who is an engineer by training and manager of a family construction company in the capital, Lima, fears

retaliation, some of which is directly aimed at the applicants, from a workers' union and a job placement agency to which she decided, in 2017, to cease making the monthly payments they required in order to ensure her security and that of her family. These payments dated back to 2009. The applicants' mother also has a third child, a daughter born of another relationship. Having been unable to obtain permission to leave the country from the young girl's father, from whom she is separated, she remains in Peru.

[2] Upon arriving in Canada, the applicants, with the help of their aunt, filed a claim for refugee protection that was essentially based on their mother's written statement. On March 18, 2019, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejected their claim, finding that they had an internal flight alternative [IFA] available to them in Chancay, another city in Peru.

[3] More specifically, the RPD, which had the applicants' mother testify by telephone, found that the evidence in the record does not support the conclusion that the applicants and their mother's agents of persecution would continue to be interested in them if she were to move to Chancay and find employment in a field other than that of construction. Thus, it rejected the applicants' mother's explanation that she did not wish to change her employment because it was in this field—construction—that she had developed her area of expertise throughout her career. In doing so, the RPD pointed out that being unable to find suitable employment was not sufficient to preclude an otherwise viable, realistic and affordable IFA.

[4] The RPD further expressed the view that the single-parent status of the applicants' mother was no more sufficient to rule out the IFA in Chancay because the applicants' father—a violent man—no longer appeared to pose a danger to them, the evidence in the record showing that the applicants no longer wanted him to look after them. The RPD also determined that the lack of family members living in the proposed IFA was not a decisive factor in assessing the reasonableness of this IFA, given the absence of evidence in the record that such a situation would endanger the safety of the applicants, who would nonetheless benefit from their mother's presence and support.

[5] It is well established that the test for establishing the viability of an IFA is two-pronged. The first prong consists of ensuring that there is no serious possibility, on a balance of probabilities, of the claimant being persecuted in the proposed IFA. If this is the case, then the second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including of the claimant's personal circumstances, for the claimant to seek refuge there (*Ndimande v Canada (Citizenship and Immigration)*, 2019 FC 1025 at para 27; *Rasaratnam v Canada (Minister of Citizenship and Immigration)*, [1992] FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] FC 589 (CA) [*Thirunavukkarasu*]).

[6] The applicants argue that the RPD erred in its assessment of the second prong of this test. They contend that the RPD failed, in particular, to consider the fact that they are minors, that they are financially dependent on their mother, and that requiring her to find work in a field other than the one in which she has always worked would place both their safety and their development at risk. They add that if their mother were to end up having to find work in the field

of construction in Chancay in order to provide for the needs of herself and her children, she—and they—would continue to be targeted by her persecutors, as the documentary evidence in the record shows. In either case, they contend that their safety, which was already imperilled before they left Peru, would be at risk once again.

[7] The issue to be determined here is whether the RPD, as the applicants claim, in deciding as it did, committed an error that would warrant this Court's intervention.

[8] At the time this matter was argued, the standard of review applicable to decisions of the RPD with regard to an IFA—the reasonableness standard, as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]—was not problematic (*Omogie v Canada (Citizenship and Immigration)*, 2019 FC 1240 at para 6; *Jimenez v Canada (Citizenship and Immigration)*, 2014 FC 780 at para 9).

[9] However, a few days after this matter was taken under advisement, the Supreme Court of Canada rendered a judgment in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], a case that provided the Court "with an opportunity to re-examine its approach to judicial review of administrative decisions" (*Vavilov* at para 1).

[10] As per a directive issued to the parties, I offered them the opportunity to file additional written submissions on the potential impact that the decision might have on the matter at hand, which they did. The applicants submit that the reasonableness standard continues to apply to cases such as this one, but argue that particular attention must now be given to the decision-

making process and justification of the decision. The respondent is also of the view that the reasonableness standard applies here, given that none of the circumstances that would justify a deviation from the presumption of the application of that standard, a presumption that was crystalized in *Vavilov*, applies in this case.

[11] Indeed, as I have already noted in *Elusme v Canada (Citizenship and Immigration)*, 2020 FC 225 [*Elusme*], the Supreme Court, out of concern for the clarification and simplification of the applicable law with regard to determining the standard of review to be applied in a given case, adopted, in *Vavilov*, an analytical framework that "begins with a presumption that reasonableness is the applicable standard in all cases" and which assumes, as a conceptual basis for this presumption, the expertise of the administrative decision-maker, considered inherent to its specialized functions (*Elusme* at para 11).

[12] As for the contents of the reasonableness standard itself, I am of the view that they are consistent with the principles established in *Dunsmuir*, although care must be taken so as to ensure that the application of these principles to a given case aligns with those set out in *Vavilov*, the ultimate objective of which is to "develop and strengthen a culture of justification in administrative decision making" (*Vavilov* at paras 2 and 143). At the end of the day, a reviewing court must "develop an understanding of the decision maker's reasoning process" and determine "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).

[13] Applying a reasonableness standard to the facts and circumstances of this case, I have determined that it is necessary to intervene and set aside the RPD's decision.

[14] I am well aware that the onus of demonstrating that an IFA is unreasonable in a given case, an onus that rests with the claimant, is an exacting one (*Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21 [*Baptiste*]; *Pineda v Canada (Citizenship and Immigration)*, 2019 FC 1446 at para 14; *Molina v Canada (Citizenship and Immigration)*, 2016 FC 349 at para 14; *Aznar Alvarez v Canada (Citizenship and Immigration)*, 2009 FC 1164 at para 10). In fact, it requires nothing less than demonstrating the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15 [*Ranganathan*]).

[15] I am also aware that, as a general rule, fear of being unable to find suitable employment is not sufficient to preclude an otherwise viable, realistic and affordable IFA (*Thirunavukkarasu* at para 14).

[16] However, this rule is not absolute, as attested to by this Court's judgment in *Fernandez Cuevas v Canada (Citizenship and Immigration)*, 2005 FC 1169 [*Fernandez Cuevas*], a matter that is similar to this case in a significant number of respects. In that particular case, the refugee claimant was being pursued by guerillas because he was a businessman. The Court found it unreasonable to require him to find work in a field that was unknown to him in order to elude his

agents of persecution. Since one must work to live, the Court determined that it must be assumed that the claimant would have to resume his business activities if he were returned to his country of origin, no matter where in the country he settled (*Fernandez Cuevas* at para 13).

[17] To my mind, the RPD, in its analysis of the second prong of the test, ought to have considered, among all of the circumstances particular to this matter, the applicants' mother's difficulty in finding work in Chancay in fields in which she has no experience, having spent her entire career working in the construction business as an engineer and manager, and the very real possibility that, as a result of this difficulty, she would have to resume working in the construction business to provide for herself and her children. The RPD should also have considered these factors as being specific to the applicants' mother in light of the applicants' dependence on her to the extent that the evidence shows her to be their sole means of support in Peru. I agree that in either case, the safety of applicants, who, I note once more, are still minors, risks being compromised.

[18] In short, the RPD failed to explain how the current circumstances in this matter would differ, for example, from those before the Court in *Fernandez Cuevas*, particularly given the existing dependent relationship between the applicants and their mother. Thus, the RPD's decision-making process, on a key aspect of the decision, is affected. In my view, and in the particular circumstances of this case, this is sufficient to set aside the RPD's decision and remit the matter to it for redetermination.

[19] Neither party proposed any question for certification. I agree that none arises in this matter.

JUDGMENT in IMM-3234-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division of the Immigration and Refugee Board dated March 18, 2019, rejecting the applicants' claim for refugee protection, is set aside and the matter is returned for reconsideration by a differently constituted panel on the basis of these reasons.
3. No question is certified.

"René LeBlanc"
Judge

Certified true translation
This 19th day of February 2020.

Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3234-19
STYLE OF CAUSE:	NEISSER GIANFRANCO MORA ALCCA, RODRIGO ENRIQUE MORA ALCCA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	DECEMBER 10, 2019
REASONS FOR JUDGMENT AND JUGEMENT:	LEBLANC J.
DATED:	FEBRUARY 11, 2020

APPEARANCES:

Chantal Ianniciello	FOR THE APPLICANTS
Simone Truong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chantal Ianniciello Counsel Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT