Federal Court

Cour fédérale

Date: 20210226

Docket: IMM-6211-19

Citation: 2021 FC 137

Ottawa, Ontario, February 26, 2021

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ANA BETTY DAZA MOLINA
JENIFFER ALEJANDRA HERNANDEZ DAZA
LUIS ALEJANDRO HERNANDEZ FARFAN
LUISA FERNANDA HERNANDEZ DAZA
JUAN PABLO HERNANDEZ DAZA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicants applied for judicial review of a September 23, 2019 decision [Decision] of the Refugee Protection Division [RPD] pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Principal Applicant, her spouse, and their three children are citizens of Columbia. The Applicants applied for refugee protection in Canada as Convention refugees and persons in need of protection pursuant to section 96 and 97 of the *IRPA*. The Principal Applicant's spouse acted as the designated representative of their two minor children.

[3] The application for judicial review is dismissed. My reasons are below.

II. Background

[4] The Applicants are from Bogota, Capital District, Columbia. The Principal Applicant worked as a coordinator of blood donations. In her Basis of Claim narrative, she alleged that she was targeted by the National Liberation Army [ELN] due to her position and access to blood donor information starting in July 2017.

[5] The Principal Applicant claims that she was physically attacked on July 28, 2017 and began receiving threatening phone calls in August 2017. After an assault against both the Principal Applicant and her spouse on August 21, 2017, the Applicants left Bogota and relocated to Villavicencio to live with the Principal Applicant's cousin. After approximately one month, the threatening phone calls resumed and the Applicants moved to Cumural, Meta on September 21, 2017 and lived with another cousin as well as the Principal Applicant's aunt in nearby

Guancavina. The Applicants stayed in Cumural until January 3, 2018 when they learned people were driving by their home in Bogota. In January 2018, the Applicants moved to Cucuta where they lived with the Principal Applicant's mother and stepfather.

[6] The Applicants received United States [US] visas on October 26, 2017. They left Colombia on April 11, 2018 and travelled to Canada after stopping in New Jersey, US.

III. Decision under Review

[7] The RPD denied the Applicants' claim for Convention refugee status as they did not have a well-founded fear of persecution on a Convention ground. The RPD determined that the Applicants were victims of crime and that their refusal to comply with ELN's demands was not rooted in political conviction nor did they establish that they were members in a particular social group. The RPD also found that the Applicants were not in need of protection as they would not face a risk to life, to a risk of cruel and unusual treatment or punishment or to a danger of torture upon removal to Columbia.

[8] Once the RPD determined that the Applicants' section 96 claim failed due to lack of nexus to a Convention ground, it turned to the section 97(1) claim and concluded that there was a viable Internal Flight Alternative [IFA] in Sincelejo.

[9] The RPD found that the Applicants would not face a risk of harm in Sincelejo because it was not persuaded that the Applicants were ever found in any of the cities they relocated to or that the ELN has maintained an interest in them. The RPD also found that, by their own actions,

the Applicants were not demonstrating a fear of the ELN by taking 6 months to leave Columbia. It further found that the ELN is not active in Sincelejo.

[10] The Minister's representative intervened on documents only taking the position that the Applicants were not credible.

IV. Issues and Standard of Review.

[11] The Applicants submit that the RPD erred in its finding that there was no nexus between the Applicants' claim and the Convention ground of political opinion. The Applicants further claim that the RPD erred in finding that there was a viable IFA in Sincelejo.

[12] The sole issue is whether the Decision is reasonable. This attracts a reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]) and does not fall under a category of exemptions as described in *Vavilov*.

V. The Parties' Positions

A. *Is the Decision Reasonable?*

(1) Applicants' Position

[13] The Applicants submit that the RPD's analysis of the nexus between their claims and a Convention ground was not reasonable because it applied the incorrect test for political opinion, which includes perceived political opinion *(Santanilla Bonilla v Canada (Minister of Citizenship and Immigration)*, 2013 FC 656 [*Santanilla Bonilla*]; *Gopalapillai v Minister of Citizenship and*

Immigration, 2019 FC 228 [*Gopalapillai*]). As a result, the RPDs assessment of the IFA was incorrect as it ignored an established principle that it is the agents of persecution, not that of a claimant or board, that determines if persecution occurred based on political opinion. The Applicants' submissions on this application focused on the RPD's errors in determining the lack of a nexus on the Convention ground of political opinion and no arguments were advanced on membership in a particular group.

[14] The Applicants also submit that a group is not required to be a legal entity, a part of the machinery of a government, or intertwined with the state for the ground of political opinion to exist (*Canada (Attorney General) v Ward* (1993) 2 SCR 689 at 746 [*Ward*]).

[15] The Applicants submit that the RPD applied the incorrect standard of assessing risk, specifically whether the Applicants would face a probability of risk in Sincelejo rather than a mere possibility of risk. In the alternative, the Applicants also take issue with the findings of fact concerning their movements after the initial contact with the ELN. They assert that the RPD did not provide a reason for why they found that the ELN had not maintained an interest in the Applicants.

[16] The Applicants also take issue with the RPD's conclusions around the Principal Applicant's credibility as it related to their stay in Villavicencio, their behaviour in Columbia, and their delay in leaving Columbia.

[17] Lastly, the Applicants submit that the RPD erred in its determination of risk in Sincelejo. They submit that the RPD only relied on the map in the National Documentation Packages [NDP] for Columbia, despite the author of the maps submitting a letter stating that they should not be relied upon to assess future risk.

(2) Respondent's Position

[18] The Respondent submits that the RPD's nexus analysis was reasonable.

[19] The Respondent submits that regardless of its determination under section 96, it is not dispositive. Therefore, if there was an error in the section 96 analysis, the determination of a viable IFA would still stand under the section 97(1) analysis. As a result, the RPD's IFA analysis was reasonable.

VI. Analysis

A. *Was the Decision Reasonable?*

(1) Convention Grounds

[20] The Applicants, relying on *Ward*, state that the RPD's assessment of the legality of the ELN and the extent that they are a "part of the machinery of government or intertwined with state" are irrelevant considerations. The Applicants also point that, in *Ward,* the applicant's perceived political opinion amounted to persecution.

[21] The RPD found that the Principal Applicant's refusal to cooperate with the ELN while in Bogota was not rooted in political opinion. Rather, it found that the Applicants were victims of crime. The RPD recognized that the Principal Applicant's opposition might constitute a perceived political opinion if the ELN had influence in the Capital District, however, after looking at the NDP, it found that the ELN was not entwined with the state in this area. Therefore the Principal Applicant would not be seen as challenging the state apparatus.

[22] I note that the Court in *Santanilla Bonilla*,at para 68, made its finding of perceived political opinion on clear evidence in the form of a UNHCR report which noted that refusal or inability to pay is viewed as an act or indication of political opposition resulting in persecution and violence.

[23] In my review of the cases of *Ward*, *Santanilla Bonilla* and *Gopalapillai*, the Courts had the benefit of "clear evidence" of persecution in coming to their respective determinations. Such clear evidence is lacking on the record.

[24] The onus is on an applicant to support his or her claim (*Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at para 49). The Applicants in the current matter have not provided such clear evidence of persecution for actual or perceived political opinion to support their claim. It was reasonable for the RPD, based on the record, to have determined that the Applicants were victims of crime and, accordingly, to find that the Applicants did not qualify for protection under section 96. I find the RPD's analysis that there is no nexus to a Convention ground to be reasonable.

(2) Viable IFA

[25] The two-part test to determine if there is not an IFA is well settled: (1) the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the proposed IFA; or (2) conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all of the circumstances, including consideration of

the claimant's personal circumstances, for the claimant to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration*), [1994] 1 FC 589 at pp 593, 597 (FCA)).

[26] The test for an IFA is objective. An applicant bears the burden of proof in demonstrating that an IFA either does not exist or is unreasonable in the circumstances. In addition, the threshold is high for what makes an IFA unreasonable in the circumstances (*Gallo Farias v Canada (Citizenship and Immigration)*, 2008 FC 1035 at para 34 [*Gallio Farias*]).

[27] The RPD correctly noted the test at para 20 of its Decision. I am not persuaded by the Applicants' submission that the RPD improperly considered proof of risk on a balance of probabilities rather than considering no serious possibility of risk. The law is clear that a refugee claimant must persuade the board, on a balance of probabilities, that there is a serious possibility that he or she will be persecuted in the proposed IFA (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (FCA); *Gallio Farias* at 34). The Applicants' argument on this point fails. I will now turn to their alternative submission in that the RPD erred in its application of the IFA test.

[28] The RPD gave four reasons for determining that there was no serious possibility of the Applicants being persecuted in the proposed IFA.

[29] First, the RPD found that the evidence of the Applicants being located by the ELN in each of the places they moved to was not credible. The RPD, in paragraphs 22 to 43 of the Decision, noted the lack of evidence from the Principal Applicant's cousins, mother, stepfather and neighbours about the ELN locating the Applicants in these various locations. For example,

while there was evidence from these family members to the effect that the Applicants stayed with them, there was no evidence from these family members or neighbours that they were contacted by the ELN, which would indicate that the ELN was able to locate the Applicants. There were other omissions identified by the RPD. The omissions went to the heart of the Applicants claims. For the RPD there was no reasonable explanation for why these family members could not have provided this information in their evidence when it was reasonably available.

[30] While the Applicants have concerns about the emphasis the RPD placed on the address that the Principal Applicant's cousin in Villavicencio placed on his declaration, it remains that the cousin did not provide any evidence of the ELN approaching him as the Principal Applicant had testified.

[31] Second, there was also a lack of evidence from the Applicants' neighbours and the Principal Applicant's in-laws regarding people driving by the Applicants' home in Bogota. Similarly, there was no evidence from the Principal Applicant's former colleagues as to any continued interest in the Applicants. Again, the RPD was not provided with a reasonable explanation as to why this information was not provided.

[32] Third, with regard to their six-month delay in leaving Columbia the RPD noted that the Applicants had extensive family networks that could have assisted in funding their departure from Columbia and the Applicants were all, for the most part, employed. A key factor for the RPD was the fact that the Principal Applicant's spouse returned several times to their home in

Bogota to sell belongings to fund their departure from Columbia despite the claims that the ELN was passing by and stopping at or near their home in Bogota.

[33] Lastly, the RPD also assessed the risk in Sincelejo and determined, on the evidence, that the ELN was not active there. The RPD assessed the NDP and maps, including a qualifying letter from the author of one of the maps which stated that the maps should not be used to assess future risk.

[34] After reviewing the record, I find that the RPD conducted a full examination of the risk posed by the ELN. After reviewing the evidence, including omissions of facts central to their claim, the RPD noted that the claim of serious possibility of persecution was not credibly established. The RPD was entitled to arrive at this conclusion and I see no error based on the record before the RPD (*Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379 at para 34). It is not the role of the Court to re-weigh the evidence (*Vavilov* at para 125).

[35] The RPD then turned to the reasonableness in locating to the IFA of Sincelejo. The RPD noted that the distance between Bogota and Sincelejo was 16.5 hours, it examined the country condition evidence in Sincelejo and looked at the personal circumstances of the Applicants. In particular, they RPD noted that the Principal Applicant is educated and her husband had been self-employed and has experience as a self-employed person. Although the Applicants take issue with the RPD's description of them as "middle class", in my view, nothing turns on this point, as there is evidence that the adult Applicants were employed prior to leaving Columbia. After

noting the high threshold that the Applicants were required to meet, the RPD found that it would not be unreasonable for the Applicants to relocate to Sincelejo.

[36] When read as a whole, there is no reviewable error in how the RPD conducted its analysis of the second part of the IFA test.

[37] The RPD's IFA analysis was fulsome and detailed. The Court is able to follow the reasoning and how the panel reached its conclusion. The Decision meets the *Vavilov* standard of reasonableness.

VII. Conclusion

[38] For the above reasons, the application for judicial review is dismissed.

[39] The parties did not raise any question of general importance for certification and none arises.

JUDGMENT in IMM-6211-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.
3. There is no order as to costs.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6211-19
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