Federal Court  Cour fédérale

Date: 20210301

Docket: IMM-6080-19

Citation: 2021 FC 189

Ottawa, Ontario, March 1, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ANA JULIA PENA VERA, LESLY PAOLA GOMEZ PENA, RONNY ALEXANDER GOMEZ PENA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Ana Julia Pena Vera and her two children, Lesly Paola Gomez Pena and Ronny Alexander Gomez Pena, are citizens of Colombia. They fled Colombia in 2000 because the Revolutionary Armed Forces of Colombia, also known as FARC, made increasing financial demands of her spouse and then killed him when he no longer could afford to pay. Ms. Pena

Vera became a target following her spouse's death. The Applicants spent twelve years in the United States, without status having failed to seek legal protection while there, before seeking refuge in Canada in June 2012.

[2] The Refugee Protection Division [RPD] heard their case in 2018 and denied the Applicants' refugee claims on January 8, 2019. The Applicants sought judicial review. With the parties' consent, the Court remitted the matter for redetermination. The RPD found, again, that the Applicants are neither Convention refugees nor persons in need of protection: sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RPD's redetermination decision of September 18, 2019 is the subject of the current judicial review application.

[3] The overarching issue for the Court's determination is the reasonableness of the RPD's redetermination decision in the following four respects, namely whether:

i. the reasons why the person(s) sought refugee protection have ceased to exist ("changed circumstances"), further to the *IRPA* s 108(1)(e);

ii. the RPD's delay in initially hearing the matter prejudiced the Applicants;

iii. there are "compelling reasons" to allow the claims despite the changed circumstances, further to the *IRPA* s 108(4); and

iv. there is a viable internal flight alternative.

[4] See Annex "A" below for relevant *IRPA* provisions.

[5] There is no dispute that the presumptive reasonableness standard of review is applicable to the matter before me: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC

65 [*Vavilov*] at para 10. I find that none of the situations rebutting such presumption is present in this matter.

[6] To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov*, at para 99. A decision may be unreasonable if the decision maker misapprehended the evidence before it: *Vavilov*, above at paras 125-126. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100.

[7] I find that the Applicants have failed to satisfy their onus. For the more detailed reasons that follow, I thus dismiss this judicial review application.

II. Analysis

(i) *Changed Circumstances*

[8] I am not persuaded that the RPD unreasonably considered the status of the peace deal concluded between the government of Colombia and the FARC in 2016 in the context of Ms. Pena Vera's alleged fear of persecution at the hands of unknown members of the FARC. The assessment, as of the date of the RPD hearing, of whether the Applicants' fear of persecution, if returned Colombia, is well-founded involves a factual determination; changed circumstances in the country's political landscape may have a bearing on whether there is a "reasonable and objectively foreseeable possibility" of persecution: *Yusuf v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 35 (FCA) at para 2.

[9] The RPD considered the peace deal, having regard to the National Documentation Package for Colombia and more recent documents and news articles the Applicants submitted in two disclosure packages concerning the status of the peace accord. The RPD expressly acknowledged that the US Department of State report for Colombia for 2016 was not the most current and up-to-date situation of the FARC. The Applicants' news articles, for example, suggest the peace deal may be fraying. I find they counterbalance this suggestion, however, by emphasizing "a majority of guerrillas had chosen civilian life" and "more than 90 percent of ex-guerillas remain committed to the peace process": "Colombia's Former FARC Guerrilla Leader Calls for Return to War," *The New York Times*, Aug. 29, 2019; and "As Colombia peace accord unravels, ex-FARC leaders take up arms, announce return to conflict," *The Washington Post*, August 29.

[10] The RPD held that "[w]hile these articles indicate that the peace agreement may not be holding as it should, the panel finds that the reliable evidence from the Board's NDP, nevertheless, does not indicate that the Peace Agreement has fallen apart." Further, having reviewed the information before it, the RPD concluded that the changed circumstances are durable and have resulted in "substantive and measurable changes in the nature of Colombian politics…" This review included, in addition to the news articles, the Applicants' more recent documents canvassed specifically in the Applicants' oral arguments before the RPD. I disagree that the RPD's findings in this regard, therefore, represent a preference for the information contained in the RPD over the recent news articles, as argued by the Applicants, and further, that the articles demonstrate on a *prima facie* basis the peace deal is anything but durable. Rather, as

noted above, in my view the articles are far from conclusive in this regard; further, they contain support for the RPD's finding that the peace deal disclosed in the NDP has not fallen apart.

[11] The RPD could have worded the first above statement more clearly. In my view, however, a holistic review of the RPD's discussion on this point in the context of the relevant evidence reveals a rational chain of analysis and does not disclose any fatal flaws in its overarching logic: *Vavilov*, above at para 102. I am not persuaded that the matter before me involves a fundamental misapprehension or failure by the RPD to account for the evidence before it: *Vavilov*, above at para 126. Nor do I find the presumption that the RPD has reviewed all the evidence is rebutted. Further, the Supreme Court strongly discourages a "line-by-line treasure hunt for error": *Vavilov*, above at para 102. I thus conclude the Applicants arguments on this issue are tantamount to a request to reweigh the relevant evidence which the Supreme Court cautions reviewing courts against doing: *Vavilov*, above at para 125.

(ii) *RPD's Delay*

[12] Contrary to the Applicants' submission on this issue, I am not persuaded that the delay of about six years from the time the Applicants sought refugee protection in Canada until the RPD initially heard and determined the matter prejudiced the Applicants. It is not such an inordinate delay that it offends the community's sense of fairness: *Bernataviciute v Canada (Citizenship and Immigration)*, 2019 FC 953 at para 34. Furthermore, I find it speculative to suggest that a delay of half that time might have resulted in a different outcome in so far as the changed circumstances are concerned. The fact is that the issue is determined as of the date of the hearing; practically, a hearing cannot be convened as of the date when a claimant perfects their claim.

There will always be some gap of time. In other words, a claim (under the *IRPA* ss 96 and 97(1)) is not assessed in a vacuum or on static, unchanging circumstances.

(iii) *Compelling Reasons*

[13] I find it was not unreasonable for the RPD to conclude that the trauma of the murder of Ms. Pena Vera's spouse, which caused her to leave Colombia, did not rise to the high threshold for compelling reasons adopted by the Courts. The Applicants do not take issue with the standard that the RPD applied; rather, they contest whether their experience—the spouse's murder by the FARC—meets the threshold of being atrocious and appalling. "Compelling reasons" are determined on a case-by-case basis: *Suleiman v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1125 at para 16. Absent a flaw in the RPD's analysis, however, as noted above it is not open to the Court to reweigh the evidence in place of the decision maker.

[14] I further find the Applicants' cited cases are distinguishable and thus, do not assist them. In *Villegas Echeverri v Canada (Citizenship and Immigration)*, 2011 FC 390 at paras 48-49, Chief Justice Crampton (as he now is) indicated that the RPD would have been required to conduct a "compelling reasons" analysis had it not erred in disbelieving the Applicant's claims of past persecution. In *Velez v Canada (Citizenship and Immigration)*, 2018 FC 290 at para 31, Justice Brown found that the RPD failed to conduct a "compelling reasons" analysis when it had a legal duty to do so because there were findings of persecution and changed country conditions. In the case before me, however, the RPD conducted the necessary analysis; the Applicants simply disagree with the RPD's conclusion.

(iv) *Viable Internal Flight Alternative*

[15] I find it was not unreasonable for the RPD to conclude that, on a balance of probabilities, the Applicants would not face a serious possibility of persecution or a likelihood of harm in either Cartagena or Medellin or that their life and safety would be jeopardized relocating to either city. The evidence before the RPD was that the Applicants had been away from Colombia for about eighteen years and did not receive threats from FARC members during that time. Further, the threshold for determining whether an IFA is unreasonable is high: *Shehzad Khokhar v Canada (Citizenship and Immigration)*, 2008 FC 449 at para 41, citing *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589.

[16] In addition, contrary to the Applicants' argument, I find that the RPD did not conclude the Applicants could relocate and find employment because of their ability to settle in the United States and then Canada. The Applicants relied on the decision in *Utoh v Canada (Citizenship and Immigration)*, 2012 FC 399 at para 17, cautioning against using an applicant's degree of establishment in Canada as evidence that they would be able to settle elsewhere without issue. I find the RPD instead focused on their education and employment histories to determine whether they have transferrable skills. The RPD also noted that all three Applicants speak Spanish on a daily basis and that there was no evidence to support the assertion that all three were too old to find employment in Colombia.

III. Conclusion

[17] For all the above reasons, I dismiss this judicial review application.

[18] Neither party raised a serious question of general importance for certification and I find that none arises.

JUDGMENT in IMM-6080-19

THIS COURT'S JUDGMENT is that the judicial review application is dismissed and there is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A" – Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**	***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27**
Convention refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	**(a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	**(b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	**Personne à protéger**
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	**(a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	**(b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Cessation of Refugee Protection
Rejection

108 (1) A claim for refugee protection shall be rejected, 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.

[…]

Exception

(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.

Perte de l'asile
Rejet

108 (1) Est rejetée la demande d'asile et le 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.

[…]

Exception

(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

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