Federal Court Cour fédérale

Date: 20210929

Docket: IMM-80-21

Citation: 2021 FC 1016

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 29, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ERIKA RUA ARANGO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant is seeking judicial review of a decision of the Refugee Appeal Division [RAD] dated December 14, 2020. In its decision, the RAD dismissed the applicant's appeal and

confirmed the decision of the Refugee Protection Division [RPD], which determined that the applicant was neither a Convention refugee, nor a person in need of protection.

[2] The applicant is a citizen of Colombia. Her refugee protection claim is based on her fear of persecution by reason of her sexual orientation.

[3] On December 19, 2019, the RPD rejected the applicant's refugee protection claim. While it found the applicant to be credible as to her sexual orientation, it concluded that the applicant had not met her burden of demonstrating that she could not obtain protection from the authorities in her country.

[4] On appeal, the RAD found that the determinative issue was one of state protection. On the one hand, it recognized that the applicant was the target of discrimination, but concluded that this did not constitute persecution. On the other hand, it acknowledged that there are still gaps in the quality of state protection in Colombia, but found that the applicant had not established, on a balance of probabilities, that adequate protection was not available to her. It therefore confirmed the RPD's decision.

[5] The applicant argues that the RAD erred in its finding of adequate state protection.

II. Analysis

[6] The applicable standard of review in this case is that of reasonableness.

[7] Where the reasonableness standard applies, the Court must develop an understanding of the decision-maker's reasoning process in order to determine whether the decision as a whole is reasonable. It must consider whether the decision "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). Furthermore, the "burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

[8] One of the applicant's criticisms of the RAD was that it did not assess the objective documentary evidence on state protection in relation to her profile. The applicant is in a relationship with a Canadian citizen, and they are the mothers of a Canadian child. While she has spent most of her life hiding her sexual orientation, the applicant wants to live her family situation openly, as she can in Canada. She also argues that the RAD erred in comparing her situation to that of other LGBT groups.

[9] The Court cannot agree with the applicant's arguments.

[10] The Court is of the view that the RAD reasonably considered the applicant's profile in assessing the objective documentary evidence. In its analysis of the legal situation, the RAD pointed out that the documentary evidence demonstrates that, since 1981, Colombia has decriminalized same-sex sexual relations and that the Penal Code was amended in 2011 to include discrimination based on sexual orientation. It also noted that the Constitutional Court has recognized the ability of same-sex couples to enter into *de facto* marital unions on the same basis

as heterosexual couples and that since 2016, marriage between two people of the same sex is legal in Colombia. The RAD added that in 2015, the Constitutional Court granted a partner the right to adopt the biological child of his or her permanent partner. In another decision, it extended the right to adoption to same-sex partners. In referring to the ability of same-sex couples to enter into a marital relationship and their right to adopt, the RAD considered the particular circumstances of the applicant.

[11] However, after considering the objective documentary evidence and looking at the legislative improvements and their degree of practical implementation, effectiveness and sustainability, the RAD found that the applicant had failed to demonstrate that state protection was not available to her, having contacted the police only once and having left her country without following up. The RAD correctly pointed out that it is trite law that in order to demonstrate the absence of state protection where the state in question is a democratic state, an applicant must prove more than simply having approached the police in vain (*Canada (Citizenship and Immigration) v Kadenko*, [1996] FCJ No 1376 (FCA)).

[12] The Court also disagrees with the applicant’s assertion that the RAD made a comparison between different LGBT groups. References to other groups must be read in context. Indeed, when the RAD referred to the different groups, it did so while summarizing the objective documentary evidence.

[13] Having reviewed the record, the Court is of the view that the RAD reasonably considered the applicant's personal circumstances in assessing conditions in Colombia and the availability of state protection.

[14] Lastly, the Court notes that in the absence of a complete breakdown of the state apparatus, there is a presumption that state protection is available in a refugee claimant's country of origin. To rebut this presumption, the claimant must provide clear and convincing evidence of the state's inability or unwillingness to provide adequate—not perfect—protection (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 722–25; *Canada (Citizenship and Immigration) v Flores Carillo*, 2008 FCA 94 at para 30; *Canada (Minister of Employment and Immigration) v Villafranca*, [1992] FCJ No 1189 (FCA) (QL) at para 7). Those claiming refugee protection must show that they have either exhausted all objectively reasonable avenues to obtain state protection or that it would have been objectively unreasonable for them to have done so (*Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at paras 46, 57).

[15] In this case, the RAD was of the view that the applicant had not discharged her burden. It is not the role of this Court to reweigh the evidence to reach its own conclusions. Its role is to determine whether the decision bears the hallmarks of a reasonable decision (*Vavilov* at paras 97, 99, 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). The Court finds that it does.

[16] The application for judicial review is therefore dismissed. No questions of general importance have been submitted for certification, and the Court is of the view that none arise in this case.

JUDGMENT in IMM-80-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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