Federal Court  Cour fédérale

Date: 20110225

Docket: IMM-3412-10

Citation: 2011 FC 227

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 25, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

LUIS FERNANDO VILLA RAMIREZ, BIVIANA MARIA OSORIO OTALVARO, ESTEBAN VILLA OSORIO, LUIS FERNANDO VILLA OSORIO, LUISA FERNANDA VILLA OSORIO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27 (IRPA), of a decision of the Refugee Protection Division of

the Immigration and Refugee Board (the Board) dated May 27, 2010, determining that the applicants are not Convention refugees or persons in need of protection.

I. Background

[2] Luis Fernando Villa Ramirez (the principal applicant), his spouse Biviana Maria Osorio Otalvaro and their daughter Luisa Fernanda Villa Osorio are citizens of Colombia. Their other two children, Esteban Villa Osorio and Luis Fernando Villa Osorio, are citizens of the United States (U.S.). All of them claimed refugee protection in Canada on August 18, 2008. The applicants' refugee protection claim is founded on that of the principal applicant, who claims to fear being subjected to threats from various paramilitary militias (FARC, EPL, ELN) that would try to recruit him if he were to return to Colombia.

[3] The principal applicant alleged that he had worked for the national police in Medellin, Colombia, from June 1986 until March 1989. He quit his job as a police officer because of telephone threats he received principally at his mother's residence. According to him, the people making the threats were members of various paramilitary militias (FARC, EPL, ELN), but never identified themselves. He moved several times for his own safety but continued to receive calls at his mother's residence. The callers were now trying to recruit him as a member of these militias.

[4] The applicant worked as a prison guard from 1996 to 1997 and stated that he had resigned in 1997 because he had been targeted by members of the militias. He had received a threatening call at work and sought to protect himself and his family by resigning. He subsequently worked as a

security guard from 1997 to 1999 before resigning because he was still receiving threats from paramilitary militias.

[5] He stated that he had not made a complaint to the police or to other authorities because these institutions were infiltrated by members of paramilitary militias and this would have increased the danger to him and his family. In 1999, the principal applicant's spouse and daughter left for the United States. In 2000, the principal applicant left Colombia for the United States in order to join his spouse and daughter. The couple's other two children were born in the United States.

[6] In October 2002, he returned to Colombia to see if he could return there to live without receiving threats and to obtain documents that would help him claim asylum in the United States. In February 2003, he returned to the United States with the intention of seeking asylum. After receiving some advice he decided to claim refugee protection in Canada for himself and his family. No fear in the United States was alleged by the applicants.

II. Impugned decision

[7] The Board determined that the principal applicant's narrative was not credible. It also determined that an internal flight alternative (IFA) was available to the applicants, specifically in Bogota, and that they had failed to demonstrate that it would be unreasonable for them to seek refuge in Bogota. The Board found that this conclusion was determinative and sufficient to dispose of the claim for refugee protection under section 96 or subsection 97(1) of the IRPA.

[8] The Board found that it was implausible that the militias would try to recruit the principal applicant more than 10 years after he had left Colombia. The Board based its finding on the fact that the documentary evidence showed that recruitment by the militias was carried out on a voluntary basis and that forced recruitment was prohibited. The Board also found that the principal applicant, who is about 45 years of age, did not fit the profile of candidates sought by the militias, who are normally between 15 and 30 years of age. It also noted that the principal applicant had not been the target of direct threats, but had instead received threats anonymously, and that he failed to demonstrate that he had been forced to join the militias.

[9] The Board was also of the opinion that the principal applicant had not demonstrated that the militias' recruitment efforts could change to reprisals if he were to refuse to join their ranks. In addition, it found that it was implausible that those responsible for the threatening calls would have continued their recruitment efforts after he had left Colombia or that they would pursue these efforts today.

[10] As for the IFA, the Board noted that it had asked the principal applicant what he would fear if he were to return to live elsewhere in the country, specifically in the city of Bogota. It indicated that the principal applicant had not provided any reason that would lead it to conclude that it would be unreasonable for the applicants to seek refuge there. The only reason cited by the applicants was that the people who had made the threatening calls would be able to track them down throughout Colombia. The Board dismissed this allegation, judging that it was implausible that the principal applicant would be of such interest to the militias that they would pursue him in other parts of Colombia.

III. Issues

[11] The applicants' criticisms of the decision raise the following two issues:

1) Did the panel err in determining that the principal applicant was not credible?

2) Did the panel err in finding that an internal flight alternative was available to the applicants?

IV. Standard of review

[12] It is settled law that questions of fact and assessment of credibility are reviewable on a reasonableness standard. Reasonableness is concerned mostly with the existence of justification, transparency, and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).

[13] The IFA finding must also be reviewed on a reasonableness standard and the Court must exercise deference with regard to the panel's determination (*Guerilus v. Canada (Minister of Citizenship and Immigration*), 2010 FC 394, at para. 10 (available on CanLII) [*Guerilus*]).

V. Analysis

[14] The principal applicant argues that the Board erred in its assessment of his credibility. He claims that the Board ought to have determined that it was reasonable that the militias would try to recruit him about 10 years later and in spite of his age because, in the past, the guerrillas had wanted to give him an important position and because several years after he had resigned as a police officer members of the guerrillas continued to call him.

[15] The principal applicant also criticizes the Board for having based its decision on documentary evidence that dealt exclusively with the FARC's recruitment methods and not those of the other militias, when he had always maintained that the FARC were not the only group who were trying recruit him. The principal applicant also argues that the Board ought to have taken into consideration the complaint and the statement he had made to the authorities regarding the death threats.

[16] The principal applicant argues that the Board's errors in assessing his credibility tainted its reasoning with regard to the IFA assessment. He also alleges that the Board's IFA finding was unreasonable because it did not correctly assess his fear. The Board should have also considered the documentary evidence in the record, according to which an IFA does not exist when a person is persecuted by militias such as the FARC or the ELN.

[17] As held in *Perez v. Canada (Citizenship and Immigration)*, 2010 FC 345 (available on CanLII), it is up to the panel to assess the explanations provided by the applicant:

> [28] The Court notes that the Board is in the best position to assess the explanations provided by the applicant with respect to the

> perceived inconsistencies and it is not up to the Court to substitute its judgment for the findings of fact drawn by the Board concerning the applicant's credibility (*Singh v. Canada (Minister of Citizenship and Immigration*), 2006 FC 181 (CanLII), 2006 FC 181, 146 A.C.W.S. (3d) 325, at par. 36; *Mavi v. Canada (Minister of Citizenship and Immigration)*, (2001), 104 A.C.W.S. (3d) 925, [2001] F.C.J. No. 1 (QL)).

[18] I have read the transcript of the hearing before the Board and reviewed all of the documentary evidence in the record. I find that the Court's intervention is not warranted because the Board's finding with regard to the principal applicant's credibility was reasonable in light of all of the evidence, both documentary and testimonial. It complies with the applicable legal principles. The applicants are essentially in disagreement with the Board's assessment, but it is not for the Court to proceed with its own assessment of the facts and no error warrants its intervention.

[19] In spite of its findings with regard to the principal applicant's credibility, the Board nonetheless proceeded with the IFA analysis and found that it was possible for the applicants to settle in an area away from the alleged place of persecution and, more specifically, in Bogota. The Board's analysis and findings are reasonable and do not warrant the intervention of the Court.

[20] It is up to the applicant to prove that it is objectively unreasonable for him to seek an IFA in another part of the country. It is also up to him to demonstrate that the risk of persecution existed everywhere in the country, as stated in *Guerilus*, above, at para. 14:

> … Refugee protection claimants have the burden of proof to demonstrate that it would be unreasonable for them to seek refuge in another part of the country or to prove that there are in fact conditions which would prevent them from relocating elsewhere (*Ramirez v. Canada (Minister of Citizenship and Immigration*), 2008 FC 1214, [2008] F.C.J. No. 1533 (QL); *Palacios v. Canada*

> *(Minister of Citizenship and Immigration*), 2008 FC 816, 169 A.C.W.S. (3d) 619 at paragraph 9). …

[21] In this case, even though the panel gave the applicants the opportunity to bolster their evidence at the hearing, they failed to meet their burden when they limited themselves to claiming that the people allegedly responsible for the telephone calls could track them down anywhere in the country. The applicants also failed to provide actual and concrete evidence showing that they could be persecuted or subjected to a risk to their lives or a risk of cruel and unusual treatment or punishment if they were to return to Colombia. The Board found that it was highly unlikely the principal applicant would be of such interest to the militias that they would try to find him elsewhere in Colombia and this finding was reasonable in light of the evidence. The Court's intervention is not warranted.

[22] For all these reasons, the application for judicial review is dismissed. No question is certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed and no question is certified.

"Marie-Josée Bédard"
Judge

Certified true translation,

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3412-10
STYLE OF CAUSE:	**LUIS FERNANDO VILLA RAMIREZ, BIVIANA MARIA OSORIO OTALVARO, ESTEBAN VILLA OSORIO, LUIS FERNANDO VILLA OSORIO, LUISA FERNANDA VILLA OSORIO v. MCI**
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	February 16, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	BÉDARD J.
DATED:	February 24, 2011

APPEARANCES:

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