

Federal Court



Cour fédérale

Date: 20110906

**Dockets: IMM-7680-10
IMM-7683-10**

Citation: 2011 FC 1049

Ottawa, Ontario, September 6, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

Docket: IMM-7680-10

**WILLIAMS RAMIREZ ABURTO
ALMENDRA VIRIDIANA CASTILLO
ANGUIANO
MOISES RAMIREZ CASTILLO (A MINOR)
MATEO RAMIREZ CASTILLO (A MINOR)
VALENTINA RAMIREZ CASTILLO
(A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

AND BETWEEN:

Docket: IMM-7683-10

**LUIS ERNESTO GONZALEZ CORTES
MARIA LUZ ANGUIANO MARTINEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] These are applications for judicial review of the decision of member Barry Dhillon of the Immigration and Refugee Board (the Board) dated December 6, 2010, wherein the Applicants were determined not to be Convention refugees or persons in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, RS 2001, c 27.

[2] Based on the reasons below, these applications are dismissed.

I. Background

A. *Factual Background*

[3] Williams Ramirez Aburto, Almendra Viridiana Castillo Anguiano, Moises Ramirez Castillo, Mateo Ramirez Castillo, Valentina Ramirez Castillo, Luis Ernesto Gonzalez Cortes and Maria Luz Anguiano Martinez (collectively the Applicants) are citizens of Mexico. Williams and Almendra are married and are the parents of Moises, Mateo and Valentina, who are all minors. Luis and Maria are also married, and Maria is Almendra's aunt. The Applicants, along with

Almendra's brother Aaron Castillo Anguiano, sought refugee protection in Canada and were all refused in one joint decision. Their refugee claims were all based on a fear of persecution from the Los Zetas gang in Mexico.

[4] Williams and Luis both owned small businesses in Mexico. On March 13, 2005, Williams' store was robbed and Williams made a police report. On September 17, 2005, Williams' father was robbed while in the store. The father received a phone call warning him not to contact the police. On June 9, 2006, six Los Zetas robbed Williams and his father in the store. On March 14, 2007, Williams and Aaron were kidnapped and beaten by a group of Los Zetas, one of whom was wearing a police badge; they were released after the Los Zetas took money from Williams' truck and they reported the incident to the police. Williams began receiving threatening phone calls and noticing a vehicle sitting outside his home and watching him. Williams fled to Canada on June 20, 2008 and claimed refugee protection on November 6, 2008.

[5] In April 2007, Almendra and her parents began receiving phone calls threatening to kidnap her children and demanding money. On August 15, 2008, unidentified individuals attempted to kidnap Mateo but they were unsuccessful. On August 22, 2008, armed men assaulted and robbed Almendra's father, who reported the incident to the public ministry. On December 1, 2008, three armed men forced Almendra into a car and demanded to know where Williams and Aaron were, but they released her after robbing her; she reported the incident to the public ministry. Almendra and her three children fled to Canada on December 5, 2008 and claimed refugee protection on December 15, 2008.

[6] Luis and Maria's store was robbed on several occasions by the Los Zetas. In 2005, armed persons stopped them while they were in their car and robbed them. In March 2007, Luis was again assaulted and robbed. After a few months, they began receiving threatening phone calls. In January 2008, Maria was abducted, detained for 3 hours, robbed and released; she refused to make a police denunciation. In March 2008, their store was robbed, as was a customer who was in the store at the time; they were afraid to give the police a statement. Luis and Maria came to Canada on May 30, 2008 and claimed refugee protection on November 12, 2008.

B. *Impugned Decision*

[7] Although the Applicants were generally determined to be credible, the Board rejected the allegation in Williams' and Aaron's Amended Personal Information Forms (PIFs) that the agents of persecution included police officers; the Board found that this allegation was not credible because it was omitted from the original PIFs and because the explanation that they had forgotten this detail was unreasonable. The Board found that the Applicants had not established a nexus to a Convention ground because they were merely victims of crime and because being small business owners did not make them members of a particular social group. The Board also found that the risk they faced was generalized and that they were therefore not persons in need of protection.

II. Issues

- (a) Is the Board's credibility determination reasonable?
- (b) Is the Board's determination that there is no nexus to a Convention ground reasonable?
- (c) Is the Board's determination that the Applicants face a generalized risk reasonable?

III. Standard of Review

[8] The issues before the Court require a deferential standard of review because they deal with the Officer's findings of fact and weighing of the evidence.

[9] The Applicants submit that the reasonableness standard applies to questions of mixed fact and law and generally to the exercise of discretion, whereas the correctness standard applies to questions of law and procedural fairness issues; the Applicants cite *Kastrati v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1141, 2008 CarswellNat 3688 at paras 9-10. In its submissions regarding IMM-7680-10, the Respondent argues that the reasonableness standard applies, citing *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 47-48 and 51; the Respondent's submissions in IMM-7683-10 do not address the applicable standard of review.

[10] Although not cited by either party, I note that the reasonableness standard applies to credibility determinations (see *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, 167 ACWS (3d) 773 at para 14), determinations that there is no nexus to a

Convention ground (see *Chekhovskiy v Canada (Minister of Citizenship and Immigration)*, 2009 FC 970, 2009 CarswellNat 2938 at para 18), and determinations that the risk faced is generalized (see *Zacarias v Canada (Minister of Citizenship and Immigration)*, 2011 FC 62, 95 Imm LR (3d) 187 at para 14).

[11] As set out in *Dunsmuir*, above, reasonableness requires consideration of the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of fact and law.

IV. Argument and Analysis

A. *The Board's Credibility Determination is Reasonable*

[12] The Applicants submit that it was unreasonable for the Board to reject the allegation in Williams' and Aaron's Amended PIFs that the police were involved with the robberies and extortion. The Applicants argue that this finding was inconsistent with the Board's determination that they were otherwise credible. The Applicants further argue that the omission from their earlier PIFs is reasonably explained by the fact that the two versions of the PIFs were prepared by different counsel, as explained in their post-hearing submissions, and that the Board unreasonably ignored this explanation.

[13] The Respondent submits that the Board was entitled to draw a negative inference from the omission of a critical element from the PIF, citing *Basseghi v Canada (Minister of Citizenship and Immigration)* (1994), 52 ACWS (3d) 165, 1994 CarswellNat 2175 (FC TD) at para 33. The Respondent argues that a change in counsel does not explain the omission.

[14] There is no merit to the Applicants' submissions on this issue. As noted by the Respondent, the Board is entitled to draw a negative inference from the failure to reasonably explain the omission of critical details from the PIF. The Applicants failed to offer such a reasonable explanation, and so the Board was entitled to doubt the veracity of the allegation, despite its finding that the Applicants were otherwise credible.

B. *The Board's Determination that there is No Nexus is Reasonable*

[15] The Applicants submit that they put forward three bases for the persecution: the fact that they are business owners, their membership in a family unit, and their right under international law to choose their profession and not be forced to change profession by a criminal group like Los Zetas. The Applicants argue that the Board failed to consider the second and third bases. The Applicants claim that Almendra, Moises, Mateo and Valentina were only persecuted because they are Williams' family, citing several decisions of this Court which address the family as a particular social group. The Applicants also claim that they have a right to self-determination without being forced to give up their profession because of criminal groups, though they have not cited any cases in support of this argument.

[16] The Respondent submits that the determination that there was no nexus was reasonable. The Respondent argues that all three grounds for the persecution relate to their fear of the Los Zetas, which the Board addressed. The Respondent notes that the Board found that the Applicants were the victims of crime, and that there was insufficient evidence to establish a link between their fear and one of the Convention grounds. The Respondent cites several decisions of this Court which state that victims of crime are generally not Convention refugees, the most recent of which is *Suarez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 227, 2009 CarswellNat 515 at para 6. The Respondent further relies on *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1, at paras 63 to 70, which rejected the idea that individuals can be members of a particular social group “merely by virtue of their common victimization as the objects of persecution” (at para 63).

[17] The Applicants have not established a reviewable error on the part of the Board. As the Respondent has correctly noted, the fact that a group of individuals are the victims of persecution does not make them members of a particular social group for the purposes of the Convention. Any claim based on the family as a particular social group is premised upon a finding that the principal claimant in that family – that is, Williams or Luis – has established a nexus already; as the Board rejected the idea that “small business owners targeted by Los Zetas” are a particular social group, the family-based claims must fail.

[18] The Applicants are being victimized by a group of criminals for the purpose of extortion and they therefore have not established a nexus to a Convention ground.

C. *The Board's Determination that the Risk Faced is Generalized is Reasonable*

[19] The Applicants submit that the Board unreasonably determined that the risk they face is generalized. The Applicants argue that the documentary evidence shows that the Los Zetas do not target all Mexican citizens and residents, but rather only target business owners and those perceived as wealthy.

[20] The Respondent submits that the Board reasonably determined that the risk the Applicants face is a generalized one. The Respondent relies on several decisions of this Court, including *Prophète v Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, aff'd 2009 FCA 31 and *Innocent v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1019, 364 FTR 17. The Respondent argues that, just as in *Prophète*, above, the Applicants face a generalized risk because it is a risk face by the general population even though those perceived as wealthy may be targeted more often.

[21] The Applicants further submit that the Board erred in failing to analyze the adequacy of state protection. The Applicants provide a very lengthy quote from the decision in *Mendoza et al v Canada (Minister of Citizenship and Immigration)*, 2010 FC 648, 90 Imm LR (3d) 10, which held that the Board erred in departing from a persuasive decision which found that state protection was adequate in Mexico.

[22] The Respondent submits that *Mendoza*, above, has no bearing on this application.

[23] *Prophète*, above, is determinative of this issue. In that decision, Justice Danièle Tremblay-Lamer canvassed recent decisions regarding when a risk is generalized at paragraphs 19 to 22, before concluding in paragraph 23 that “The risk of all forms of criminality is general and felt by all Haitians. While a specific number of individuals may be targeted more frequently because of their wealth, all Haitians are at risk of becoming the victims of violence.” The Applicants are in a similar situation and so, as in *Prophète*, above, face a generalized risk and are not persons in need of protection.

[24] It is unclear why the Applicants have referenced *Mendoza*, above, as it is not relevant to this application. Further, as the Board made no finding that state protection would be forthcoming or adequate, it is unclear why the Applicants have this issue at all.

V. Conclusion

[25] In consideration of the above conclusions, these applications for judicial review are dismissed.

[26] No question was proposed for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that these applications for judicial review are dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-7680-10
IMM-7683-10

STYLE OF CAUSE: WILLIAMS RAMIREZ ABURTO ET AL. v.
MCI

AND

LUIS ERNESTO GONZALEZ CORTES ET AL. v.
MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: AUGUST 9, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: SEPTEMBER 6, 2011

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