

Federal Court



Cour fédérale

Date: 20120207

Docket: IMM-5694-11

Citation: 2012 FC 163

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 7, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**LUCY STELLA DELGADO RUIZ,
JOHAN FERNANDO MEDINA DELGADO
AND JESSICA IVONNE MEDINA DELGADO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] For several years, Ms. Delgado Ruiz, a citizen of Colombia, worked at the Colombian embassy in Guatemala. In the performance of her duties, she was responsible for document applications by Colombian citizens in Guatemala, to whom she would send various documents such as Colombian passports, birth certificates, marriage certificates and other identity documents. Over time, she started to receive some requests without any supporting documents, and therefore had to call those applicants to an interview. Following the interviews, she received threats from the FARC

(Revolutionary Armed Forces of Colombia) and the Maras indicating that she should facilitate the issuance of documents to their members.

[2] Ms. Delgado Ruiz refused to cooperate. She resigned from her position at the embassy and bought a restaurant in Guatemala. In retaliation, members of the FARC and Maras attacked her son by firing shots at his car and threatened her at work.

[3] In the end, she came to Canada with her two children to claim refugee protection. Even though the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada believes that, at a certain point in time, Ms. Delgado Ruiz did face a risk from the FARC if she were to return to Colombia, it is of the opinion that that risk has dissipated since that time given that she no longer works for the Colombian government and is no longer able to help them. This is an application for judicial review of that decision.

[4] It is important to note, as a preliminary remark, that it has been well established that Ms. Delgado Ruiz and her children have no legal status in Guatemala. The only country of reference is Colombia.

[5] It has also been established that the panel member of the RPD committed a number of errors of fact. However, I am of the opinion that none of these errors are material to the decision reached (*Miranda v Canada (Minister of Citizenship and Immigration)*, 63 FTR 81, [1993] FCJ No 437 (QL)).

[6] Specifically, and contrary to the panel member's findings of fact, Ms. Delgado Ruiz does not have a sister in the United States. This erroneous finding was the basis for the omission alleged, that is, that she failed to claim asylum in the United States. Ms. Delgado Ruiz spent only one night in New York when she was in transit to Canada. In any event, the delay in claiming refugee protection at the earliest opportunity is not a determinative factor (*S.D.J. v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1283, [2010] FCJ No 1593 (QL); *Liblizadeh v Canada (Minister of Citizenship and Immigration)*, 81 ACWS (3d) 332, [1998] FCJ No 979 (QL); *Gurusamy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 990, [2011] FCJ No 1217 (QL); *Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 4, [2012] FCJ No 16 (QL)).

ISSUE

[7] The only issue is whether the RPD's finding that Ms. Delgado Ruiz would no longer be at risk in Colombia on the grounds that she no longer works for the Colombian government and is no longer able to issue passports and other identity documents was reasonable.

ANALYSIS

[8] It is understandable that, in the abstract, logic and common sense support the RPD's decision. Why target someone who is no longer able to advance the objectives of these organizations? It is unnecessary to consider Ms. Delgado Ruiz's allegation that she is still useful to the FARC because she is familiar with the system.

[9] However, the RPD's finding is contrary to the documentary evidence on the FARC situation in Colombia. It is abundantly clear that FARC members are vindictive. The following is according to response to information request *COL103286.E*, dated February 23, 2010:

In correspondence with the Research Directorate, the Senior Researcher with Human Rights Watch indicated that "[d]ue to their presence in vast sectors of Colombia and extensive information networks, it is likely that the FARC, ELN and successor groups to the AUC have the capacity to pursue victims even after they have spent many years outside the country" (Human Rights Watch 9 Nov. 2009). Furthermore, in the view of the Professor of Sociology at Acadia University, the FARC and ELN "would continue to view persons, it deems as a 'class' enemy, regardless of time duration or geographical location" (19 Jan. 2010).

The Professor at Stetson University, explaining that the following statements apply also to the ELN, addressed this issue as follows:

[It] depends on the ongoing value of that individual to the FARC. ... The FARC is capable of monitoring over the long term the movement of Colombian nationals from and into Colombia by flagging names that will signal an alert when that individual returns to Colombian soil. Also, there is some risk to a targeted individual who continues to reside outside Colombia, especially if that individual is a high value target and resides in a nation where the FARC maintains a significant covert presence (other Andean states, Argentina, Paraguay, Mexico, Costa Rica, Panama, and some parts of the United States, particularly Florida and Georgia). ... at some point, the paper trail of an individual's daily routine and lifestyle would expose that individual to possible identification by the FARC.

Moreover, there is a stigma attached to Colombian nationals who return to Colombia from the United States, Canada, and Europe. Many criminals and illegal armed groups such as the FARC are under the impression that expatriates returning to Colombia bring back with them money that can be extorted. ... This false assumption places many returning Colombians at risk of being targeted by groups who must include extortion in their arsenal of criminal activities in order to survive. Therefore, even if several years have elapsed, there is simply no way to assure that a repatriated Colombian national who was once targeted and persecuted by the FARC

can live securely and in peace. (Professor, Stetson University 21 Jan. 2010).

[10] In this case, *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ No 1425 (QL), applies. Mr. Justice Evans, later appointed to the Federal Court of Appeal, explained the following at paragraph 17:

However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)*, (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[11] Furthermore, the fact that Ms. Delgado Ruiz returned to Colombia for less than three weeks to complete certain steps relating to her resignation from her position at the embassy, and the fact that she did not experience any problems during her stay in Colombia, does not mean that she would not have been at risk if she had stayed there longer. This is especially true when we consider that Ms. Delgado Ruiz received threats in Guatemala City immediately before her departure for Colombia.

[12] Consequently, I am of the opinion that the decision by the panel member is unreasonable and I refer it back to another decision-maker for redetermination. The new decision will have to take into account the availability of state protection and an internal flight alternative in Colombia.

[13] As agreed by the two parties during the hearing, there is no serious question of general importance to certify.

ORDER

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review of the decision by a member of the RPD, of the IRB, dated August 1, 2011, that the applicants are not Convention refugees or persons in need of protection is allowed.
2. The said decision dated August 1, 2011, is set aside and the matter is referred back for redetermination by a different panel member of the RPD, of the IRB. The new decision will have to take into account the availability of state protection and an internal flight alternative in Colombia.
3. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: FEBRUARY 7, 2012

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