Federal Court  Cour fédérale

Date: 20120222

Docket: IMM-5635-11

Citation: 2012 FC 245

Ottawa, Ontario, February 22, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

MARTHA SOFIA SERNAS DE TORO AND MARIA CECILIA CERNAZ HAMANN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review concerns a determination by the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated July 19, 2011, that sisters Martha Sofia Sernas de Toro and Maria Cecilia Cernaz Hamann were not Convention refugees or persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the following reasons, this application is dismissed.

I. Facts

[3] The Applicants are citizens of Colombia. On September 25, 2009, they claimed refugee protection in Canada based on a fear of the Revolutionary Armed Forces of Colombia (FARC).

[4] The husband of the Principal Applicant (Maria Sofia Sernas de Toro) was shot and killed by FARC guerrillas as a result of an incident on November 2, 2002. He was directed to drive his taxi to an empty lot where the FARC guerrillas jumped in the car and threatened him. He managed to get out of the car but was shot in the process. The police responded quickly and apprehended those responsible.

[5] When the prosecutor (or Fiscalia) came to the hospital, the Principal Applicant's husband did not identify the FARC as the perpetrators. He died one month later.

[6] The Principal Applicant was told to appear at the Fiscalia to make a formal denunciation. She also commenced a lawsuit to receive compensation for her husband's death in February 2003. The lawsuit was subsequently withdrawn out of fear as the Principal Applicant claims to have received a phone call from the father of one of the perpetrators suggesting that her husband was killed because he refused to carry out his duties.

[7] In January 2009, the Applicants received a phone call telling them that they had to pay a debt to compensate for the six years that one of the perpetrators had spent in jail. They decided to relocate from Cali to Bogota. Shortly after this move, they learned that their apartment in Cali had been robbed.

[8] On July 21, 2009, the Principal Applicant alleged having received another call on her cell phone from the FARC in Bogota. The caller demanded 300 million pesos, failing which they would be killed. As a result, the Applicants fled to Canada.

II. Decision Under Review

[9] The Board found that there was no nexus to a Convention ground in the Applicants' case. While it accepted that the FARC have political objectives, the Principal Applicant's husband was extorted because of his vehicle and perception that he had money and the Applicants were in turn targeted as a result of that incident. The objective behind this extortion was purely criminal in nature, rather than the consequence of any real or imputed political opinion.

[10] There were also some concerns expressed regarding the Applicants' credibility. When the Principal Applicant was asked to explain the gap in her Personal Information Form (PIF) narrative between 2003 and 2009, she referred to threatening phone calls in 2006. The Board gave no weight to this evidence; however, since it was not in the PIF and the only explanation provided when pressed was that she focused more on the 2009 incident. In addition, on being questioned about the phone call received after fleeing to Bogota, the Principal Applicant acknowledged that this was

received on her cell phone at the same phone number she used in Cali. This did not translate to her having been located in Bogota.

[11] The Board concluded that the Principal Applicant, at no time, approached the police. As a consequence, she had not provided clear and convincing evidence of the state's inability to protect her. Colombia was considered a constitutional, multiparty democracy. Although significant human rights abuses remain, the Board noted that the government continues to make efforts to confront and address these issues.

[12] Examining the documentary evidence specific to the threat posed by FARC, the Board concluded that the group continues to operate in rural areas but has been weakened in most urban centres. It was acknowledged that security forces fear FARC will attempt to win back status in urban areas through terrorism, and there were signs of these efforts recently. However, these incidents were not generally considered targeted attacks.

[13] The Board referred to classes of individuals currently considered targets of the FARC. While the group continues to murder these targets, there was no documentation that persons who do not meet that profile, such as the Applicants, were being targeting in cities or towns.

[14] The Board also found that the Applicants had a viable Internal Flight Alternative (IFA) in Bogota. The call received by the Principal Applicant was at the same number and cell phone as used in Cali.

[15] Considering documentary evidence related to the likelihood of FARC tracking the Applicants in Bogota, the Board suggested that this depended on the value of the target. The FARC were angry that the Principal Applicant espoused contrary views but she was not a high-value target being extorted or coerced to cooperate and provide technical assistance. The Board concluded that it was not likely she would be located in Bogota and that, if she were, state protection would be reasonably forthcoming.

III. Issues

[16] The issues raised in this application can be stated as follows:

(a) Was the Board's assessment of state protection reasonable?

(b) Was it reasonable for the Board to find that the Applicants had a viable IFA?

IV. Standard of Review

[17] The standard of review for the Board's assessment of state protection is reasonableness (*Mendez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 584, [2008] FCJ No 771 at paras 11-13). This standard must also be applied to the finding of an IFA (*Diaz v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1243, [2008] FCJ no 1543 at para 24; *Guerilus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 394, [2010] FCJ no 438 at para. 10).

[18] Reasonableness is concerned with "the existence of justification, transparency and intelligibility" as well as "whether the decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

A. *State Protection*

[19] The Applicants contest the Board's state protection finding for failing to consider their explanation as to why they did not approach authorities for protection following the receipt of telephone threats. Having filed a denunciation for her husband's death, the Principal Applicant was targeted and threatened by the FARC. She was therefore unwilling, out of fear, to approach the authorities in response to threats against her and possibly other family members.

[20] The Respondent maintains that the Board considered the Principal Applicant's testimony and explanations regarding her failure to approach state authorities. The Board also made clear why it was giving part of her testimony no weight.

[21] On examining the Board's decision, I am inclined to agree with the Respondent's position. At paragraph 23 of its decision, the Board explicitly refers to the Principal Applicant not having gone to police when she was threatened and that "[h]er reason for not doing so was fear and her belief that the FARC have infiltrated the police." It was also acknowledged that it may have been

reasonable at the time for her not to have approached police in Cali, which supported further consideration of the viability of an IFA in the final portion of the decision.

[22] Since there is no clear failure to consider the Principal Applicant's testimony, the concern raised is with the weight accorded to her explanation. On its own, the Applicants' concern does not warrant the intervention of this Court. The Board is entitled to weigh the evidence submitted in its assessment of state protection.

[23] The Applicants further assert that the Board was selective in its review of documentary evidence regarding state protection in that it failed to consider contradictory material.

[24] As the Respondent stresses, however, the Board conducted a thorough analysis of this evidence and acknowledged contradictions before analyzing the Applicants' individual circumstances. Ongoing corruption and conflict were recognized along with efforts involving government programs and officials to address these problems. The Board directed its attention to the risk posed by FARC as well as its weakened presence in urban centres, such as Bogota.

[25] The Board expressly addressed contradictory evidence regarding the availability of state protection. Failing to mention every piece of documentary evidence does not amount to a reviewable error (see *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ no 946 (FCA); *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (FCA)).

[26] The Applicants had to provide clear and convincing evidence that state protection was inadequate (see *Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, 2008 CarswellNat 605 at para 38). The burden for doing so is higher in a democratic state (see *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, [2007] FCJ no 584 at para 57). Having considered all of the testimony and documentary evidence, the Board was convinced that the Applicants had not sought police assistance and state protection would be reasonably forthcoming in other areas of Colombia. This was within the range of possible, acceptable outcomes.

[27] Since the Board's assessment of state protection was closely linked to its IFA finding, I must also turn my attention to that issue.

B. *Internal Flight Alternative (IFA)*

[28] The Applicants dispute the conclusion that they have a viable IFA in Bogota, Colombia. They insist the Board failed to consider the Principal Applicant's testimony, supported by the available documentary evidence, that she did not approach police for protection because the FARC has infiltrated the Colombian police force throughout the country. According to the Applicants, this evidence contradicts the suggestion that although it may have been reasonable that they did not approach police in Cali, protection would have been available in Bogota.

[29] However, I am not persuaded that the Board ignored the Principal Applicant's testimony in this regard. Indeed, paragraph 49 of its reasons specifically notes that "she testified that she would not be afforded state protection as the police have infiltrated the FARC."

[30] The Board proceeded to assess the documentary evidence as to the threat of the FARC in Bogota. Although it acknowledged the group's presence in the area, it was possible to relocate and live safely if an individual was not considered a high-value target. Since the Applicants did not meet the profile of primary FARC targets, the Board found they would not likely be located and, if they were, state protection would be reasonably forthcoming in Bogota.

[31] This is consistent with determinations by the Federal Court of Appeal in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 22 Imm LR (2d) 241 and *Ranganathan v Canada (Minister of Citizenship and Immigration)* (2000), [2001] 2 FC 164, [2000] FCJ no 2118 at paras 13-15 that an IFA can be found if the applicants will not be at risk at the location and it is objectively reasonable to expect the applicants to seek refuge there.

[32] It was therefore reasonably open to the Board, having considered the Principal Applicants' testimony and documentary evidence, to find that Bogota represented a viable internal flight alternative. The Applicants initially relocated there because they must have thought they would be safer and could return to the city. Once again, the Court is being asked to reweigh the evidence where the Board is appropriately given deference in the matter.

VI. Conclusion

[33] Since the Board considered the Applicants' testimony and documentary evidence to reach reasonable findings on state protection and the viability of an IFA in Bogota, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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