Federal Court  Cour fédérale

Date: 20120719

Docket: IMM-4990-11

Citation: 2012 FC 913

Ottawa, Ontario, July 19, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

DORIS YALITH GARAVITO OLAYA
JHON VELOZA ROCHA
NICOLAS ESTEBAN VELOZA GARAVITO
ANDRES FELIPE VELOZA GARAVITO

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the Board), dated June 15, 2011, wherein the applicants were determined to be neither Convention refugees within the meaning of section 96 of the Act, nor persons in need of protection as defined in subsection 97(1) of the Act. This conclusion

was based on the Board's finding that adequate state protection was available to the applicants in Colombia.

[2] The applicants request that the Board's decision be set aside and the matter be referred back for redetermination by a differently constituted panel.

Background

[3] The principal applicant is Doris Yalith Garavito Olaya and the co-applicant is her husband, Jhon Veloza Rocha. The other two applicants are the couple's sons, Nicolas Esteban Veloza Garavito and Andres Felipe Veloza Garavito. All the applicants are citizens of Columbia.

[4] In 2007, the principal applicant (an industrial engineer) and the co-applicant (a lawyer) established Alquimaq Garavito, a consulting company providing legal advice to companies, governments and small entities across the southwest and south-central regions of Colombia.

[5] In November 2009, Alquimaq Garavito was hired to manage construction contracts for the municipality of Orito in southern Colombia. This entailed analyzing the technical and financial abilities of companies bidding on municipal contracts. Alquimaq Garavito issued recommendations to the municipality, who then made the final decision on the awarding of contracts. To complete this work, the applicants moved from Bogota to Orito.

[6] In May 2010, the co-applicant received a call from a man identifying himself as a member of the 7th front of the Revolutionary Armed Forces of Colombia (FARC). The caller ordered the co-applicant to award the Orito contracts to companies identified by FARC. If the co-applicant did not do as told, the caller threatened that harm would come to him and his family.

[7] The following month, the co-applicant received another call, apparently from the same man. The caller identified a company that FARC wished to have the contract awarded to. However, the co-applicant informed the caller that a selection had already been made and no changes were possible. The caller demanded to know which company had been recommended, but the co-applicant refused to give him this information.

[8] The following day, the principal applicant received a call from a man who identified himself as a sub-commander from the 7th front of FARC. The man threatened that if the company identified by FARC did not win the contract, harm would come to the applicants.

[9] Thereafter, the co-applicant contacted Mr. Uribe, a lawyer and advisor to the mayor's office, for advice on how to handle the situation. Mr. Uribe advised him to make a statement with the ombudsman in Orito and then to contact the authorities. As recommended, the co-applicant made a statement to the ombudsman, who notified the Commission of Orito (an agency of the Attorney General's office). The ombudsman informed the co-applicant that although he was qualified as a displaced person, no special protection could be granted because he was not directly employed by the government.

[10] As no protection was available to them, the applicants decided to relocate to Bogota on or around June 21, 2010. In Bogota, the applicants first stayed with the co-applicant's mother for a week and then moved to the home of the principal applicant's mother where they went into hiding. Later, on July 9, 2010, two men forced their way into the home of the co-applicant's mother. They identified themselves as FARC members and threatened her with a gun. The men searched the home and demanded to know the applicants' whereabouts. The co-applicant's mother reported this event to the police.

[11] When the applicants were notified about this event, they decided to apply for U.S. visas to leave Colombia.

[12] Approximately ten days later, the contracts in Orito were officially awarded to companies other than those identified by FARC. On or around August 15, 2010, a message was left on the Alquimaq Garavito office phone threatening to kill the applicants for not awarding the contracts to the FARC companies.

[13] On August 26, 2010, six-month U.S. visitor visas were issued to the applicants. The applicants left Colombia for the U.S. on September 22, 2010. As the principal applicant had an aunt in Canada, the applicants travelled to the border and entered Canada on September 27, 2010. They filed their refugee claims the same day.

[14] Since leaving Colombia, the co-applicant's mother has received numerous calls asking for the applicants' whereabouts and threatening them.

[15] The hearing of the applicants' refugee claims was held on April 11, 2011.

Board's Decision

[16] The Board issued its decision on June 15, 2011. Notice of the decision was sent on July 8, 2011.

[17] The Board noted that the applicants feared persecution at the hands of FARC. The Board found that the applicants' identities were established based on the evidence before it.

[18] The Board considered the applicants' subjective fear based on their failure to claim protection in the U.S. The Board noted that although they held six-month U.S. visitor visas and had been in the U.S. for five days before coming to Canada, they did not speak with immigration authorities, claim asylum or consult a lawyer when there. The Board found this lack of effort to inquire about filing a claim in the U.S. indicative of a lack of genuine subjective fear.

[19] The Board then provided an overview of the guerrilla and paramilitary activity in Colombia based on the documentary evidence before it. The Board noted that Colombia has long been embroiled in armed conflict, which continues to lead to significant civilian casualties and human rights abuses. Civilian authorities generally maintain effective control of the security forces although instances exist where these forces have violated state policy.

[20] The Board also noted that although FARC is under severe stress with several deaths and captures of top commanders, the new leader has led to renewed internal cohesion. Nevertheless, government statistics indicate progress in combating guerrilla groups, with murders and kidnapping decreasing over recent years. As a result, FARC has been forced to retreat to a more traditional guerrilla war and the national security is no longer threatened by illegal armed groups or criminal elements.

[21] The Board then proceeded to the state protection analysis, which it found was the determinative issue in this case. The Board considered whether the applicants took all reasonable steps to avail themselves of the state protection; there is adequate state protection in Colombia; and the applicants provided clear and convincing evidence of the state's inability to protect.

[22] The Board noted that prior to November 2009, the applicants had no problems with the FARC. It then summarized the applicants' allegations of events that transpired in Orito.

[23] The Board noted that the applicants did not report the threats to the police as they had been told that their lives would be in danger if they did. However, it rejected this explanation for several reasons. First, the Board questioned why the co-applicant would have made a report to the ombudsman if he feared retribution for reporting the threats. Further, the Board noted that the applicants are well-educated. As the co-applicant was a lawyer, he should have known to approach a police office if the ombudsman did not provide the protection he wanted.

[24] Further, the Board noted that the ombudsman's report did not indicate that the applicants had been threatened by FARC. The Board rejected the co-applicant's statement that that was how the report was written. Rather, the Board found it reasonable to expect that the ombudsman, whose function is to record complaints made by citizens, would have included details of the event and the name of the agents of persecution.

[25] The Board also noted that the ombudsman report dated June 16, 2010, stated that the applicants "have been forced to relocate outside of the country". This suggested that they had already relocated abroad. However, this report was written before the applicants' passports were issued on June 24, 2010 and before their departure in September 2010. The Board therefore found, on a balance of probabilities, that the applicants were not threatened in June 2010 and that the ombudsman's report was obtained merely to embellish their refugee claims.

[26] The Board also noted that the co-applicant's mother filed an incident report to the police. Conversely, the applicants did not file any reports for the threatening phone calls made to them in August 2010. The Board highlighted that the applicants had only received threatening calls, whereas the co-applicant's mother had been assaulted at gun point.

[27] Turning to the level of state protection in Colombia, the Board noted that:

Colombia is a constitutional and functioning democracy;

The most recent elections were considered generally free and fair;

Civilian authorities generally maintained control of security forces;

The national police and other departments manage internal law enforcement;

The Prosecutor General's Office runs a witness protection program, investigates criminal offences and has a specialized human rights unit;

A new criminal procedure code was adopted in 2008, which had led to increased conviction rates.

[28] Furthermore, since the U.S. has committed significant resources to help Colombia protect its citizens from militant groups, the left-wing guerrilla groups and right-wing paramilitary groups have splintered away from mainstream groups and now focus more on extortions and drug-trafficking to enrich themselves. The Board therefore found that the remnant groups are no longer ideologically-based groups, but merely common criminals.

[29] The Board acknowledged the applicants' evidence that Colombia is experiencing difficulties dealing with groups such as FARC. However, it noted that although significant human rights abuses remain, the government continues to make efforts to confront and address these abuses. The Board found that although there were some inconsistencies in the documentary evidence, the preponderance of it suggested adequate state protection in Colombia for victims of crime, with the police both willing and able to protect victims.

[30] As such, the Board found that the applicants had not established that if they returned to Colombia, state protection would not be reasonably forthcoming or that it was objectively unreasonable for them to seek that protection. Therefore, the Board found that the applicants had failed to rebut the presumption of state protection. As the issue of state protection is equally

applicable to claims under sections 96 and 97 of the Act, the Board denied the applicants' refugee claims.

Issues

[31] The applicants submit the following points at issue:

1. The Board committed a breach of natural justice and procedural fairness by basing its decision in part on material that was not before it.

2. In coming to its conclusions, the Board made a number of errors that should result in this application being allowed.

3. The Board's analysis of the applicants' failure to claim in the U.S. as a basis of a lack of subjective fear is erroneous in fact and law.

4. The Board's negative credibility findings were as a result of factual errors and a complete misunderstanding of the evidence, ignoring relevant portions of the evidence and misunderstanding the law.

5. The Board's findings on adequacy of state protection were based on ignoring evidence, misunderstanding the evidence, relying on evidence not before it and misunderstanding the law.

6. The Board erred in law by providing reasons that were confusing and inadequate.

[32] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Was the Board's finding that the applicants lacked subjective fear unreasonable?

3. Did the Board err in its state protection analysis?

Applicants' Written Submissions

[33] The applicants submit that the standard of review on matters of procedural fairness is correctness. Conversely, matters of mixed fact and law or factual errors, are reviewable on a reasonableness standard.

[34] As a preliminary matter, the applicants submit that the Board relied on a document that was not before it in coming to its determination on state protection. As this document was not before the Board, the applicants were unable to respond to it. This was a breach of procedural fairness.

[35] The applicants also submit that the Board's finding on their failure to claim in the U.S. was unreasonable. The applicants submit that the Board was required to look at the circumstances of the applicants' failure to claim elsewhere before deciding if it was indicative of a lack of subjective fear. In this case, the applicants' stay in the U.S. was legal (they held valid visas), was made for the purpose of arranging their entry in Canada and was brief (five days) as they intended to come to Canada where the principal applicant's aunt lived. The Board erred by not properly taking these explanations into account.

[36] The applicants submit that although the Board did not specifically state that it was making negative credibility findings, portions of its state protection analysis are clearly that. The applicants submit that the ombudsman warned them that it was dangerous to report the matter to the police as

they could not be trusted. This fact was supported by the applicants' testimony that the police were infiltrated and that there were only three police officers in Orito for a population of 45,000. It would therefore have been unreasonable for the applicants to report to the police. The Board erred by ignoring this evidence in drawing its negative credibility inferences.

[37] Further, although the ombudsman's report does not specifically mention FARC, it does state that the applicants were threatened by armed groups outside the law. This report therefore corroborates their submission that they were threatened. In addition, at the hearing, the interpreter verbally translated the report. The interpreter's translation indicated a slight error in the original translation: rather than stating that the applicants had already left Colombia, the report actually stated that as a result of the threats, they would be forced to leave the country. The applicants submit that the Board ignored this evidence in drawing a negative credibility inference from the original translation, rather than the interpreter's corrected translation provided at the hearing.

[38] The applicants also submit that the Board's decision is not clear on whether it believed that FARC members visited the co-applicant's mother, whether the phone calls were made to the applicants or whether the complaint to the ombudsman was made to embellish the claim. Unclear reasons are an error of law.

[39] The applicants submit that the Board's state protection analysis was deficient. Specifically, the Board selected evidence that best supported its decision while ignoring evidence that contradicted it. For example, with regards to the evidence on groups at risk, the Board erred in not recognizing that the co-applicant falls within two of these groups: local and regional government

authorities and judges and other persons involved in the administration of justice. Further, the Board relied on the omission of a paragraph on the FARC's ability to track down its victims in a 2008 report, noting that that paragraph was included in the previous 2005 report. However, the authors of these two reports differ. The Board therefore erred in drawing conclusions based on differences between them.

[40] Finally, the applicants cite excerpts from numerous documents that were before the Board and that are critical of Colombia's state protection. The applicants submit that this evidence paints a very different picture from that depicted by the Board of the current reality in Colombia. This evidence shows that adequate state protection does not exist for the applicants. As such, the Board erred by not properly understanding and reviewing the documentary evidence, ignoring evidence and referring to material that was not before it.

Respondent's Written Submissions

[41] The respondent submits that there was no breach of natural justice in this case. The respondent acknowledges that the Board mistakenly referred to the wrong year's National Documentation Package for Colombia (i.e., 2009 instead of the correct date of 2010). However, the Board first undertook a thorough analysis of the most recent materials and only then provided a general reference to the documentation package. Thus, there was no breach of natural justice.

[42] The respondent also submits that the Board made a reasonable finding in holding that the applicants' failure to file a claim in the U.S. undermined their subjective fear. It is trite law that

when travelling to Canada, a failure to seek asylum in a country travelled through and that is party to the Refugee Convention is a relevant consideration in rejecting a claim.

[43] The respondent also submits that the Board's factual findings on the threats that the applicants' allegedly received and their failure to take steps to seek state protection in Colombia were reasonable. It was reasonable for the Board to question why the co-applicant reported the matter to the ombudsman in light of his alleged fear of the police. Further, as the co-applicant was a lawyer, it was reasonable for the Board to find that he should have known to approach a police office in Colombia; not necessarily only in Orito. His failure to report to the police was exacerbated by the fact that the principal applicant's mother did report the FARC visit to the police. In addition, the lack of detail in the ombudsman's report was a reasonable basis on which the Board found that it had been obtained to embellish or bolster the applicants' claims.

[44] The respondent submits that the Board's state protection finding was reasonable. Although the applicants provided a detailed summary of documentary evidence in support of their position, they did not cite any authority indicating that the Board was required to go into that level of detail.

[45] Further, the applicants' argument that the Board erred by ignoring evidence that contradicted its findings is untenable. The respondent notes that the Board is an independent and impartial tribunal that is presumed to have considered all the evidence before it unless there are good grounds to believe otherwise. In addition, there is no reason to believe that the material cited by the applicants in their submissions was not considered in the Board's assessment of their claim. Rather, the Board expressly accepted that Colombia continues to face challenges, but nevertheless

found persuasive evidence that the country is making serious efforts to rectify past problems. As such, the main issue pertains to the weighing of the evidence and whether the decision was within the range of acceptable outcomes based on the facts. In this case, the respondent submits that it was reasonable and open to the Board to find that state protection today in Colombia is adequate although not perfect.

[46] Finally, in response to the applicants' observation that the Board confused the agencies that authored a 2005 and a 2008 report on Colombia, the respondent submits that this confusion alone does not render the Board's decision unreasonable. This was not a significant mistake and was not a material error.

Analysis and Decision

[47] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[48] Decisions of the Board on the weight assigned to evidence and the interpretation and assessment of evidence are reviewable on a standard of reasonableness (see *NOO v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045, [2009] FCJ No 1286 at paragraph 38).

[49] Findings on state protection raise questions of mixed fact and law that are also reviewable on a reasonableness standard (see *Hughey v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, [2007] FCJ No 584 at paragraph 38; *Gaymes v Canada (Minister of Citizenship and Immigration)*, 2010 FC 801 at paragraph 9; and *SSJ v Canada (Minister of Citizenship and Immigration)*, 2010 FC 546, [2010] FCJ No 650 at paragraph 16).

[50] In reviewing the Board's decision on a standard of reasonableness, the Court should not intervene unless the Board came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at paragraph 59). As the Supreme Court held in *Khosa* above, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraphs 59 and 61).

[51] **Issue 2**

Was the Board's finding that the applicants lacked subjective fear unreasonable?

The Board found that the applicants' failure to pursue immigration efforts or asylum claims in the U.S. prior to coming to Canada indicated a lack of subjective fear. Although this was not a determinative finding, the applicants criticized it for being made without regard to their specific circumstances. These circumstances included the fact that their stay in the U.S. was legal (they held valid visas) and brief (five days). They also never intended to stay there but rather always planned to come to Canada where one of their relatives lives.

[52] In defending the Board's finding on this issue, the respondent submits that it is trite law that a failure to seek asylum in a signatory country, through which an applicant travels before arriving in Canada, is a relevant consideration in rejecting a claim. This argument has judicial support (see *Gilgorri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 559, [2006] FCJ No 701 at paragraphs 24 to 27). One of the cases cited approvingly by Mr. Justice Michel Shore in *Gilgorri* is *Pissareva v Canada (Minister of Citizenship and Immigration)*, 11 Imm LR (3d) 233, [2000] FCJ No 2001. In *Pissareva* above, Chief Justice Edmond Blanchard explained (at paragraph 29):

> As regards the plaintiff's failure to claim refugee status in the U.S., where she lived for nearly a month before setting foot on Canadian soil, this Court has many times said that the Refugee Division must take claimants' behaviour into account. The fact of passing through a country which is a signatory of the Convention without claiming refugee status as quickly as possible may be one factor in assessing the subjective aspects of her claim. [emphasis added]

[53] More recently, this Court has found that absent a satisfactory explanation for the delay, such delay can be fatal to an applicant's claim, even where that applicant's credibility has not otherwise been challenged (see *Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 923, [2010] FCJ No 1138 at paragraph 28).

[54] In this case, it is notable that the applicants remained in the U.S. less than a week. However, as they held six-month U.S. visitor visas, there was no legal impediment to them staying longer and filing asylum claims there. Furthermore, the mere fact that the applicants have one relative living in Canada is not a sufficient basis to overcome the fact that they did not claim refugee status in the U.S. "as quickly as possible" (see *Pissareva* above, at paragraph 29).

[55] As the Board did not ultimately render its decision on this issue, I find no fault in the negative inference that it drew from the applicants' failure to file claims in the U.S. Their failure to claim in the U.S. was a legitimate factor for the Board to consider in assessing the subjective aspects of their claims. The Board's finding on this issue was reasonably open to it based on the evidence before it.

[56] **Issue 3**

Did the Board err in its state protection analysis?

State protection was the determinative issue in this case. In rendering its decision on this issue, the Board first provided a broad overview of guerrilla and paramilitary activity in Colombia. This overview included recognition of the long-standing problems in Colombia and the heavy impacts on the civilian population, with certain groups facing particular risks of persecution. The Board also noted that human rights abuses continue, although the government is making efforts to confront and address them. Further, FARC presence is more localized in south-eastern Colombia and rebel groups have withdrawn to the border areas.

[57] The Board then turned to the applicants' allegations. In assessing whether they took all reasonable steps to avail themselves of state protection in Columbia, the Board drew negative inferences from the following:

Although the co-applicant reported the threats to the ombudsman, he claimed he feared reporting them to the police;

The co-applicant, as a lawyer, should have known to approach a police office in Columbia when the ombudsman did not provide protection;

The ombudsman's report, which predated their departure, stated that the applicants had already been forced to relocated abroad;

The ombudsman's report did not specify FARC as the agent of persecution; and

The principal applicant's mother reported an attack in Bogota by FARC members to the police, but the applicants did not report threatening calls that they received while in Bogota to the police.

[58] Finally, the Board reviewed the documentary evidence on the adequacy of state protection in Colombia. After highlighting some key points, the Board recognized that there were some inconsistencies in the evidence. Nevertheless, it found that the preponderance of the evidence indicated that although not perfect, there is adequate state protection in Colombia for victims of crime.

[59] The applicants raise a number of issues with the Board's state protection analysis.

[60] As a preliminary matter, the applicants submit that the Board erred by relying on the National Documentation Package (NDP) for 2009, which was not before it. The applicants submit that this was a breach of procedural fairness. Where a decision maker relies on a document not put before the applicants, thereby eliminating their opportunity to respond, the decision may be found to have resulted from procedural unfairness (see *THSB v Canada (Minister of Citizenship and Immigration)*, 2011 FC 354, [2011] FCJ No 462 at paragraphs 9, 13 and 23).

[61] However, as noted by the respondent, the Board in this case merely made a clerical error in its reasons. Rather than relying on the 2009 NDP, it did actually rely on the 2010 NDP. The 2010 package was before the applicants and it is included in the applicants' record. The first document provided after the 2010 NDP list in the applicants' record is the US Department of State 2009 Human Rights Report: Colombia. This document supports the summary provided by the Board at paragraph 39 of its decision. I therefore agree with the respondent that this mistaken reference is not sufficient basis on which to set aside the Board's decision. Unlike *THSB* above, I do not find that the Board in this case relied on extrinsic evidence that was not put before the applicants. As such, the applicants were not denied an opportunity to respond and the decision, on this basis alone, did not result from procedural unfairness.

[62] The applicants also criticize the Board's finding that they should have reported the threats to the police. However, I find that the Board drew a reasonable negative inference from the fact that the applicants pursued one avenue of recourse (the ombudsman), while not pursuing another (the police).

[63] Further, and perhaps most notable, is the applicants' failure to seek police help after the August calls, when they had returned to Bogota. The applicants testified that they questioned the effectiveness of the police in Orito. This fear is supported by the documentary evidence, cited by the Board, which stated that FARC's presence is predominantly in southern Colombia. However, the applicants did not explain why they could not seek police protection when they returned to Bogota. This was exacerbated by the fact that the principal applicant's mother did successfully seek such

protection in Bogota. The hearing testimony highlights a lack of clarity and explanation in the co-applicant's reason for not seeking police protection in Bogota:

> PRESIDING MEMBER: So why would you not go to the police? Your mother went to the police to tell them that the FARC was looking for you.
>
> CO-APPLICANT: The people who were threatened of death was my family and myself. She was not threatened. It was me and the members of my family.
>
> PRESIDING MEMBER: Sir you still have not answered the question. Your mother went to the police and provided the information to them that the FARC was looking for you. So why would you not go to the police?
>
> CO-APPLICANT: Because I was in the city and I was not given any kind of protection in Orito where I was respected and well-known person. If I made a denunciation in Bogota I could not take that risk because I know protection was not going to be given to me or provided to me.

[64] I find this evidence is sufficient basis for the Board's finding that the applicants failed, especially after they left Orito and returned to Bogota, to seek state protection in Colombia. There was no evidence, aside from the co-applicant's brief allegation, that police protection was not available in Bogota.

[65] The applicants also submit that the Board erred by drawing a negative inference from the timing of the applicants' departure as stated in the original interpretation of the ombudsman's report. Admittedly, the Board did err by relying on the original interpretation in its decision, rather than the revised interpretation provided at the hearing. However, this was not the sole reason for the Board's ultimate finding on state protection. I find that the other reasons listed above were

collectively sufficient to support the Board's finding on the applicants' efforts to seek state protection.

[66] The applicants then highlight the Board's finding that the removal from a 2008 report, where it was previously included in a 2005 report, of a statement on irregular armed groups' capacity to track down victims in Colombia indicated that this statement no longer applies. The two reports were written by different authors with similar acronyms. In *Diaz v Canada (Minister of Citizenship and Immigration)*, 2010 FC 797, [2010] FCJ No 979, the Board based its internal flight alternative finding on the same discrepancy (at paragraph 12). Mr. Justice Russel Zinn explained the problem with this approach (at paragraph 31):

> The reports the Board referred to were not from the same organizations. The 2005 report was from the United Nations High Commissioner for Refugees. The 2008 report was from the United Nations High Commissioner for Human Rights. These are separate entities, with different commissioners, and different mandates. The Board's error renders its conclusion that the paragraph was "removed" because it no longer applied perverse. [emphasis added]

[67] Although the Board's reliance on discrepancies in reports by different authors is troublesome, I do not find it renders its decision as a whole erroneous in this case. As stated by the respondent, the Board's error was not a significant mistake or a material error. Rather, it is more in line with *Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1114, [2010] FCJ No 1468, where Mr. Justice Yvon Pinard distinguished *Diaz* above, even though the board in both cases made the same error. Mr. Justice Pinard explained that the two cases were distinguishable because the board in *Velez* above, also relied on other evidence in coming to its finding (at paragraph 13). Similarly, the Board in this case also relied on other evidence in rendering its decision.

[68] When read as a whole, I find that the applicants' submissions pertain more to the weighing of the evidence, a matter on which this Court owes the Board significant discretion (see *Velychko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 264, [2010] FCJ No 298 at paragraph 26). It is not the role of this Court to reweigh the evidence (see *Zrig v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178, [2003] FCJ No 565 at paragraph 42). As stated by Madam Justice Carolyn Layden-Stevenson in *Augusto v Canada (Solicitor General)*, 2005 FC 673, [2005] FCJ No 850 (at paragraph 9):

> […] In the absence of having failed to consider relevant factors or having relied upon irrelevant ones, the weighing of the evidence lies within the purview of the officer conducting the assessment and does not normally give rise to judicial review. […]

[69] In this case, the Board provided a thorough review of the evidence and acknowledged that some of it conflicted. However, it found that the preponderance of the evidence indicated that adequate state protection was available in Colombia for victims of crime. As I summarized in *Guevara v Canada (Minister of Citizenship and Immigration)*, 2011 FC 242, [2011] FCJ No 447 (at paragraph 41):

> […] Board members are presumed to have considered all of the evidence before them" (see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ No 1425 (FCTD) (QL)). The Board need not summarize all of the evidence in its decision so long as it takes into account evidence which may contradict its conclusion and its decision is within the range of reasonable outcomes (see *Florea v. Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA).

[70] In this case, I find that the Board made a reasonable assessment based on the evidence before it. As such, I find that the Board's decision was reasonable. Its finding on the adequacy of

state protection was well within the range of possible, acceptable outcomes that are defensible in respect of the facts and law. This application for judicial review should therefore be dismissed.

[71] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

[72] The application for judicial review is dismissed.

JUDGMENT

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

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 2001, c 27

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4990-11
STYLE OF CAUSE:	DORIS YALITH GARAVITO OLAYA JHON VELOZA ROCHA NICOLAS ESTEBAN VELOZA GARAVITO ANDRES FELIPE VELOZA GARAVITO - and - MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	February 7, 2012
REASONS FOR JUDGMENT AND JUDGMENT OF:	O'KEEFE J.
DATED:	July 19, 2012

APPEARANCES:

Howard P. Eisenberg	FOR THE APPLICANTS
John Provart	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Howard P. Eisenberg Hamilton, Ontario	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT