

Federal Court



Cour fédérale

Date: 20130312

Docket: IMM-5798-12

Citation: 2013 FC 229

Ottawa, Ontario, March 12, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**JUAN ROMAN ARGUETA CALDERON
SILVIA ELIZABETH RINCAND de ARGUETA
ALISON GABRIELA ARGUETA RINCAND**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Juan Roman Argueta Calderon fled El Salvador out of fear of extortion by gangs. About once a week, gang members demanded money or merchandise from his mother's shop in San Salvador. In 2007, after Mr Argueta resisted making further payments, a gang member pointed a

gun at him and threatened his life. Being aware that another businessman had been murdered for failing to comply with the gang's extortion demands, Mr Argueta decided to leave.

[2] After he left El Salvador, gang members elevated their demands on Mr Argueta's mother. She sought help from police, who eventually arrested and charged the men responsible. However, she feared testifying against them, so they were presumably acquitted. She closed the shop and moved to Sonsonate, and then to La Union.

[3] Mr Argueta and his family sought refugee protection in Canada on the ground that gangs will target them for extortion if they return to El Salvador. A panel of the Immigration and Refugee Board dismissed their application, finding that they were not persecuted on grounds recognized by the Refugee Convention; they faced a general, not a particularized, risk from criminals; and they could, in any case, receive the protection of state authorities in El Salvador.

[4] Mr Argueta contends that the Board erred in its analysis of generalized risk and state protection. He asks me to quash the Board's decision and order another panel to reconsider the family's claim.

[5] I can find no basis for overturning the Board's decision. The Board reasonably concluded that Mr Argueta and his family have a general fear of extortion. It is unnecessary, therefore, to consider the issue of state protection.

II. The Board's Decision

[6] The Board found that the Argueta family did not constitute a particular social group, and that there was no other nexus to a ground recognized in the Refugee Convention. Therefore, they could not succeed on their claim under s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see Annex for provisions cited).

[7] The Board went on to consider the Argueta family's claim for protection under s 97 of the IRPA. The Board accepted that they might face extortion demands on their return to El Salvador. However, this was a risk facing the population as a whole; it was not particular to this family. Indeed, Mr Argueta conceded that he did not fear the gang members who threatened him or his mother. He feared gangs that operated in La Union, the city where they would likely relocate if they returned to El Salvador.

[8] The Board went on to conclude that, even if Mr Argueta had been specifically targeted, the risk facing the family was still general. Their personal circumstances might increase their risk but that would not be enough to qualify that risk as personalized. The Board relied on decisions in which this Court confirmed decisions of the Board finding that victims of extortion in El Salvador did not face personalized crime. It chose not to follow a 2002 opinion of the Board's Legal Services unit, which concluded that personal risks that are not indiscriminate or random could come within s 97.

[9] Finally, the Board found that state protection was available in El Salvador. While gang violence is a serious problem, and the Argueta family may well face extortion demands on their

return, the evidence showed that when Mr Argueta's mother made a complaint to the police, they responded by investigating, arresting and charging the suspected offenders. Mr Argueta had not made any complaint to the police about the threat he received. Therefore, the Argueta family had not rebutted the presumption that the state could protect them.

III. Did the Board err in concluding that the Argueta family faced a generalized risk?

[10] Mr Argueta argues that this issue should be reviewed on a correctness, not a reasonableness, standard. He suggests that there is a need for a uniform approach to this issue and uniformity is best served by a correctness standard. This would help ensure, for example, that the Board applied the same approach as visa officers, and that international law was applied uniformly across jurisdictions.

[11] The fact remains, however, that the question whether an applicant faces a generalized risk is one of mixed fact and law. It requires interpretation of the applicable provision in the IRPA (namely, s 97(1)(b)(ii)) and an analysis of the relevant evidence about the applicant's circumstances. Clearly, the appropriate standard of review is reasonableness (*Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 11 at para 26).

[12] Mr Argueta argues that the Board's conclusion that his family faces a general risk is unreasonable. The Board seemed to be of the view that personal threats of criminal conduct cannot amount to personalized risk. Yet, the Court has found that threats of extortion can support a claim

under s 97 (see *Munoz v Canada (Minister of Citizenship and Immigration)*, 2010 FC 238 and *Diaz v Canada (Minister of Citizenship and Immigration)*, 2011 FC 705).

[13] The evidence before the Board clearly showed that Mr Argueta did not fear the gang that threatened him in San Salvador. He planned to move to La Union and his other family members there had not been threatened since 2010. Therefore, the Board's finding that the Argueta family, like the rest of the population of El Salvador, faced a general risk of extortion was not unreasonable on this evidence.

[14] Mr Argueta also argues that the Board's alternative finding that, even if he had been specifically targeted, he would still be facing a general risk, was unreasonable. In arriving at that conclusion, the Board purported to rely on a number of decisions of this Court: *Acosta v Canada (Minister of Citizenship and Immigration)*, 2009 FC 213; *Ventura de Parada v Canada (Minister of Citizenship and Immigration)*, 2009 FC 845; *Rodriguez Perez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1029; *Prophète v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31; *Perez v Canada Minister of Citizenship and Immigration*, 2010 FC 345 and *Paz Guifarro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 182.

[15] These cases make clear that a widespread threat of criminality will not support a s 97 claim. However, where the threat is more focussed, based on the claimant's unique profile (*Munoz*, above) or the escalation of the threats against the claimant's family (*Tobias Gomez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1093), the Court has overturned the Board's conclusion that the claim falls outside s 97.

[16] In my view, while the Board's statement of the law – that a person who has been specifically targeted may be facing a generalized risk – was rather clumsy, and did not accurately capture the thrust of the case law, its conclusion that Mr Argueta faced a general risk was not unreasonable on the evidence. Mr Argueta's circumstances did not support a finding that he would be particularly at risk of extortion on his return to El Salvador.

[17] Further, the fact that the Board did not feel bound by the 2002 Legal Services memorandum did not render its decision unreasonable. The Board reasonably relied on jurisprudence emanating from this Court.

IV. Conclusion and Disposition

[18] The Board's conclusion that Mr Argueta and his family faced a generalized risk of extortion in El Salvador fell within the range of defensible outcomes based on the facts and the law. Therefore, it was not unreasonable, and I must dismiss this application for judicial review.

[19] Counsel for Mr Argueta proposed the following questions for certification:

- a. Under *Immigration and Refugee Protection Act* section 97(1)(b)(ii), if a claimant was specifically targeted and continues to fit the profile which led to his targeting, is the risk the claimant faces generalized or individualized?

- b. If a claimant was specifically targeted by a particular gang, is the fact of fear of risk from the same gang, although not necessarily the same members, sufficient to make the risk the applicant faces on return individualized?

[20] As discussed above, the Board's main finding was that the risk facing Mr Argueta was common to the population as a whole. Its subsequent reference to the possibility that Mr Argueta was specifically targeted was, therefore, not essential to its conclusion. Accordingly, given that the proposed questions deal with the Board's alternative finding, they are inapt for certification. No questions will be stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

Immigration and Refugee Protection Act SC 2001, c 27***Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27***Convention refugee

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,

- (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
 (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.

Person in need of protection

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

- (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
 (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
 (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
 (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,
 (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international

Définition de « réfugié »

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) 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) 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.

Personne à protéger

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) 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) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
 (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
 (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) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes

standards, and

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

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

internationales — et inhérents à celles-ci ou occasionnés par elles,

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

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5798-12

STYLE OF CAUSE: JUAN ROMAN ARGUETA CALDERON, ET AL
v
MCI

PLACE OF HEARING: Winnipeg, Manitoba

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**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 12, 2013

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