

Federal Court



Cour fédérale

Date: 20131119

Docket: IMM-913-13

Citation: 2013 FC 1173

Ottawa, Ontario, November 19, 2013

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**AMAYA GARCIA, CARLOS RAUL
URIAS, SANDRA PATRICIA,
AMAYA URIAS, DANIELA EUNICE
AMAYA URIAS, NICOLE ALEXANDR**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The refugee claim filed by Carlos Raul Amaya Garcia and his family based upon their alleged fear of the Mara Salvatrucha (MS) gang was rejected by the Refugee Protection Division of the Immigration and Refugee Board on credibility grounds. The Board further found that state protection was available to the family in El Salvador and that they also had an internal flight alternative within El Salvador.

[2] For the reasons that follow, I have concluded that the Board's finding that the claim was not credible was one that was reasonably open to it on the record before it. Given that this is determinative of the claim, it is not necessary to deal with the issues of state protection and internal flight alternative. The application will therefore be dismissed.

Background

[3] The principal applicant worked as the chief of production at a linens factory in the town of Santa Tecla in El Salvador. He asserts that in October or November of 2010, he witnessed a machine operator by the name of Andres Elias misusing machinery. After confronting Elias about his conduct, the principal applicant reported the incident to his boss. Elias was then reprimanded and was threatened with dismissal if he was caught doing anything inappropriate in the future.

[4] Over the next two weeks, Elias allegedly gave the principal applicant threatening looks. The principal applicant states that he and his family also received death threats by phone on December 2, 2010 and again on December 8, 2010. In this second call, the caller allegedly advised the principal applicant's wife that he belonged to the MS gang.

[5] The principal applicant says that he filed a report with the authorities the following day. The police said that they would look into the matter, and suggested that the family change their telephone number. However, no police protection was provided to them.

[6] On December 10, 2010, a co-worker of the principal applicant warned him to be careful because Elias was a member of MS. The co-worker told the principal applicant that he had overheard Elias on the phone saying something like “Hey Mara, is everything ready?”

[7] That same day, the principal applicant received another call at home threatening to kill him and his family. The family disconnected their phone and moved to the wife’s sister’s house, which was a few kilometres from their own, the following day.

[8] The principal applicant says that Elias approached him at work on December 13, 2010 and said “we are going to kill you all.” He further alleges that he was afraid to go back to the police because he was concerned that they had been infiltrated by the MS. The principal applicant claims that he stopped going to work on December 17, 2010, and his wife stopped working on December 23, 2010.

[9] The family left the country on December 27, 2010, spending three days in the United States before coming to Canada. The applicants report that Elias has since been dismissed from his job at the linens factory on the pretext of a “restructuring”, and that the principal applicant’s wife’s sister has been approached several times by strangers asking about their whereabouts.

Analysis

[10] The Board had numerous reasons for doubting the credibility of the applicants’ story.

[11] The Board questioned why the family waited until December 11, 2010 to go into hiding after first receiving phone threats on December 2, 2010, finding that this delay undermined their credibility.

[12] The applicants say that they went into hiding immediately after the principal applicant's co-worker warned him that Elias was a member of MS on December 10, 2010. However, the principal applicant also says that his wife had been told in the December 8, 2010 call that the caller belonged to the MS gang, yet there is no suggestion that the applicants went into hiding after that call.

[13] More troubling is the fact that even though the family had allegedly gone into hiding on December 11, 2010 the principal applicant continued to report to work – the very place where Elias was located – until December 17, 2010. One has to wonder what the point of going into hiding was if the principal applicant continued to attend work where he knew Elias could find him. In addition, the principal applicant's wife continued to go to work until December 23, 2010. According to the principal applicant, her place of work was near to the linens factory.

[14] The applicants' explanation for their failure to return to the police after Elias' December 13, 2010 threat is also problematic. The principal applicant asserted that they did not go back to the police after the December 13, 2010 threat, as they knew by this point that the MS were involved, and they were afraid that the police had been infiltrated by the gang. However, the principal applicant also claims that his wife had been told in the December 8, 2010 call that

the caller belonged to the MS. This information did not, however, prevent the principal applicant from going to the authorities the next day.

[15] There was also an inconsistency in the evidence of the principal applicant's co-worker. According to the principal applicant, his co-worker had reportedly overheard Elias on the telephone saying something like "Hey Mara, is everything ready?" However, the letter provided to the Board from the co-worker told quite a different story. According to the letter, the co-worker had actually "witnessed the fact that ... [Elias] ... threatened to kill the [principal applicant] because of a work-related reprimand ..."

[16] The applicants say that the Board erred in basing a negative credibility finding on such a minor or peripheral inconsistency in the evidence. I do not agree that that this was a minor or peripheral inconsistency. The letter from the co-worker was key independent evidence corroborating the existence of Elias, his membership in the MS, and the threats made to the principal applicant. Indeed, it was the only piece of independent evidence linking Elias to the MS. It was thus central to the case, and it was entirely reasonable for the Board to be concerned about the material inconsistencies in the evidence.

[17] Similarly, it was not unreasonable for the Board to question Elias' membership in the MS, given that he had allegedly been working at the factory for five years at the time of these incidents. The Board Member noted that according to his specialized knowledge, MS members do not hold regular employment but rather, "work the streets and are involved in full-time criminality." While the applicants have pointed to evidence suggesting that some MS members

infiltrate businesses in order to take them over, there is nothing to suggest that in his five years working as a machine operator at the linens factory, Elias had been doing anything of the sort.

[18] It was also not unreasonable for the Board to have doubts about the applicants' story, given that Elias lost his job at the linens factory, and yet no problems were encountered by the principal applicant's boss who had terminated Elias' employment.

[19] The applicants argue that it was unfair for the Board to consider the fact that Elias did not have any of the tattoos that one would normally expect to see on a member of the MS, given that the principal applicant was never asked whether Elias had any tattoos. I might have been inclined to agree with the applicants on this point had there been any evidence before me as to what the principal applicant would have said, had he been asked the question, but there is none.

[20] Finally, the principal applicant failed to explain the inconsistencies between his Point of Entry interview and the narrative in his Personal Information Form (PIF). At the port of entry, he claimed that he thought the threats to him and his family "could be involved with the people where I work" and that "[s]ome of them might be involved with the gangs" but that there was "not anyway to identify them" [sic]. However, his PIF narrative clearly identified Elias as the MS member behind the threats. These are material inconsistencies, further undermining the applicants' credibility.

Conclusion

[21] As a consequence, I am satisfied that the Board's conclusion that the applicants' story was not credible was one that was well within the range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47. The application for judicial review is therefore dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-913-13

STYLE OF CAUSE: AMAYA GARCIA, CARLOS RAUL ET AL
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 14, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:**

MACTAVISH J.

DATED: NOVEMBER 19, 2013

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