

Federal Court



Cour fédérale

Date: 20140221

Docket: IMM-421-13

Citation: 2014 FC 169

Ottawa, Ontario, February 21, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**ALEXANDRA NARVAEZ GIRALDO, JUAN
DAVID PATAQUIVA NARVAEZ, EMMANUEL
LOPEZ NARVAEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The principal applicant (the Applicant) and her two children, seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated December 13, 2012 (the Decision) in which their claims were refused on the basis that they had failed to rebut the presumption that state protection in Colombia is adequate.

[2] The Applicant lived in Cali, Colombia with her two sons. She worked as a dispatcher for a bus company and her half-sister Gloria worked as a director of the same company. It operated buses on rural routes. In mid-August 2008 the Applicant and Gloria were visiting a branch of the company in the town of Dagua when three armed FARC guerrillas came into the office and asked for Gloria. One of the men said that he was a FARC commander and told Gloria that she had to pay the FARC a monthly “fee” of 2 million pesos to continue operating the bus routes. The FARC warned Gloria not to report to authorities and threatened to kill her if she reported.

[3] Gloria reported the incident to the police at a station in Cali. However, they declined to deal with the matter since it occurred in Dagua. Gloria did not report to the Dagua police.

[4] In mid-September 2008, the FARC telephoned Gloria to demand the first monthly payment of 2 million pesos. The FARC called repeatedly but Gloria did not pay.

[5] On October 31, 2008, Gloria was shot in Cali. She was hospitalized, and died. Her husband told the Applicant that the authorities “were on top of the investigation”.

[6] In December 2008, Gloria’s husband told the Applicant that FARC had called him and demanded that he now pay the fee Gloria was to have paid. He told the Applicant that he was leaving Colombia. This was the last time the Applicant heard from her brother-in-law.

[7] On February 4, 2009 the Applicant had her first solo contact with the FARC. She received a telephone call from a FARC commander who demanded information about her brother-in-law's whereabouts. He threatened the Applicant with death if she did not co-operate.

[8] The second contact with the FARC occurred on February 13, 2009. The Applicant was about to take a taxi home from work when a man called her name. He asked her whether she had any information about her brother-in-law. When she told him that she did not know where he was, she was advised that she now owed the FARC 10 million pesos. The Applicant asked for time to obtain the funds. The man warned her not to go to the authorities or she would be killed.

[9] The following day, the Applicant and her two sons and went into hiding. However, in March 2009, the FARC called the Applicant's cell phone and threatened to find her and kill her for not co-operating. She changed her cell phone so that she could not be traced and had no further contact with the FARC. The Applicants remained in hiding for a further 16 months before they left Colombia.

Issues

- [10] There were two issues:
- i. Credibility
 - ii. State Protection

Credibility

[11] The Respondent agreed with the Applicant that the Board's adverse credibility finding was unreasonable. Accordingly, it will not be further discussed except to note that it caused the Board to conclude that the FARC had not murdered Gloria. I agree with the parties that this conclusion was unreasonable.

State Protection

[12] The Applicant did not seek police protection even though she was threatened by the FARC twice by phone and once in person. Her evidence was that she had a subjective fear that, although they would accept her complaint and perhaps investigate the threats and extortion, the police would not be able to offer her adequate protection (the First Explanation). She also had a subjective fear of being killed by FARC if she went to the police as a result of the threat made during her second contact with the FARC (the Second Explanation).

[13] The Board reviewed the documentary evidence and concluded that the First Explanation was not objectively reasonable. The documents showed that the police do arrest and prosecutors do prosecute members of the FARC when there is sufficient evidence. The Applicants are critical of the Board's conclusion and say that crucial contradictory evidence was ignored. This will be discussed below.

[14] The Board appears to have given no serious consideration to the Second Explanation because it did not accept that the FARC murdered Gloria. However, the Respondent says that this is not a material error because, even if the FARC killed Gloria, the Second Explanation only justified

the Applicant's initial failure to seek state protection. It no longer excused the failure to report once the Applicant was safely in hiding.

[15] The Applicant spent 16 months in safety and the Respondent says that, in this period, she should have contacted the police. The Board reached the same conclusion and said at paragraph 24 of the Decision "I cannot find that it would have been unreasonable for the PC to go to the police on at least one occasion to report these matters".

[16] Against this background, the narrow issue is whether the Board acted reasonably when it rejected the First Explanation on the basis that the documentary evidence does not support the Applicant's subjective fear that adequate police protection would not reasonably have been forthcoming.

[17] Specifically, was it reasonable to reject the First Explanation without referring to a document prepared in November 2010 by the Canadian Council for Refugees entitled *The Future of Colombian Refugees in Canada: Are we being equitable?*. It was submitted by the Applicants and was dealt with in their written submissions. It shows that in Bogota only 2.5% of those who commit crimes are found, charged and convicted and concludes at page 21 that police investigation into crimes is "virtually non-existent". The Applicants say there is no reason to suppose that the situation in Cali is different.

[18] The Respondent says that the Board's statement at paragraph 27 of the Decision is sufficient to deal with this document. It reads:

... the preponderance of the objective evidence regarding current country conditions suggests that, although not perfect, there is adequate state protection in Colombia for victims of crime.

[19] In my view, it was unreasonable to reject the First Explanation without referring to an apparently credible and timely document. This is particularly so when much of the documentary evidence to which the Board made reference dealt with protection programs for high profile personalities and witnesses in court cases and had no relevance to the Applicants' circumstances as ordinary civilians.

Certification

[20] No question was posed for certification for appeal.

ORDER

THIS COURT ORDERS that the application is allowed and the matter is referred back for reconsideration by a different member of the Board.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-421-13

STYLE OF CAUSE: ALEXANDRA NARVAEZ GIRALDO, JUAN DAVID
PATAQUIVA NARVAEZ, EMMANUEL LOPEZ
NARVAEZ v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 16, 2014

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

DATED: FEBRUARY 21, 2014

APPEARANCES:

Douglas Lehrer FOR THE APPLICANTS

Laura Christodoulides FOR THE RESPONDENT

SOLICITORS OF RECORD:

Douglas Lehrer FOR THE APPLICANTS
VanderVennen Lehrer
Barristers and Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario