

Federal Court



Cour fédérale

Date: 20140423

Docket: IMM-6151-13

Citation: 2014 FC 378

Ottawa, Ontario, April 23, 2014

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

CYNTHIA LORENA CUADROS LARA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Cynthia Lorena Cuadros, seeks judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*] of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the “Board”) made on September 3, 2013, which determined that she was not a Convention refugee pursuant to section 96, nor a person in need of protection pursuant to section 97 of the *Act*.

[2] For the reasons that follow, the application is allowed.

Background

[3] The applicant is a young woman and citizen of Venezuela. She arrived in Canada on April 13, 2012 and sought protection as a Convention refugee or a person in need of protection on the basis of her political opinion.

[4] The applicant recounted her political activism which began while attending University. She became politically active against the United Socialist Party of Venezuela [PSUV], the government of Hugo Chavez, in 2005 as a student at the Universidad Nacional Experimental de la Fuerza Armada. She was involved with the Comité de Organización Política Electoral Independiente [COPEI] and joined the party as an official member in January 2010. The party is opposed to the policies of the PSUV. As a result of her political views, she claimed that she was singled out by professors and subjected to political name-calling by both students and teachers.

[5] The applicant based her fear of persecution in Venezuela on several events related to her political involvement, including:

- She was present during the creation of the Mesa de Unidad Democrática Nacional Venezolana [MUD], a coalition of opposition political parties;
- She was involved in a June 2009 demonstration for free speech in the city of El Tigre at which a group of motorcyclists wearing t-shirts supporting Chavez opened fire on the demonstrators and a MUD companion was shot and killed a few metres away;

- In 2009 and 2010, she published several articles critical of the Chavez government;
- She co-signed or co-authored several articles with Antonio Laca which were critical of Cuba;
- On March 18, 2010, officers with a search warrant looking for Jose Rodriguez searched the applicant's family home and interrogated her about her activities with COPEI and MUD and her family members;
- On March 19, 2010, her father was detained, interrogated and encouraged to dissuade the applicant from pursuing her political activities;
- During the run-up to the September 2010 elections, the applicant was painting MUD banners with Jeber Barreto, the Regional President of COPEI, when they were watched and then chased by people in a car;
- By 2011, the applicant began receiving calls and texts from unknown numbers which led her to fear;
- In May 2011, the applicant's brother was driving her car when he was stopped, detained and interrogated by the Scientific Penal and Forensic Investigation Corps [CICPC]. He was told that what was happening to his family was the applicant's fault;
- In September 2011, a MUD representative attending a MUD meeting in Caracas was shot and killed by a 'sicario' (a hired killer) while driving;

- In March 2012, Alberto Pareira, a MUD representative and friend of the applicant, was kidnapped, but released 24 hours later for ransom; and,
- A week later, Dunia Moreno, another MUD representative, was kidnapped, detained for 19 days, and tortured before being released.

[6] The applicant visited Canada in July 2011 for one month to attend a conference, but did not make a claim for refugee protection at that time. She claims that the last two incidents of kidnapping of others like her, particularly Dunia Moreno, prompted her to finally decide to leave Venezuela, because she shared a similar profile.

The decision

[7] The Board found that the applicant had exaggerated her political profile and did not have a genuine subjective fear of persecution and that on an objective basis there was not a reasonable or serious possibility that the applicant would be persecuted if she returned to Venezuela.

[8] The Board raised specific concerns, including that the applicant testified that she had written ten articles critical of the Venezuelan government, but produced none of these. The Board also noted that the translated article the applicant had written, which was published in 2009 and bore her by-line, described her as a political leader, although she did not join a political party until 2010. The Board also noted that the article was critical of municipal government, not the federal government and found it would be unlikely this type of criticism would put the applicant's life at risk.

[9] Articles the applicant had written with Antonio Llaca were submitted to the Board to establish that she had shared a by-line. The articles were critical of Cuban political philosophy, which she submits is tantamount to being critical of the Venezuelan government. The Board noted that Mr Llaca had never been arrested. The Board concluded it would be unlikely the applicant would be persecuted for sharing his by-line.

[10] The Board opined that if the applicant had a genuine fear of persecution she would have made a refugee claim when she visited Canada in July 2011.

[11] The Board also concluded that there was no evidence that the events that occurred after the applicant returned to Venezuela were politically motivated, rather they were criminal acts.

[12] The Board considered the country condition documents and referred to the article "Venezuela: Freedom in the World 2013" (Freedom 2013), which was included in the National Documentation Package on Venezuela [NDP]. The Board acknowledged that Venezuela is not an electoral democracy, but found "there is no evidence that the Venezuelan government has relied on violence and physical intimidation to achieve its goals." Further, in the February 2012 presidential election, "campaigning was largely peaceful, although several violent episodes targeting Capriles supporters occurred".

Standard of Review

[13] The parties agree that the standard of review is reasonableness. The Board's decision should be given deference as long as the decision "falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 47, 53, 55; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59).

[14] In addition, given its role as trier of fact, the Board's credibility findings should be given significant deference (*Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329; *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para 65, 10 Imm LR (4th) 222).

[15] However, credibility findings are not beyond review, for example, when the inconsistencies or omissions are insignificant or result from a microscopic examination, or when explanations have been unreasonably discounted, or when relevant information has not been considered.

The Issues

[16] The applicant submits that the Board misconstrued or misunderstood the evidence which resulted in the Board finding that the applicant was not credible and did not have a genuine fear of persecution.

[17] I agree with the applicant's submission.

[18] The Board assessed the events set out above individually and made negative findings which appeared to have coloured its overall assessment of whether the applicant had a political profile or would be perceived to have such a profile and whether she had genuine fear of persecution that was objectively well-founded.

[19] The Board focussed on the translated article leading to the conclusion that the applicant had exaggerated her political leadership. As the applicant noted, the article was written about her, and not by her, and it identified her as a political leader. Although the article is critical of municipal government, its translated title reads, “El Tigre finds itself completely abandoned by the government” [emphasis in original] which could be regarded as critical of the PSUV.

[20] Although the applicant may not have been a political leader, the article clearly described her as a leader. She had been politically active since 2005, although she only joined the party officially in 2010.

[21] Although it was reasonable for the Board to conclude the applicant had exaggerated her level of political activism, the Board did not appreciate how the articles would enhance her profile or the perception of her position of political leadership nor did the Board consider the cumulative nature of the applicant’s activities on the perception of her role as a political activist.

[22] The Board noted that the events relied on occurred before the applicant visited Canada, and concluded that if she had a genuine subjective fear of persecution based on those events she would have claimed protection at that time rather than returning to Venezuela.

[23] However the applicant's testimony before the Board indicated that she was in fear at that time but she remained determined to continue her activism. The applicant was asked why she did not claim protection in 2011 and she provided an explanation:

Well, because I did have some kind of – well, you know, what really scared me, I did have the hopes that perhaps that things were not going to get worse. But then what made me take the decision, first of all, it's not an easy decision in order to leave your family and get away from your country but when they started kidnapping people like me who were living very close to my house and who used to do the same kind of activities as me, and then they murdered Juan Carlos Martinez -- before that, when Carlos Martinez was killed, he was also an activist like me. And those actions really scared me and that's where [sic] I travelled for the second time in order to claim refugee status here.

[24] When questioned whether she already believed her life was in danger when she came to Canada in 2011, she stated:

Yes, but I did not want to surrender.

[25] And later:

No, I never thought it was safe to go back to the country but still I didn't want to surrender to give back and to stop doing the activities I was doing.

[26] When asked if she was worried about her life, she stated:

Yeah, but maybe it could be that I got used to being in this kind of dangers [sic] until I saw it -- until what point the things could get.

(Certified Tribunal Record at 247).

[27] When questioned about the kidnappings that occurred after she returned, the applicant indicated that she believed these were in retaliation for the victims' political activities and that the victims were like her, in particular, Dunia Moreno.

[28] The Board concluded that the applicant did not have a genuine subjective fear, however, her testimony indicates that she did have fear and that this fear escalated after her return when those with similar profiles to hers were harmed. As noted, the Board appears to have failed to consider that a refugee claimant can base their claim on the basis of perceived political opinion. The Board simply looked at the applicant's actual level of political activism, but failed to consider whether the applicant would be perceived to have an elevated political profile due to the contents of the article.

[29] This error relates to the issues of both subjective fear of persecution and whether those fears of persecution are objectively well-founded.

[30] The Board also misunderstood or failed to consider relevant country condition evidence which informed their assessment of the objective grounds for the applicant's fear.

[31] The Board found that there was no evidence to suggest that the Venezuelan government uses violence or intimidation to achieve its ends. The following passages from Freedom 2013 indicate otherwise:

[...] Although the constitution provides for freedom of the press, the media climate is permeated by intimidation, sometimes including physical attacks, and strong antimedia rhetoric by the government is common [...]

[...]

Freedom of peaceful assembly is guaranteed in the constitution. However, the right to protest has become a sensitive topic in recent years, and rights groups have criticized legal amendments that make it easier to charge protesters with serious crimes. According to the local rights group Provea, at least 10 protesters were subjected to unconstitutional trials within the military justice system in 2012. [...]

Non-governmental organizations (NGOs) are also frequent antagonists of the government, which has sought to undermine the legitimacy of human rights and other civil society organizations by questioning their ties to international groups. In December 2010, the lame-duck parliament passed the Law on Political Sovereignty and National Self-Determination, which threatens sanctions against any “political organization” that receives foreign funding or hosts foreign visitors who criticize the government. Dozens of civil society activists have been physically attacked in recent years, and other forms of harassment are common, including bureaucratic hurdles to registration.

[...]

Politicization of the judicial branch has increased under Chavez, and high courts generally do not rule against the government. Conviction rates remain low, the public defender system is underfunded, and nearly half of all judges and prosecutors lack tenure, undermining their autonomy. The National Assembly has the authority to remove and appoint judges to the Supreme Tribunal of Justice (TSJ), which controls the rest of the judiciary. [...] In April 2012 a fired and exiled TSJ judge, Eladio Aponte, leveled accusations that administration officials instructed judges on decisions in sensitive cases. [...]

[32] The United States Venezuela Country Reports on Human Rights Practices (April 2013) included similar information.

[33] Although the Board could find that this evidence was not persuasive, the statement that there is no evidence of intimidation or violence used by the government is unreasonable. The

Board is required to address the contradictory evidence which supports the applicant's allegations.

[34] The application for judicial review is allowed. No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. No question was proposed for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6151-13

STYLE OF CAUSE: CYNTHIA LORENA CUADROS LARA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MARCH 27, 2014

**REASONS FOR JUDGMENT
AND JUDGMENT:** KANE J.

DATED: APRIL 23, 2014

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