

Federal Court



Cour fédérale

Date: 20150216

Docket: IMM-6140-14

Citation: 2015 FC 190

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 16, 2015

Present: The Honourable Mr. Justice Luc Martineau

BETWEEN:

**MIRYAM SOFIA BLANCO ORTEGA
LINA SOFIA BLANCO COLMENARES
CIRO ALFONSO COLMENARES GALVIS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review from a decision dated July 18, 2014, in which the Refugee Protection Division of the Immigration and Refugee Board of Canada [Panel] rejected the applicants' refugee claim on the ground that they are neither Convention refugees

nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] The applicants are citizens of Colombia who allege a fear of the Revolutionary Armed Forces of Colombia [FARC], which is seeking the principal female applicant's and the principal male applicant's son who is not a claimant on the present refugee protection claim. According to the applicants, the son had problems with the FARC because he had been investigating the death of his grandfather, the male applicant's father, and then left the country. Subsequently, the applicants started being intimidated and threatened so that they would reveal their son's location; these threats were made on several occasions between October 2011 and June 2013. The principal female applicant filed complaints and reports with the Office of the Attorney General, the United Nations Office of the High Commissioner for Human Rights and Colombia's Human Rights Office. Following an incident where two shots were fired into a window of their home, the applicants left Colombia for the United States on June 26, 2013. They arrived in Canada on July 3, 2013, and claimed refugee protection on the same day.

[3] The Panel denied the applicants' claim on the ground that they lacked credibility because of contradictions, omissions, implausibilities and problems related to the many documents filed. The Panel noted a contradiction between the refugee protection claim, which indicated that the applicants had received several pamphlets from the FARC, and the testimony of the principal female applicant, Ms. Blanco Ortega, in which she stated that she had received only one pamphlet and that her son, too, had received one. The Panel also found contradictions between the complaint made to the Office of the Attorney General on November 1, 2011, and the

principal female applicant's testimony, in which she indicated that she had not experienced any problems between her son's leaving and October 31, 2011 (Exhibit C-17). The Panel further noted a contradiction between the principal female applicant's testimony and the document given to Colombia's Human Rights Office, which indicated that she had gone to the United Nations Office of the High Commissioner for Human Rights after seeking police protection rather than beforehand (Exhibit C-23). Counsel for the applicants stated that this was a translation error and submitted another translation after the hearing that supported the principal female applicant's testimony. The Panel then obtained two further translations from independent translators who confirmed the initial translation. The Panel gave counsel for the applicants an opportunity to make comments on these translations, but did not receive any from her.

[4] The Panel also noted that the applicants had failed to mention in the refugee protection claim form that they received threatening telephone calls after the death of the male applicant's father. It further identified several implausibilities including that the male applicant did not know the results of the investigation into his father's death and that the FARC, a group that has claimed many murders and whose human rights violations are known worldwide, was concerned about their image being tarnished solely because of the murder of the male applicant's father. According to the Panel, the applicants' conduct was also not consistent with their alleged fear: for example, the applicants had not changed their lifestyle to protect themselves, and the principal female applicant took five days from receiving a document allowing her to obtain police protection to actually requesting this protection at the local police station. Lastly, the Panel found some of the documents to be problematic. This included a letter from the Attorney General, which contained a great many mistakes (Exhibit C-19), and letters from a senator

stating that the reason for the applicants' persecution was rather their involvement in the Conservative party's social activities (Exhibit C-5). The Panel therefore concluded that the applicants were not credible and rejected their refugee protection claim.

[5] The reasons for the Panel's rejection essentially concern the assessment of the applicants' credibility, meaning that the applicable standard of review is that of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9). The Panel's conclusions with respect to the applicants' credibility attract considerable deference from this Court, and applicants bear a heavy burden when they seek to have a Panel decision made on the basis of a non-credibility finding set aside (*Aguebor v Canada (Minister of Employment and Immigration)*, 160 NR 315, [1993] FCJ No 732 (FCA) at para 4; *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paras 35-38; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 61 and 64; *Canada (Attorney General) v Almon Equipment Limited*, 2010 FCA 193 at para 62; *Obeid v. Canada (Citizenship and Immigration)*, 2008 FC 503 at paras 9-11; *Nijjer v Canada (Citizenship and Immigration)*, 2009 FC 1259 at para 14).

[6] Even though counsel for the applicants spoke with force and conviction, it is my humble opinion that there is no reason to intervene here. I will not reproduce each and every argument made by counsel for the parties. Here is a succinct summary.

[7] The applicants allege that the Panel made many errors in assessing the applicants' credibility. The Panel omitted an essential element in its summary of the facts, namely, that the applicants' son was found to be a refugee. Moreover, it was unreasonable for the Panel to draw a

negative inference from the contradiction between the refugee protection claim form and the female applicant's testimony with respect to the number of pamphlets received since the principal female applicant had given a reasonable explanation and the form had been completed by a translator. In addition, exaggerating facts as in Exhibit C-17 is normal in Colombian culture. The Panel was also overzealous in having two additional translations done of Exhibit C-23, and the applicants had already said everything there was to say on this topic by providing a contextual translation. The Panel afforded unreasonable weight to the omission of threats in the refugee protection claim form. It also acted unreasonably by finding that the testimonies on the ground of persecution were implausible. In addition, it made an unreasonable assessment of exhibits C-19 and C-5. Lastly, the applicants allege that the delay between the August 30, 2013, hearing and the July 18, 2014, decision caused them harm.

[8] In reply, the respondent stated that the applicants did not meet the heavy burden imposed on them to reverse the non-credibility finding. According to the respondent, there were many defects in the evidence, including hesitant, improvised testimony with unusually long silences, serious contradictions, a major omission and many implausibilities, as well as many irregularities in the documents. Moreover, it was reasonable for the Panel not to accept the applicants' explanations, and the Court should not interfere (*Mxumalo v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 413 at para 7). Even if an error had been committed by the Panel, this error would not have been fatal since there were many defects in the claim (*Zavadskaia v Canada (Minister of Citizenship and Immigration)*, 2006 FC 235 at paras 14-15). Lastly, the applicants do not explain how the delay in the decision caused them irreparable harm, and the

Panel explained why there was a delay, namely, the need to obtain independent translations of Exhibit C-23 and to subsequently ask the applicants to comment.

[9] I agree with the respondent. The applicants are in fact asking the Court to reassess all of the evidence on file to reach different conclusions from the Panel. The Court is not sitting on appeal but in judicial review. The applicants did not establish that the Panel drew unreasonable conclusions from the evidence. For each element, be it contradictions, implausibilities or omissions, the Panel clearly explains why it does not accept the applicants' explanations. Moreover, contrary to the applicants' arguments, obtaining additional, independent translations of Exhibit C-23 was not overzealousness on the part of the Panel but a logical solution to the fact that two contradictory translations were presented to the Panel. In addition, the Panel gave the applicants an opportunity to comment on these two translations, which they failed to do. The Panel's decision relies on the evidence, and there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 60). Moreover, I find that the delay between the hearing and the decision was reasonable in the circumstances surrounding Exhibit C-23, and applicants have not established having suffered harm as a result of the delay.

[10] Even if another decision-maker could have reached a different conclusion, this is not sufficient reason to intervene. The Panel's decision must be read as a whole. The examples provided at the hearing by learned counsel for the applicants do not suggest that the outcome was unreasonable. The application for judicial review will be dismissed. Counsel agree that this case does not raise any questions of general importance.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6140-14

STYLE OF CAUSE: MIRYAM SOFIA BLANCO ORTEGA, LINA SOFIA
BLANCO COLMENARES, CIRO ALFONSO
COLMENARES GALVIS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 12, 2015

JUDGMENT AND REASONS: MARTINEAU J.

DATED: FEBRUARY 16, 2015

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