

Federal Court



Cour fédérale

Date: 20181022

Docket: IMM-5089-15

Citation: 2018 FC 1056

Toronto, Ontario, October 22, 2018

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**GIOVANI ACEVEDO ARANGO
CRISTIAN CAMILO ACEVEDO GOMEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application is a judicial review of a decision of the Refugee Protection Division (RPD) dated October 22, 2015 refusing the Applicants' refugee claims pursuant to s. 96 and s. 97 of the *Immigration and Refugee Protection Act (IRPA)*. The Applicants are a Colombian father and son who provided evidence that they were targeted in their home city of Buenaventura by the Revolutionary Armed Forces of Colombia (FARC) due to their failure to pay extortion money that its members had demanded.

[2] The Applicants' primary argument on judicial review is that, in reaching a decision on their claim, the RPD was required to determine the adequacy of state protection in Columbia for them as regular citizens of the country and failed to do so. Further, the Applicants argue that the RPD delivered the decision under review without considering fundamentally important evidence.

[3] The Court has addressed and supported the argument advanced. The Applicants rely upon the following passage at paragraphs 10 and 11 of Justice Gleeson's September 2, 2015 unpublished decision in *Pelaez Barrios v MCI*, IMM-7956-14 quoted in its entirety in the Appendix to these reasons:

The applicant argues and I agree that although the Board recognized the need for a particularized assessment of the adequacy of state protection, it failed to conduct such an analysis. In canvassing Colombian government efforts, the Board identifies the tactical successes of Colombian security forces and the success of its voluntary demobilization program for guerrillas and paramilitaries. The Board equates this success to adequate state protection for an individual targeted by the FARC.

State programs and efforts addressed by the Board decision might well be adequate in addressing and reducing the FARC threat on a military or security level. However, it is not obvious how these efforts demonstrate the adequacy of state protection from the perspective of an individual citizen specifically targeted by the FARC. It is adequacy on this level that that must be addressed by the Board. [Citations omitted; Emphasis added]

[4] In the course of the hearing before the RPD, Counsel for the Applicants presented the following detailed statement of the evidence on the record addressing the inadequacy of state protection from the perspective of regular citizens specifically targeted by the FARC:

So it's not — it's a case, I would submit, where although there have [sic] been improvement in Colombia and where the state has been, you know, do more to try and improve the situation, the police are still not in a position, whether they are unable or

unwilling, are unable, I would submit, to assist individuals specifically targeted by the FARC.

In terms of the country documentation that supports this, I would just try to take you to what I think are the most important documents; there are obviously many, many more.

The Department of State report begins by stating the most serious human rights problems in the country are impunity and an inefficient judiciary and forced displacement. And this is a claimant who is subject to forced displacement and obviously impunity is the main concern.

In the documentation that I submitted to you in — again, it's Exhibit 6, under the second heading Country Documents, at the beginning of page 33, there is a series of articles or reports dealing with displacement, dealing with the situation in Buenaventura specifically, among other things. So I point you to a couple of things. First of all, page 36, the top of— the middle column on the page. The paragraph explains that displacement in Colombia is still driven by the armed conflict which continues despite the ongoing peace process. While there are fewer hostilities between the government and the FARC, insecurity and violence are still rife and there is ongoing issues, including what has happened to this claimant: extortion and be forced to leave their homes. So that kind of places in context — this case in a context of the political situation in the country.

Page 39 of the same report talks about armed groups across the country that continue to terrorise the population and specifically mentions Buenaventura as being one of the cities that are most badly affected.

At page 44 you have a Human Rights Watch report again specifically mentioning Buenaventura as having the highest rate of displacement in the country. And, page 55 and 56, there is an article that talks about ongoing attacks by the FARC in Buenaventura, including an attack where they left the entire city without electricity, and also refers to the city as Colombia's largest port, which is what the claimant has explained. The article also talks about attacks by the FARC on the police there. So that shows the power of the FARC ongoing over the state.

At page 43 there is another Human Rights Watch report, which is also in the National Documentation Package, which states that the administrative — administration consistently condemns attacks by a lack of effective investigation, meaning that perpetrators are

rarely arrested. And that summarizes, I think, the top problem with state protection.

At page 46 it talks about a law that was passed in 2012 that if the peace talks come to a peace agreement, they have planned to give immunity to everyone; government, paramilitary guerrillas, except for the people considered most responsible. So regular people like the claimant are not expecting to get protection from individual types targeting like this one.

At page 57 you have a Human Rights Watch article, a report on Buenaventura. It talks about mostly paramilitaries who are committing violence throughout the city. There is also some cases of dismemberment of people; it's considered a crisis situation.

Page 58 indicates that many people do not report to the authorities because of fear and distrust of the authorities, which is the claimant's situation. Page 60 mentions that the FARC still operates in (inaudible) areas of Buenaventura; 57 talks about extortion of business people, which is, I'd say (sic) a situation; 60 to 69 mentions that threats to people by the paramilitary or by their attackers not to report to the police are common.

So again, that supports both the plausibility and also the failure of state protection. And the article goes on, page 60-69, to talk about the impunity. In March 2014 no one had been charged for any of the disappearances in Buenaventura and the article said that it's mostly because of a high caseload there; it's impossible for the prosecutor to keep up, and although some resources were allocated since then, there is still just one prosecutor. And so the impunity remains and there is very few convictions for these sorts of crimes in the city.

Page 71 refers to the fact that residents are afraid to be seen talking to the police and so they don't — they can't help the police in doing any investigation even if the police wanted to. And those (inaudible) what other criticisms that residents have of the police who are there, not being there consistently, people complain that they collude or they just stay on the main streets. They are sort of there in appearance more than in reality. And so there is more articles in the exhibit that, I would say, I won't point to them but they go through the same types of examples, specifically in that city.

Now, the claimant obviously left the city; he did not want to leave his country. He indicated he was doing what he could to stay hoping he could maybe organize himself to start somewhere else.

But because he was followed, because the threats didn't stop, he actually had to go.

And so the last thing I would point to is the Response to Information Request that is — it is the one on what it means being a military objective. That's from 15th of April, 2015 Colombia 105118.E and that information request specifically quotes a professor, under State Protection, the heading State Protection, saying that if a person receiving a threat holds a position of leadership or power or is a public servant in the judicial system, they may receive protection from the authorities but not otherwise, adding that the citizen or family who has been victimized, displaced or killed may obtain resources from the state but might not receive protection from the police or other force once they received a threat.

So I would submit that the situation that you have before you is, unfortunately, one where the claimant could not expect state protection even had he made more efforts to get it, and the case law has not required one to approach the police if assistance cannot reasonably be expected to be forthcoming.

(RPD Transcript: Certified Tribunal Record [CTR], pp. 472-474)

(The page references in the passage above are from Counsel for the Applicants' argument presented to the RPD. The sources are found in the CTR at pp. 352 - 424 with Counsel's page numbering found at the middle bottom of each page.)

[5] In the present review, Counsel for the Applicants argues that the RPD failed to conduct the required personalized state protection analysis:

The RPD does review in detail some general evidence about Colombia's security apparatus, its structure, its tactical successes in fighting armed groups, its demobilization programs, its mechanisms for addressing corruption, etc. The decision on one level appears thorough and detailed.

However, the decision entirely lacks an assessment of the state's ability to protect individuals like the Appellants who have been targeted by the FARC. There is simply no analysis beyond the general in this decision. [Emphasis added]

(Applicants' Memorandum of Fact and Law, paras. 8-9)

[6] I find that Counsel for the Applicants' argument is correct in substance. Indeed, the RPD did not address any of the evidence presented by the Applicants.

[7] In addition, Counsel for the Applicants advanced an argument that the RPD ignored and relied selectively on evidence that spoke directly to the availability of state protection. The RPD relied on 2011 and 2012 Response to Information Request (RIR) documents, but ignored a more recent RIR which directly addressed whether regular citizens who had been targeted by the FARC could access state protection. The more recent RIR states:

The Assistant Professor at Winthrop University noted that if a person receiving a threat “currently holds a position of leadership or power or is a public servant in the judicial system, [they] might receive protection from the authorities, but not otherwise,” adding that a citizen (or their family) who has been “victimized (displaced/killed)” may obtain resources from the state but might not receive protection from the police or other forces once the individual has received a threat. [Emphasis added]

(COL105118.E Colombia: What it means to be a “military objective” (objetivo militar), including who executes these threats and methods of issuing them; whether there is an internal flight alternative for someone who has been issued a threat; state response, April 15, 2015, NDP Item 7.21, p. 114—115)

[8] I agree with Counsel for the Applicants' argument.

[9] In the result, I find that there are two reasons to set aside the decision under review. First, the RPD did not conduct the necessary evaluation of the adequacy of state protection from the perspective of the Applicants. Second, the RPD delivered its decision “without regard for the material before it” (see s. 18.1(d) of the *Federal Courts Act*, RSC 1985, c F-7).

JUDGMENT IN IMM-5089-15

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

“Douglas R. Campbell”

Judge

Federal Court



Cour fédérale

“APPENDIX”

Date: 20150902

Docket: IMM-7956-14

Ottawa, Ontario, September 2, 2015

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**LEONARDO PELAEZ BARRIOS
DAISY MILENA HERNANDEZ BERNAL
ISABELA SOFIA PELAEZ HERNANDEZ
VALENTINA SOFIA PELAEZ HERNANDEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT

UPON application for judicial review, brought under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] seeking to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board], finding that the applicants are neither Convention refugees nor persons in need of protection under sections 96 or 97 of the IRPA, respectively;

AND UPON considering that the issues before this Court are: (1) did the Board fail to conduct a particularized analysis in its assessment of state protection; (2) did the Board ignore relevant and contradictory evidence that spoke directly to the question of the applicants' ability to receive protection from the state; and (3) did the Board err in finding that the applicants did not make adequate efforts to seek out state protection;

AND UPON recognizing that *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 57, [2008] 1 SCR 190 establishes that where previous jurisprudence has determined the standard of review to be applied to a particular issue before the court, the reviewing court may adopt that standard;

AND UPON noting that *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 at paras 20 to 22, 440 FTR 106 establishes that where an applicant is challenging the manner in which a decision-maker applied the correct legal test, questions of mixed fact and law, that the standard of review is reasonableness;

AND UPON reading the parties' submissions and hearing their oral arguments;

AND UPON determining that the application for judicial review should be allowed for the following reasons;

- 1) Mr Barrios and his family are citizens of Colombia who have sought refugee status and protection in Canada as the result of having received threats from the Revolutionary Armed Forces of Colombia [the FARC]. The FARC approached Mr. Barrios by phone in September 2013 demanding that he use his position with a privately run organization supporting indigenous populations in Colombia to funnel money and supplies to the

FARC. Mr. Barrios dismissed the initial demand and a follow on demand. At the end of September 2013, Mr. Barrios was contacted for a third time. On this occasion the caller threatened Mr. Barrios, identified his daughter's school, their work locations and advised Mr. Barrios that the FARC was aware of a recent family trip to Bogota. This contact caused Mr. Barrios to conclude that he and his family were being followed and the threat was to be taken seriously.

- 2) Mr. Barrios ceased going to work after this third contact but did not immediately report the incidents to either his workplace or the police. He indicates that he was concerned with doing so as FARC informants are located throughout the country and he did not trust the police to provide any real protection. Instead Mr. Barros prepared to leave Colombia on October 12, 2013.
- 3) At the insistence of his brother, Mr. Barrios did report the FARC threats to authorities on October 9, 2013. As a result police commenced regular patrols in his neighbourhood on October 10, 2013. Despite these patrols Mr. Barrios was intercepted and threatened at gun point by FARC members on October 10, 2013 and given a list of equipment and supplies that the FARC demanded he provide.
- 4) The family left Colombia on October 12, 2013. As they travelled to the airport Mr. Barrios reports that the family was followed and that they heard gunshots being fired which Mr. Barrios believes were shots fired in the air by the occupants of the car following him and intended to scare Mr. Barrios and his family.

- 5) Mr. Barrios and his family arrived in Canada on October 17, 2013 and made refugee claims on arrival.
- 6) The Board refused the claim. The determinative issue was state protection. The Board noted that state authorities responded to Mr. Barrios' report providing him with forms and referring him to the police. The police in turn accepted his complaint and undertook to conduct patrols in his neighbourhood, which they did. Mr. Barrios was instructed to contact the police if any further problems arose. The police also informed Mr. Barrios that they would conduct an investigation.
- 7) The Board notes that Mr. Barrios did not follow-up with the police after submitting his documents or inquire into the status of the police investigation. The Board also notes that Mr. Barrios fled Colombia on October 12, 2013 three days after filing his report. On this basis the Board held that Mr. Barrios did not fully test the effectiveness of the protection offered by the state. The Board concludes that Mr. Barrios' general fear and distrust of the police flowing from his belief that the police may be aligned with the FARC amounted to a subjective reluctance to engage the state. The Board held that this subjective reluctance was insufficient to rebut the presumption of state protection.
- 8) In its decision, the Board acknowledged that significant human rights abuses occur in Colombia and that the FARC remains an active guerrilla group. The Board states however that it gives more weight to the evidence before it that demonstrates the government is making serious efforts to protect its citizens from illegal armed groups.

- 9) The Board highlights the successes of anti-guerrilla operations by Colombian security forces, and notes that the government has neutralized the FARC threat in Bogota, the central zone and the oil regions of Meta and Casanare. The Board states at paragraph 10 of its decision that the documentary evidence “is both current and drawn from a wide range of objective governmental and non-governmental sources which offer persuasive evidence that is both reliable and probative that while state protection may not be perfect or guaranteed, the government of Colombia is making serious efforts to provide protection and that such measures have been implemented and shown to be adequate”.
- 10) The applicant argues and I agree that although the Board recognized the need for a particularized assessment of the adequacy of state protection, it failed to conduct such an analysis. In canvassing Colombian government efforts, the Board identifies the tactical successes of Colombian security forces and the success of its voluntary demobilization program for guerillas and paramilitaries. The Board equates this success to adequate state protection for an individual targeted by the FARC.
- 11) State programs and efforts addressed in the Board decision might well be adequate in addressing and reducing the FARC threat on a military or state security level. However, it is not obvious how these efforts demonstrate the adequacy of state protection from the perspective of an individual citizen specifically targeted by the FARC. It is adequacy at this level that must be addressed by the Board: (*Bustos v Canada (Minister of Citizenship and Immigration)*), 2014 FC 114 at para 40, 24 Imm LR (4th) 81; *Infante v Canada (Minister of Citizenship and Immigration)*, 2013 FC 846 at paras 17-18; *Gonzalez v Canada (Minister of Citizenship and Immigration)*, 2014 FC 750 at paras 52-59, 27 Imm

LR (4th) 151; *Barragan Gonzalez v Canada (Minister of Citizenship and Immigration)*, 2015 FC 502 at paras 38-39).

- 12) State efforts and programs directed at the protection of targeted citizens are neither identified nor their effectiveness analyzed in the Board's decision. This despite the existence of documentary evidence before the Board that speaks to: (1) the Colombian government's practical ability to protect Colombians from targeted threats and the prevalence of targeted FARC criminal activity towards individuals (Certified Tribunal Record [CTR], at pages 512 and 186 – 187); (2) the effectiveness of victim's protection programs in Colombia (CTR at pages 472 – 475); and (3) the nature and degree of FARC infiltration of government institutions (CTR at pages 195 and 582).

- 13) This evidence is directly relevant to and contradictory of the conclusions reached by the Board in its state protection analysis. The respondent argues that the particularized nature of the Board's assessment of state protection is implicit in the Board's statement at paragraph 10 of its decision that "the panel has reviewed and considered the claimant's documentary evidence as well as Counsel's submissions." While I agree that the Board need not refer to all the documentary evidence before it: (*Florea v Canada (Minister of Employment and Immigration*, [1993] FCJ No 598 (CA) at para 1), a blanket statement of consideration is insufficient where there is evidence directly relevant and contrary to a finding or conclusion: (*Montoya v Canada (Minister of Citizenship and Immigration)*, 2014 FC 808 at paras 33-36).

- 14) I am further of the opinion that the Board also failed to address relevant and contradictory evidence in respect of its conclusion that Mr. Barrios failed to rebut the presumption of state protection on the basis of a subjective reluctance to seek state protection after making an initial report to police. As stated by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 49 a claimant need not pursue state protection where it is objectively reasonable not to have done so. The evidence before the Board that Mr. Barrios had been targeted and threatened by the FARC on two occasions after his report to police is relevant to the assessment of objective reasonableness and should have been addressed.
- 15) I find that the Board's conclusions did not fall within the range of legally defensible outcomes based on facts and law; (*Dunsmuir* at para 47).

I allow the application for judicial review. The parties did not identify any question of general importance for consideration.

THIS COURT'S JUDGMENT is that:

1. The application is allowed;
2. The matter is returned to a different panel of the Board for reconsideration; and
3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5089-15

STYLE OF CAUSE: GIOVANI ACEVEDO ARANGO, CRISTIAN CAMILO
ACEVEDO GOMEZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 18, 2018

JUDGMENT AND REASONS: CAMPBELL J.

DATED: OCTOBER 22, 2018

APPEARANCES:

Leigh Salsburg FOR THE APPLICANTS

Amy King FOR THE RESPONDENT

SOLICITORS OF RECORD:

Leigh Salsburg FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario