Federal Court Cour fédérale

Date: 20200306

Docket: IMM-4645-19

Citation: 2020 FC 343

Ottawa, Ontario, March 6, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MOISES VERGARA BRAVO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Moises Vergara Bravo, seeks judicial review of a decision dated June 18, 2019 by the Refugee Appeal Division [RAD]. In its decision, the RAD dismissed the appeal and confirmed the decision rendered by the Refugee Protection Division [RPD], in accordance with paragraph 111(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], that

the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the IRPA.

[2] The Applicant is a citizen of Colombia who owned and operated a small carpentry shop in a residential neighbourhood in Colombia. As a small business owner, he paid occasional extortion fees to the Urabeños, a criminal gang that controlled his neighbourhood. In July 2014, two (2) members of the Urabeños came to his carpentry shop and demanded an excessive extortion amount that the Applicant could not pay. When he advised them of his inability to pay this amount, they assaulted him with a weapon and threatened his life. The two (2) men returned to his shop on two (2) further occasions. The Applicant paid them what he could, but he was again assaulted and threatened with death. Fearing for his safety, the Applicant left Colombia in September 2014 and travelled to Mexico. He subsequently entered the United States in November 2014. He remained there until he came to Canada in January 2017. In June 2017, he filed a claim for refugee protection.

[3] The RPD dismissed the Applicant’s claim in October 2017. The RPD found the Applicant to be credible, and it did not draw an adverse inference from either his failure to make a refugee claim in the Unites States or his delay in making a refugee claim in Canada. The RPD determined that the Applicant had not demonstrated a nexus to the Convention based on his Afro-Colombian origins. Instead, the RPD found that the Urabeños had targeted the Applicant for economic reasons because of his perceived ability to pay extortion monies as the owner of a small business. The RPD also concluded that the Applicant did not face an ongoing or

prospective risk under section 97 of the IRPA, given that the Applicant did not establish that members of the Urabeños would have an ongoing interest in him.

[4] The Applicant appealed the RPD’s decision to the RAD. Before the RAD, the Applicant argued that: (1) he remained at risk at the hands of the Urabeños or other criminal groups in Colombia; (2) the RPD erred in finding that he could live safely in another part of the city where he resided; and (3) as an Afro-Colombian, he fits the profile of individuals at risk in Colombia.

[5] In dismissing the appeal, the RAD found that the Applicant was a target and victim of criminal activity, and it determined that he had not established a link between his fear of persecution and any of the five (5) Convention grounds. The RAD also determined that the Applicant had failed to establish an ongoing or prospective risk of harm. The RAD found that any risk faced by the Applicant from the Urabeños was a risk faced generally by other individuals and business owners in Colombia, who may also be potential victims of the gang’s criminal activities.

[6] The Applicant, who is self-represented, seeks judicial review of the RAD’s decision.

[7] When the Applicant failed to appear at the hearing of the application originally scheduled on February 17, 2020, the Registry Officer attempted to contact the Applicant using the telephone numbers provided on various Court documents, but to no avail. Upon considering that the hearing being scheduled on the same day as a provincial holiday in British Columbia may have contributed to a misunderstanding, the Court adjourned the hearing to the following week.

The Court issued an order to that effect the same day and directed the Court Registry to send the order to the Applicant's address by special courier. The Court also ordered the Applicant to provide the Court Registry with a valid phone number that could be used to contact him and to confirm his attendance at the hearing, or, if unable to attend, to bring a motion to have the matter rescheduled. Despite this order being delivered to the Applicant's address, the Applicant did not communicate with the Court Registry.

[8] The Applicant did not appear at the rescheduled hearing on February 28, 2020.

[9] Section 38 of the *Federal Courts Rules*, SOR/98-106 [Rules] provides that the Court may proceed in the absence of a party if the Court is satisfied that notice of the hearing was given to that party in accordance with the Rules. Given the attempts to communicate with the Applicant and his failure to respond following receipt of this Court's order, I was satisfied the hearing could proceed in his absence. In reaching my decision, I considered the Applicant's written arguments.

[10] In his memorandum of argument, the Applicant has not clearly articulated his grounds for seeking judicial review. However, he appears to disagree with the RAD's finding that there was insufficient evidence to demonstrate that he was personally targeted for extortion to an extent beyond that experienced by the population at large. He also believes that both the RPD and the RAD failed to understand the nature and scale of his personal suffering because of the extortion attempts and the physical and psychological violence he experienced in Colombia.

II. Analysis

[11] Prior to the recent decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the RAD's findings and assessment of the evidence were reviewable on a standard of reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). Applying the framework set out in *Vavilov*, there is no basis for departing from the presumption that reasonableness is the applicable standard of review for administrative decisions (*Vavilov* at paras 10, 16-17). None of the exceptions described in *Vavilov* apply here.

[12] In providing guidance on what constitutes a reasonable decision, the Supreme Court of Canada explained that "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The reviewing court must consider "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83) to determine whether the decision is "based on an internally coherent and rational chain of analysis and […] justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Close attention must be paid to a decision maker's written reasons, and they must be read holistically and contextually (*Vavilov* at para 97). It is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). If "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision", it is not for the reviewing court to substitute the outcome it would prefer (*Vavilov* at para 99).

[13] In the absence of any argument to demonstrate otherwise, I am satisfied that the RAD reasonably determined that the Applicant had not established a link between his fear of persecution and any of the five (5) Convention grounds.

[14] As for the Applicant's alleged risk under subsection 97(1) of the IRPA, I am not persuaded that the RAD committed an error warranting this Court's intervention.

[15] The first step in the examination of a claim under paragraph 97(1)(*b*) of the IRPA is to determine the nature of the risk faced by the claimant. This requires an individualized assessment of whether the claimant faces an ongoing or future risk if removed to the country of origin (*Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31 at para 7; *Cao v Canada (Citizenship and Immigration)*, 2019 FC 231 at para 38 [*Cao*]; *Komaromi v Canada (Citizenship and Immigration)*, 2018 FC 1168 at para 25 [*Komaromi*]; *Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678 at para 40 [*Portillo*]).

[16] Once the risk has been properly characterized, the next step in the analysis consists of comparing the risk faced by the claimant to that faced by a significant group in the country to determine whether the risks are of the same nature and degree. If the risk is not the same, the claimant will be entitled to protection under section 97 of the IRPA (*Cao* at para 38; *Komaromi* at para 25; *Portillo* at para 41).

[17] In the case at hand, the RAD properly described the analysis required in the context of a section 97 claim. It also reasonably noted that membership in a particular economic sector –

small business owners – does not transform a generalized risk of criminal violence into a personalized risk. The RAD then examined and considered the Applicant's ongoing and future risk.

[18] The RAD noted there was no evidence that the Urabeños had tried to locate the Applicant after he closed his shop in 2014 and relocated to another city in Colombia. There was also no evidence that they had attempted to harm any of his family members, including his cousin, who continued to occupy the Applicant's residence, or that they had attempted to locate the Applicant since his departure from Colombia. Since the Applicant had not gone to the police to file a report against the Urabeños when they assaulted him and extorted monies from him, retaliation on that basis was also not an issue. The RAD agreed with the RPD's conclusion that there was insufficient evidence demonstrating that the Urabeños had any ongoing interest in tracking down the Applicant in Colombia.

[19] Once it determined that it was unlikely the Urabeños would personally target the Applicant upon his return to Colombia, it was open to the RAD to find that the risk faced by the Applicant from the Urabeños was no different from that of other citizens of Colombia who worked and resided in the regions where the Urabeños engaged in their criminal activities (*Komaromi* at para 27).

[20] I recognize that a sentence in paragraph 20 of the RAD's decision can be construed to suggest that the RAD, unlike the RPD, failed to consider whether the Applicant's risk became personalized when he defied the Urabeños while in Colombia. However, when the decision is

read as a whole, I am satisfied that the RAD's analysis of the Applicant's present and prospective risk was reasonable. Before a decision can be set aside, the reviewing court must be satisfied that any shortcomings or flaws in the reasoning are sufficiently central or significant to render the decision unreasonable. The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100). In this case, the Applicant has not persuaded me that the RAD's decision should be overturned.

[21] For these reasons, the application for judicial review is dismissed.

[22] No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-4645-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4645-19
STYLE OF CAUSE:	MOISES VERGARA BRAVO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	FEBRUARY 28, 2020
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	MARCH 6, 2020

APPEARANCES:

Robert L. Gibson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT