Federal Court  Cour fédérale

Date: 20201113

Docket: IMM-3333-17

Citation: 2020 FC 1052

Montréal, Quebec, November 13, 2020

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

HERNAN DARIO NEIRA GIRALDO
HEIDY YELYTHZA GOMEZ MARTINEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Hernan Dario Neira Giraldo [the Principal Applicant] and Mrs. Heidi Yelythza Gomez Martinez [collectively, the Applicants] seek judicial review of the June 27, 2017 decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [the RPD], finding that they had not rebutted the state protection presumption, and are not Convention

refugees or persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (SC 2001, c 27) [the *Immigration Act*].

[2] For the reasons set out below, the Application for judicial review [the Application] will be dismissed.

II. Relevant Factual Background

[3] The Applicants are citizens of Columbia. On March 21, 2017, they left Colombia for the United States, each holding a valid US visitor visa, and on April 20, 2017, they arrived at the Canadian land border and claimed refugee protection.

[4] They based their claim on fear of harm at the hands of the Gaitanista Paramilitary Self-Defense Forces of Colombia, which threatened them because of Mr. Giraldo's involvement, as a dentist, with the Colombian Victims of the Internal Conflict Association "Road to Restoration."

III. The RPD Decision

[5] On June 15, 2017, the RPD heard the claim, and the Applicants testified. Regarding the issue of state protection, the Applicants stressed that the Principal Applicant had contacted the authorities (the police, the *fiscalia*, and the ombudsman) five times, and that while he did benefit from protection measures, individuals from the Forces nonetheless continued to communicate with him, target him, and threaten him. The Applicants argued that this constitutes evidence that state protection in Colombia is inadequate. Before the RPD, the Applicants referred to the

National Documentation Package for Colombia [NDP] of May 31, 2017 (item 1.7), ostensibly to argue that state protection would not be adequate given the involvement of this paramilitary group.

[6] In its decision, the RPD noted that the determinative issue in the claim was the issue of state protection. It confirmed that: “The state is presumed to be able to protect the claimants. It rests on the claimant [sic] to rebut this presumption with clear and compelling evidence. This evidence can include general country documentation, as well as evidence which is specific to the [ ] claimants.”

[7] The RPD noted that the Applicants had approached the authorities and noted the actions said authorities undertook in response. The RPD noted that the police provided surveillance, asked the Principal Applicant to sign a document every time they stopped at his house, conducted security rounds, provided a phone number the Principal Applicant could call if necessary, encouraged him to change his route and time of travel, and investigated the matter. The RPD also noted that his spouse was a medical doctor working at a facility associated with the police and that she received confirmation that the measures undertook were the necessary steps. The RPD thus concluded that, in the particular circumstances of the Applicants, the authorities responded quickly by providing protection.

[8] The RPD referred to the NDP documents the Applicants had raised in their submissions, noted mixed information on these issues, and, *inter alia*, noted that the problems with state protection in Colombia are documented but not universal. The RPD noted the country evidence

to the effect that significant efforts had been made, and continue to be made, in Colombia to improve the police and judicial sectors and that these attempts were reflected in the response of the authorities to the Applicants' fear.

[9] The RPD stated that no government can guarantee the protection of all of its citizens at all times. Where a state is in effective control of its territory, has military, police, and civil authorities in place, and makes serious efforts to protect its citizens; the mere fact that it is not always successful at doing so will not rebut the presumption of adequate state protection. The RPD considered that the Applicants received state protection and found that they had not succeeded in rebutting the presumption of adequate state protection. The RPD thus found it unnecessary to rule on the Applicants' credibility, which had been an issue during the hearing.

[10] The RPD thus concluded that the Applicants had not met their burden of establishing a serious possibility of persecution on a Convention ground (section 96 of the *Immigration Act*) or that they would personally be subjected to a risk of cruel and unusual treatment or punishment, or a danger of torture, if returned to Colombia (section 97 of the *Immigration Act*). The RPD therefore rejected the Applicants' claim.

IV. The Standard of Review

[11] As recently confirmed by my colleague Justice Gascon in *Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 (at para 17) [*Burai*], the presumption of reasonableness, as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], applies to the issue of state protection.

[12] Justice Gascon also noted in *Burai* (at para 19) that: “Before a decision can be set aside on the basis that it is unreasonable, the reviewing court must be satisfied that ‘there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency’ (*Vavilov* at para 100). An assessment of the reasonableness of a decision must be robust, but it must remain sensitive to and respectful of the administrative decision maker (*Vavilov* at paras 12-13). Reasonableness review is an approach anchored in the principle of judicial restraint and in a respect for the distinct role and specialized knowledge of administrative decision makers (*Vavilov* at paras 13, 75, 93). In other words, the approach to be followed by the reviewing court is one of deference, especially with respect to findings of facts and the weighing of evidence. Absent exceptional circumstances, the reviewing court will not interfere with an administrative decision maker’s factual findings (*Vavilov* at paras 125-126).”

V. Analysis

[13] The parties do not dispute that there is a presumption that the state is capable of protecting its own citizens, and that this presumption can only be displaced with clear and convincing evidence of the state’s inability to do so. (*Canada (Attorney General*) v *Ward*, [1993] 2 SCR 689 at 724-25; *Carillo v Canada* (*Citizenship and Immigration*), 2008 FCA 94). The Applicants thus bore the burden of demonstrating to the RPD that state protection in Columbia is inadequate.

[14] The parties do not dispute that adequacy of protection requires an assessment of the protection at the operational level and that declarations of best efforts by a state are insufficient if

they do not translate into actual results (*Vidak v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 976 at para 8; *Mata v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1007 at paras 13-14). However, the case law has also established that the fact that the results at the operational level are not always successful will not rebut the presumption of state protection (*Samuel v Canada (Citizenship and Immigration)*, 2008 FC 762 at para 13; *Flores v Canada (Citizenship and Immigration)*, 2008 FC 723 at paras 9-11).

[15] The Applicants submit that the RPD decision is unreasonable. They submit that the facts of the case do not demonstrate that the authorities acted quickly and offered adequate protection. They argue that the facts, on the contrary, demonstrate that the authorities could not stop the threats and danger they were facing, and that the protection offered was therefore inadequate. They add that the documentary evidence before the RPD included documents showing that state protection in Colombia is inadequate. Finally, the Applicants take issue with the fact that the RPD did not mention the terms “effectiveness” or “adequacy,” instead using the term “efforts” twice – which they argue shows that the RPD failed to conduct a proper state protection analysis.

[16] The Applicants have not convinced me that the decision is unreasonable.

[17] Although it did not mention the words “effectiveness” or “adequacy,” it is clear that the RPD understood and applied the proper legal test. The RPD did not limit its analysis to an examination of declarations of best efforts made by the state to provide protection: the RPD assessed the numerous protection measures the Applicants actually received.

[18] As stated previously, the fact that the protection was not entirely successful does not rebut the presumption of adequacy. The Applicants bore the burden to rebut this presumption, and they have not convinced me that it was unreasonable for the RPD to conclude that they had not met that burden given the applicable legal principles and the evidence on record.

[19] Finally, before the RPD, the Applicants limited their evidence of state inadequacy to one of the documents contained in the NDP which presented mixed information, as noted by the RPD. The RPD is not required to look for evidence on its own to support the Applicants' argument and proposition, but in any event, I am satisfied the other documents also present mixed information, and that it was open to the RPD to conclude as it did (*Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 19 ("the RPD [is] not obliged to comb through every document listed in the National Document Package in the hope of finding passages that may support the Applicant's claim and specifically address why they do not, in fact, support the Applicant"), followed in *Simolia v Canada (Citizenship and Immigration)*, 2019 FC 133 at para 22 and *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61; *Anand v Canada (Citizenship and Immigration)*, 2007 FC 234 at paras 22-25).

[20] I am satisfied that the RPD applied the proper test, and given the specific circumstances cited by the RPD to justify its conclusions, I am also satisfied that the analysis is intelligible and that the decision is reasonable.

[21] The Application for judicial review will therefore be dismissed.

JUDGMENT in IMM-3333-17

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed;

2. No question is certified;

3. No costs are granted.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3333-17
STYLE OF CAUSE:	HERNAN DARIO NEIRA GIRALDO, HEIDY YELYTHZA GOMEZ MARTINEZ AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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