Federal Court Cour fédérale

Date: 20141120

Docket: IMM-4677-13

Citation: 2014 FC 1099

Toronto, Ontario, November 20, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

MARIA DEL PILAR BRAVO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Maria del Pilar Bravo's application for refugee protection was dismissed by the Refugee Protection Division of the Immigration and Refugee Board on credibility grounds. The Board also found that her delay in seeking refugee protection in Canada demonstrated that she lacked a subjective fear of persecution.

[2] At the conclusion of the hearing, I advised the parties that I would be dismissing the application for judicial review. These are my reasons for coming to that decision.

I. The Mootness Issue

[3] Before considering the merits of this application, it is first necessary to address the respondent's contention that this application for judicial review has become moot because Ms. del Pilar is no longer in Canada.

[4] Ms. del Pilar was removed from Canada in February of 2014, after her motion for a stay of her removal was dismissed by this Court. The respondent contends that because Ms. del Pilar is no longer "outside her country of her nationality" or "former habitual residence", she cannot meet the refugee definition contained in section 96 of *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. Nor could Ms. del Pilar be found to be a person in need of protection for the purposes of section 97 of the Act as she is not a "person in Canada". As a consequence, the respondent says that Ms. del Pilar could not benefit from a re-determination of her refugee claim and her application for judicial review is thus moot.

[5] Because this argument was raised for the first time in the respondent's further memorandum of fact and law, Ms. del Pilar did not have a chance to address it in writing, and asked at the commencement of the hearing that she be given an opportunity to provide written submissions on this issue. Both parties proceeded, however, to make fulsome submissions on the merits of the application.

[6] Having now heard the parties in relation to underlying application, I have concluded that the application should be dismissed on its merits. In the circumstances, it would not, in my view, be an efficient use of scarce judicial resources to adjourn the matter for further submissions on the question of mootness.

II. The Reasonableness of the Board's Decision

[7] The Board had numerous reasons for disbelieving Ms. del Pilar's claim that the Revolutionary Armed Forces of Colombia (FARC) had threatened her because she taught extra-curricular programs designed to prevent students being recruited by FARC. Even if I accept Ms. del Pilar's arguments that the Board erred in failing to consider her brother's first-hand evidence of efforts taken to protect her, and in finding that her evidence contained material inconsistencies as to the agents of persecution, the Board nevertheless had a number of other reasons for doubting her credibility which were reasonably open to it on the record before it.

[8] One such reason was Ms. del Pilar's failure to mention at the port of entry that FARC members had physically threatened her at gunpoint. When asked in her refugee intake form why she was seeking protection in Canada, Ms. del Pilar wrote that "I am being the object of threats. They were telephone threats where they tell me I should disappear away from the city and my place of work".

[9] In contrast, Ms. del Pilar stated in her Personal Information Form and oral testimony that on February 12, 2011, eight FARC members entered her workshop, threatening her at gunpoint, telling her she was a political objective. They reportedly told her to stop leading workshops or they would make sure that she did.

[10] Citing this Court's decision in *Argueta v. Canada (Minister of Citizenship & Immigration)*, 2011 FC 1146 at paras. 33-34, 4 Imm. L.R. (4th) 333, Ms. del Pilar submits that a refugee intake form is not intended to provide all the details of the claim, and that members must be careful to distinguish between cases where the claimant contradicts his or her initial statement, and cases such as this where the claimant simply added details regarding her claim.

[11] I do not accept this submission. Ms. del Pilar's refugee intake form states that she was the object of threats, which she identifies as "telephone threats". Her later claim to have been threatened at gunpoint by eight FARC members contradicted her earlier description of the nature of the threats. It was, moreover, a material inconsistency - one that went to the very heart of her claim. The Board's finding that this inconsistency undermined Ms. del Pilar's credibility was one that was reasonably open to it.

[12] Similarly, it was entirely reasonable for the Board to conclude that a letter corroborating the February 12, 2011 incident, purportedly from a colleague of Ms. del Pilar's named "Diana", was a fraudulent document. According to Ms. del Pilar, she had received the signed letter from Diana by mail. That being the case, Ms. del Pilar was unable to explain how it was that she possessed both a signed copy of the letter and an unsigned version of the same letter.

[13] Ms. del Pilar argues that the Board failed to accept her counsel's suggestion that her colleague may have first sent her an unsigned draft of the letter by email, followed by a hard copy sent by mail. The Board did, however, consider counsel's suggestion and rejected it. Given that counsel's suggestion was entirely speculative, and was unsupported by any evidence from Ms. del Pilar herself, it was reasonably open to the Board to find that the document was not legitimate.

[14] The Board accepted that Ms. del Pilar had worked as a teacher, and did not discount letters provided by her employer just because of differences in the letterhead used in the two letters. It was, however, entirely reasonable for the Board to find it surprising that letters from Ms. del Pilar's employer documenting her employment as a teacher made no mention of the

threats that she had suffered at the hands of FARC. This was especially so given Ms. del Pilar's assertion that she had told the author of one of the letters about the threats.

[15] Nor was it unreasonable for the Board to find it concerning that Ms. del Pilar's evidence contained inconsistencies as to how frequently she participated in the extra-curricular activities that were the source of her problems.

[16] My finding that many of the Board's negative credibility findings regarding Ms. del Pilar's claim were reasonable provides sufficient basis for concluding that the decision is one that falls within the range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190 and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59, [2009] 1 S.C.R. 339. In the interests of completeness, however, I will also briefly address the Board's finding regarding the issue of subjective fear.

III. Lack of Subjective Fear

[17] The Board observed that Ms. del Pilar left Colombia and travelled to the United States, where she remained for more than three months before coming to Canada and claiming refugee protection. The Board noted that Ms. del Pilar's two children live in Canada, and acknowledged that it was not unreasonable for a mother to wish to reunite with her daughters. That said, the Board also found that someone genuinely fleeing a country in fear of her life would have claimed protection at the first opportunity, and Ms. del Pilar's failure to do so was indicative of a lack of subjective fear on her part.

[18] Ms. del Pilar argues that these findings were internally inconsistent because the Board accepted that it was not unreasonable for a mother to wish to reunite with her daughters while at the same time finding that it was unreasonable for her to wait until she was in Canada before seeking refugee protection.

[19] I am not persuaded that the Board's findings were internally inconsistent. This was not a case where a person transited briefly through one country, waiting to make a refugee claim in Canada where he or she had family. Ms. del Pilar spent more than three months in the United States, without taking any steps to seek protection. A fair reading of the Board's reasons discloses that its concern was the lack of any apparent sense of urgency on the part of Ms. del Pilar that belied her claim to fear for her life.

IV. <u>Conclusion</u>

[20] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

"Anne L. Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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