

Federal Court



Cour fédérale

Date: 20150619

Docket: IMM-5003-14

Citation: 2015 FC 768

Ottawa, Ontario, June 19, 2015

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**ADRIANA CAICEDO HURTADO AND
ANDREW VALENCIA (BY HER
LITIGATION GUARDIAN,
ADRIANA CAICEDO HURTADO)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND THE MINISTER OF
SAFETY AND EMERGENCY
PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

[1] This is an application for the judicial review of a Pre-Removal Risk Assessment [PRRA] decision by which the protection claims of Adriana Caicedo Hurtado and her son, Andrew Valencia, were denied.

[2] Ms. Hurtado is a citizen of Colombia and her son is a citizen of the United States.

Ms. Hurtado brought her claim to protection on the basis of an alleged risk of persecution at the hands of the Revolutionary Armed Forces of Colombia [FARC] and on the basis of her ethnicity as an Afro-Colombian single parent. She claimed that she had been attacked and wounded by the FARC during an assault on the family home in 1996. At the same time her mother was killed.

[3] Within weeks Ms. Hurtado left Colombia for the United States. For almost 14 years she lived in the United States without status. During that time she lived under a false identity and amassed a significant criminal record under her alias.

[4] Ms. Hurtado and her son entered Canada in 2010 and claimed refugee protection. Their claims were denied by the Refugee Protection Division [RPD] on December 14, 2012.

Ms. Hurtado's claim was denied on the basis of serious criminality and her son's because he has American citizenship.

[5] In this proceeding, the Applicants challenge a Pre-Removal Risk Assessment [PRRA] decision which denied their claims to relief.

[6] The PRRA Officer refused the Applicants' claims, in part, because he did not believe that the 1996 assault on Ms. Hurtado was connected to the FARC and because he rejected

Ms. Hurtado's "contention that the 1996 attack(s) indicate a significant threat to her now".

Ms. Hurtado's asserted ethnicity-based risk was denied on the following basis:

There is discrimination against Afro-Colombians but this is largely in the context of persons displaced by FARC or other actors. That is not Ms. Caicedo Hurtado's situation.

She alleged risk as a single mother or Afro-Colombian single mother but did not provide persuasive evidence of a personalized risk on this basis.

[7] As a citizen of the United States, Andrew was found not to be at risk on a return to that country.

[8] Counsel for Ms. Hurtado argues with considerable conviction that the Officer had a legal obligation to conduct an oral hearing before dismissing these claims. I agree with counsel for the Minister that the standard of review that applies to the Officer's discretion under section 113 of the *Immigration Refugee and Protection Act*, SC 2001, c 27, [IRPA] and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] is reasonableness: see *Kioko v Canada*, 2014 FC 717 per Justice George Locke at paras 15-19, 244 ACWS (3d) 175.

[9] In support of Ms. Hurtado's argument for an oral hearing, she points to several negative credibility references in the decision including the statement "[t]here are credibility problems with Ms. Caicedo Hurtado's evidence". There is not much doubt that the Officer did not believe those parts of Ms. Hurtado's story that linked the 2006 attack to the FARC. This is the type of finding that could justify an oral hearing under section 113 of the IRPA.

[10] The Officer did not, however, base the decision only on his assessment of Ms. Hurtado's credibility. He also determined that, even if Ms. Hurtado's evidence about the involvement of the

FARC was true, there was nothing before him to indicate that the FARC would have the means or motivation to pursue her after 19 years.

[11] It strikes me that after being away from Colombia for almost two decades without apparent incident, it was entirely reasonable for the Officer to conclude that any personal risk had fully dissipated. Because the Officer found there to be no extant FARC risk in Colombia his credibility findings were not determinative of the claim to relief and no oral hearing was required.

[12] Counsel for Ms. Hurtado also takes issue with the thinness of the Officer's reasons for rejecting the asserted ethnicity risk and the risk to Andrew. It is true that the reasons the Officer gave are sparse but in the context of the tendered evidence they were sufficient to reasonably dispose of these arguments. The country-condition evidence disclosed only generalized risks of harm arising mostly in the context of ongoing armed conflict. For those not caught up directly in hostilities, the problems faced by Afro-Colombian women and their children were described as forms of discrimination. There was also absolutely no factual basis to support an argument that at seven years of age Andrew would face a risk of forced recruitment into the FARC. The Officer noted the presence of Ms. Hurdato's five sisters in Colombia and it is reasonable for him to assume the family can provide support and assistance if and when it is required.

[13] It is also argued that the Officer erred by citing the lack of expected corroborating evidence in support of Ms. Hurtado's risk narrative. It is, however, not an error for a decision-maker to consider the absence of readily available corroboration in assessing the merits of a

claim. Ms. Hurtado had an extended family network in Colombia who would have first-hand knowledge of her history. Furthermore, given the serious nature of the events she described, the failure to produce verifiable third-party reports establishing a link to the FARC (eg. newspaper accounts) and to include this information in the employment reference letter are inexplicable. It was not an error for the Officer to have expected more and to discount the claim when this expected evidence was not produced.

[14] For the foregoing reasons, this application for judicial review is dismissed.

[15] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that application for judicial review is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5003-14

STYLE OF CAUSE: ADRIANA CAICEDO HURTADO AND
ANDREW VALENCIA (BY HER LITIGATION
GUARDIAN, ADRIANA CAICEDO HURTADO)
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND THE MINISTER OF
SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 11, 2015

JUDGMENT AND REASONS: BARNES J.

DATED: JUNE 19, 2015

APPEARANCES:

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