

Federal Court



Cour fédérale

Date: 20160912

Docket: IMM-553-16

Citation: 2016 FC 1032

Ottawa, Ontario, September 12, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SANDRA MILENA LOZANO MOLINA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Molina, is a citizen of Colombia who claimed protection in Canada because she fears the National Liberation Army [ELN], a guerilla group in Colombia.

[2] In her Basis of Claim form [BOC] Ms. Molina's alleges that she was employed as a communications specialist on a solid waste project that encouraged residents to abandon criminal activities and work in recycling projects. Her work involved travel to high risk areas of Medellin. She also spoke on local radio and wrote articles in local newspapers relating to the solid waste project.

[3] She alleges that the ELN approached her in her workplace in September 2015 demanding that she accompany them to see their ELN commander. She refused. She believes the commander had an interest in her and did not like the work she was doing with displaced persons in poor neighbourhoods. After the refusal, the ELN members returned frequently to her office threatening her life and, on one occasion, attempted to physically remove her from her office. They also threatened her life while she was at home. She left her job and her home, making plans to leave Colombia for Mexico. She arrived in Canada from the United States in October 2015 after meeting and marrying her partner, a permanent resident of Canada, in Mexico.

[4] The Refugee Protection Division [RPD] of the Immigration and Refugee Protection Board of Canada [IRB] rejected Ms. Molina's claim finding that her allegations relating to the ELN were not credible. The RPD alternatively concluded that even if the allegations were credible she had not provided clear and convincing evidence that Colombia would not be reasonably forthcoming with adequate state protection.

[5] Ms. Molina asks that the Court set aside the RPD decision and return the matter for redetermination. She argues that the RPD's credibility findings were unreasonable and that the RPD erred in making its state protection findings.

[6] The state protection finding is determinative and is the sole issue I need to address in considering this application. In this regard, I am not convinced the RPD erred. The RPD reasonably concluded that Ms. Molina had failed to rebut the presumption of state protection as she made no efforts to report threats or otherwise seek protection.

II. Standard of Review

[7] The RPD's state protection findings engage issues of mixed fact and law to be reviewed on a reasonableness standard (*Nava v Canada (Minister of Citizenship and Immigration)*, 2008 FC 706 at para 12).

III. Analysis

[8] Ms. Molina submits that the RPD erred in finding that her failure to seek protection from Colombian authorities was unreasonable. She argues that the evidence before the tribunal demonstrated that it was objectively unreasonable for her to seek protection from the state and therefore she was under no obligation to do so. She further submits that the RPD selectively reviewed the documentary evidence and erred in giving more weight to that evidence than her reasons for not seeking protection. She also argues that the RPD considered serious state efforts but failed to address the availability of adequate state protection for her. Finally Ms. Molina

argues that the RPD erred in failing to consider her profile as a female government employee and community activist. I disagree.

[9] It is not disputed that Ms. Molina had the legal burden of providing clear and convincing evidence that Colombia was unable to provide adequate state protection (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 19). Ms. Molina's evidence before the RPD was that she had not sought out any state protection resources in Colombia and did not report any threats to police or authorities prior to departing for Mexico. She testified to the effect that reporting ELN threats to the police was too risky, the police would not protect her and to report would amount to a death sentence.

[10] Contrary to Ms. Molina's submission that the RPD selectively reviewed the documentary evidence, it is clear from the decision that the RPD reviewed Ms. Molina's country documents and the documentation in the Board's National Documentation Package. In conducting its review, the RPD noted that there are several agencies and programs through which citizens can seek protection but that Ms. Molina made no effort to do so. The RPD acknowledged that the evidence relating to the adequacy of state protection is mixed. The RPD also concluded that Ms. Moklina's concerns with the adequacy of state protection were speculative. On the basis of this evidence, the RPD gave more weight to the documentary evidence before it relating to the adequacy of state protection than Ms. Molina's stated concerns.

[11] The RPD's reasoning is transparent and intelligible. This is not a case where the RPD failed to address and assess Ms. Molina's evidence or the contrary country condition evidence,

the situation in *Guerrero Hidalgo v Canada (Minister of Citizenship and Immigration)*, 2016 FC 222 upon which Ms. Molina relies. Similarly, while the RPD reviewed the efforts of the state to improve protection, it links those efforts to the operational adequacy of state protection for someone in Ms. Molina's circumstances.

[12] It was reasonably open to the RPD to conclude that Ms. Molina's failure to make any effort to seek out or obtain state protection was fatal to her claim. While a reviewing court might prefer to see more detailed reasoning relating to her profile "[r]easons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). The RPD did not err in its state protection findings.

IV. Conclusion

[13] The RPD decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[14] Neither of the parties has proposed a question for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-553-16

STYLE OF CAUSE: SANDRA MILENA LOZANO MOLINA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: GLEESON J.

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