

Federal Court



Cour fédérale

Date: 20170421

Docket: IMM-4046-16

Citation: 2017 FC 390

Ottawa, Ontario, April 21, 2017

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

KEYSI JAVIER MEJIA RAMOS

Applicant

And

**MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Mejia Ramos, applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated September 7, 2016 [Decision]. The RPD determined that Mr. Mejia Ramos was not a Convention refugee under section 96 of the *IRPA*, as there was no link to a Convention ground. It then found that he had not established he

was a person in need of protection under section 97 because the risk he faced was one faced generally by the population of El Salvador.

[2] Mr. Mejia Ramos is a twenty-year-old citizen of El Salvador. He says he fears members of the Mara Salvatrucha gang, who murdered his friend Jaime in 2012, at which time Mr. Mejia Ramos was 16 years old. Shortly thereafter, the gang began extorting money from Mr. Mejia Ramos while he was walking to and from school. They told him to keep quiet about the extortions or he “would end up like Jaime.” Although, Mr. Mejia Ramos did not witness the murder, he inferred from this statement that the gang had murdered Jaime and would kill him if he did not pay.

[3] The RPD accepted Mr. Mejia Ramos was a citizen of El Salvador. It made no negative credibility findings. The determinative issues were that there was no nexus to a Convention ground and that he did not face a personalized risk. Both findings were based on the RPD determination that Mr. Mejia Ramos was a victim of crime that was not specific or individualized to him.

[4] Mr. Mejia Ramos challenges only the section 97 finding made by the RPD.

[5] For the reasons that follow, I will dismiss the application. The decision-making process was transparent, intelligible and justified. It enabled Mr. Mejia Ramos to know why the RPD came to the conclusion it did. In my view, that conclusion falls within the range of acceptable, possible outcomes which are defensible on the facts and law.

II. **The RPD Decision**

[6] The RPD noted that section 97 was based on an objective assessment of risk, and that the

evidence must establish a specific, individualized risk for a claimant rather than generalized human rights violations in a country. The RPD also noted that being a victim of crime does not make someone automatically qualify under section 97. There must be evidence establishing, on the balance of probabilities, that the claimant faces a specific, individualized risk of harm.

[7] The RPD found the extortions were not personal to Mr. Mejia Ramos; the gang extorted him because he had money. In arriving at that determination the RPD relied upon several facts:

- that Mr. Mejia Ramos did not know the names of the gang members;
- the gang members did not know Mr. Mejia Ramos' name;
- Mr. Mejia Ramos' mother, with whom he lived, had not been threatened as the gang did not know where they lived;
- Mr. Mejia Ramos did not witness the murder;
- Mr. Mejia Ramos never spoke to the gang about Jaime;
- Mr. Mejia Ramos never reported anything to the authorities;
- the last contact Mr. Mejia Ramos had with any gang member was in July 2012.

[8] After considering the facts, the RPD determined that Mr. Mejia Ramos "has not established that he was personally targeted. There was no persuasive evidence before the panel that the claimant was targeted for any other reason than that the gang wanted his money." The RPD concluded that, "on a balance of probabilities, the risk the claimant faces is generalized and one which is faced generally by the population of El Salvador."

III. The Issue

[9] The only issue is whether the RPD erred in determining Mr. Mejia Ramos did not face a personal risk under section 97 of the *IRPA*: is the risk to Mr. Mejia Ramos personal or, is it a generalized risk? Both sides submit this question is reviewable on a standard of reasonableness. I

agree as it is a mixed question of fact and law: *Correa v Canada (Citizenship and Immigration)*, 2014 FC 252 at para 19 [*Correa*].

[10] The Decision is reasonable if there is justification, intelligibility and transparency within the decision-making process and the decision falls within the range of possible, acceptable outcomes defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

IV. **The positions of the parties**

A. *Mr. Mejia Ramos*

[11] Mr. Mejia Ramos argues that the RPD erred in finding he did not face a personal risk of harm if returned to El Salvador. He has not challenged the RPD section 96 assessment. He notes inconsistencies between the Decision and the evidence before the RPD. For example, the RPD said the demands for money were made by unknown members of the Maras whereas Mr. Mejia Ramos had testified that although he did not know their names, he knew the nicknames of two gang members and he knew they were Maras members because of their tattoos.

[12] Mr. Mejia Ramos says the Maras knew he was a friend of Jaime. Both his testimony before the RPD and his Basis of Claim [BOC] narrative indicate that he had no problems in his community until after Jaime was killed. Gang members then asked him for money 6 or 7 times over several weeks while he was on his way to school. He says they clearly associated him with Jaime. He fears returning to El Salvador because he would have to live in the same small community that he left as he does not have any family members in other parts of the country. In the same community he would face the same problems from the Maras.

[13] Counsel for Mr. Mejia Ramos says the RPD accepted his story as credible but then ignored significant aspects of it in finding that he only faced a generalized risk and did not provide a clear explanation as to why some evidence was accepted and other evidence was rejected. For example, Mr. Mejia Ramos testified that he knew the nicknames of two of the gang members—“Sonpopo” and “Chilingo”—yet the RPD said the extortion demands were made by unknown members of the Maras. Also, Mr. Mejia Ramos testified that the extortion demands started after Jaime’s death and the gang “clearly associated” him with Jaime, in whose company he had been seen the night before the murder, but the RPD made no reference to that evidence.

[14] In his affidavit, Mr. Mejia Ramos said he thought Sonpopo and his friends were members of Maras and they extorted him because they knew, as a friend of Jaime’s, that he would be particularly afraid of them. Importantly, he states that the gang said to him that he should pay because, if he did not, “the same thing could happen to him as to his friend Jaime.” Counsel for Mr. Mejia Ramos claims that statement personalizes the extortion not only by adding a death threat but also by making a direct tie to Jaime. The risk is said to be personal because no other group has a risk arising from association with a murdered friend.

[15] Mr. Mejia Ramos also fears returning to El Salvador because he says the gang will think he reported them to the authorities.

[16] Counsel for Mr. Mejia Ramos says the RPD is not following more recent cases addressing personalized risk. He relies on jurisprudence where the RPD found that applicants who fled their countries because of extortion and death threats from gang members were found by the RPD to face only a generalized risk existed but, on review, this Court reversed the RPD and granted judicial review: *Correa; Barragan Gonzalez v Canada (Citizenship and*

Immigration), 2015 FC 502; *Mejia v Canada (Citizenship and Immigration)*, 2015 FC 434 and *Puerto Rodriguez v Canada (Citizenship and Immigration)*, 2015 FC 1360.

[17] In particular, counsel points to *Correa* at paragraphs 83 and 84 where Mr. Justice Russell set out several principles that should be considered when determining whether a risk is generalized or personal. He also notes that *Correa* involved fear of persecution in El Salvador.

B. *The Minister*

[18] The Minister agrees that the facts are not in dispute and that there are no credibility issues. The Minister notes, though, that the onus is on Mr. Mejia Ramos to show he faces a personal risk and he did not do so. The facts relied on by the RPD—such as the gang not knowing Mr. Mejia Ramos' name or where he lived and his last contact with any gang member being in July 2012—reasonably led to a conclusion that the targeting of Mr. Mejia Ramos was not personal. The documentary evidence shows that crime, including robberies, is prevalent in El Salvador and the gang problem is widespread. There was no persuasive evidence that Mr. Mejia Ramos was targeted for any other reason than that the gang wanted money.

[19] Counsel for the Minister says the RPD identified the correct test and applied it properly to the facts. Acknowledging that the cases in this area are very fact specific, the Minister submits that the facts alleged by Mr. Mejia Ramos line up most closely with the jurisprudence that has found the risk to be generalized. The gang knows very little about Mr. Mejia Ramos—not his name or his address. In the cases where a personalized risk has been found there has been very clear, personal targeting. The facts are not nearly as clear in this case. The testimony by Mr. Mejia Ramos that he knew the nicknames of two gang members is not the same as knowing their

identities. It was reasonable for the RPD to determine that he did not know the identity of those who attacked him.

[20] The Minister urges comparison of the facts in this case with cases where a personalized risk has been found, saying that the facts here are not sufficient to find personalized risk; rather, they line up with the cases where the RPD and this court found a generalized risk.

C. *Analysis*

(1) Was the RPD decision that there was no valid s. 97 claim reasonable?

[21] The section 97 evaluation is forward-looking. The question is whether the targeting of Mr. Mejia Ramos was of a nature such that he will remain a target if returned to El Salvador. In that sense, the RPD finding that Mr. Mejia Ramos was vulnerable to extortion is not inconsistent with being targeted simply for money. The question is whether or not the RPD finding that Mr. Mejia Ramos was not personally targeted was reasonable.

[22] In *Correa*, Mr. Justice Russell reviewed the case law in this court related to extortion by gangs, as it was said to diverge. He noted that in Mr. Correa's case there was personal, specific targeting. The gang had conducted surveillance of the house, had photos of Mr. Correa and his wife in various locations and had threatened to kill Mr. Correa if he went to the police. They knew where he worked, called him by telephone and tried to kidnap him. The gang also continued to look for Mr. Correa after he fled.

[23] Justice Russell determined that although the risk to Mr. Correa may have started out as extortion, it fundamentally changed to a risk that he and his family would be killed or severely harmed because he had refused the gang's demands and had reported them to the police. As

Justice Russell said, there was a clear pattern of escalating violence that put Mr. Correa and his family in extreme danger.

[24] None of those elements of serious, specific personal risk are present in this case. Here, Mr. Mejia Ramos paid the extortion money, he did not report the gang to the police and the gang never threatened his family. In fact, other than the one comment that he should pay so he would not end up like his friend Jaime, there was no threat. The RPD acknowledged that Mr. Mejia Ramos said the Maras killed Jaime but it balanced that against his testimony that he did not witness the murder or mention Jaime to the gang. When the RPD asked Mr. Mejia Ramos whether he had any reason to believe the Maras were still interested in him four years after his last contact with them, his answer was they can still recognize him.

[25] In *Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678 [*Portillo*], Madam Justice Gleason, a member of this court at the time, reviewed a number of cases involving section 97 determinations. She concluded that “the essential starting point for the required analysis under section 97 of IRPA is to first appropriately determine the nature of the risk faced by the claimant. This requires an assessment of whether the claimant faces an ongoing or future risk”. Once the nature of the risk has been determined, then it is to be compared to that faced by a significant group in the country to determine whether the risks are of the same nature and degree: *Portillo* at paras 40 and 41.

[26] In *Correa*, Mr. Justice Russell, in applying the first step of the test, examined the nature of the risk faced by Mr. Correa. He distinguished it as being not one of extortion, which was the initial threat, but rather “as someone who had been specifically and personally targeted, whose life and family had been threatened and attacked, and who had refused demands and reported the

gang to the police.” He observed that the Board had confused the reasons for the targeting with the risk itself. Instead of looking at the original reason of extortion, the Board ought to have considered Mr. Correa’s risk at the time. In that case it would have seen that events transformed the initial extortion risk from that experienced generally as a crime to a very personal one, as evidenced by the surveillance photos and death threats that included Mr. Correa’s family.

[27] Here, the RPD had no evidence that the risk faced by Mr. Mejia Ramos escalated or changed in any way; the extortions continued and were paid by Mr. Mejia Ramos until he fled. The RPD noted that the country condition documentation showed that robbery was commonly faced in El Salvador. It concluded that a demand for money from a criminal gang is a generalized risk similar to that faced by other people in El Salvador who may have money. Without more evidence from Mr. Mejia Ramos, that was a reasonable conclusion for the RPD to draw. Clearly, targeting a vulnerable school boy for extortion is different from targeting someone who has witnessed a murder. Given the overall lack of knowledge the gang possessed about Mr. Mejia Ramos there was no evidence before the RPD suggesting that the gang had any interest in pursuing him. After he fled it does not appear any further incidents occurred. His mother was not threatened and he never received any telephone calls or threatening letters demanding money. It was reasonably open to the RPD to conclude that, at the time of the hearing, Mr. Mejia Ramos did not face any risk to his life or of cruel and unusual treatment or punishment beyond the risk faced by other residents of El Salvador generally.

(2) Was a *sur place* claim available to Mr. Mejia Ramos?

[28] In his written memorandum and at the RPD hearing, Mr. Mejia Ramos said he cannot be returned because the gang will believe that while he was gone he reported them to the authorities

and they will kill him. That fear, which resembles a *sur place* claim, was implicitly rejected by the RPD. Given the RPD's emphasis that Mr. Mejia Ramos never witnessed or spoke to the gang about Jaime's murder and never went to the police, it appears to have found that this fear is purely speculative on the part of Mr. Mejia Ramos. There is no evidence the gang would believe he reported either the extortions or the murder to the authorities. The BOC narrative submitted by Mr. Mejia Ramos did not mention this fear; it said he feared the gang would extort him if he returned.

[29] The RPD had before it no evidence on which it could determine, on an objective basis, that Mr. Mejia Ramos would be targeted for reporting the gang to the authorities. The evidence is that Mr. Mejia Ramos did not report the original extortions to the police and that, other than his own fear, Mr. Mejia Ramos put forward no evidence to ground a section 97 claim.

V. Conclusion

[30] The RPD arrived at a decision that was reasonable given the evidence. It fell within the range of possible, acceptable outcomes that are defensible on the facts and law. The decision-making process was justified, transparent and intelligible, as it was clear why the RPD made the decision it did. Mr. Mejia Ramos did not present any evidence to show the gang wanted anything other than money from him. The fact that he was once targeted need not stop the RPD from reasonably concluding that he would face no greater risk than the rest of the population if returned to El Salvador.

[31] The application is dismissed. Neither party suggested a question for certification and none arises on these facts.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question for certification was posed nor does one arise on these facts.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4046-16

STYLE OF CAUSE: KEYSI JAVIER MEJIA RAMOS v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

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