

Federal Court



Cour fédérale

Date: 20190111

Docket: IMM-1298-18

Citation: 2019 FC 40

Ottawa, Ontario, January 11, 2019

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**JOSE UBIER RODRIGUEZ CABELLOS
YADIRA BELTRAN ROMERO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Jose Ubier Rodriguez Ceballos, also known as Mr. Cabellos, (the “Principal Applicant”) and his wife Yadira Beltran Romero (collectively, the “Applicants”), are citizens of Columbia. While living in Columbia, the Principal Applicant volunteered for the Olama Foundation, helping displaced Columbians. He says the Revolutionary Armed Forces of Columbia (“FARC”) threatened to kill him. Fearing for their lives, the Applicants traveled to the

United States and then Canada using visas they obtained through their jobs in the travel industry. On September 24, 2017, they made a claim for refugee protection.

[2] On November 16, 2017, the Refugee Protection Division (the “RPD”) of the Immigration and Refugee Board of Canada heard the Applicants’ refugee claim. In a decision dated January 9, 2018, the RPD rejected their claim, saying the Principal Applicant is not credible and that there is an Internal Flight Alternative (“IFA”) to Cartagena, Columbia.

[3] On March 19, 2018 the Applicants applied for judicial review. For the reasons that follow, I am granting the application.

II. **Facts**

[4] The Applicants are both Columbian citizens with jobs in the travel industry. They say that they came to Canada after the Principal Applicant received death threats from the FARC. He believes the threats are related to the volunteer work he does for the Olama Foundation (a non-profit organization he has worked with since 2012). The Basis of Claim (“BOC”) explains that the Olama Foundation keeps information very secret. For example, volunteers are not allowed to know the names of the families or where the families are from. But the Principal Applicant believes he was threatened because FARC suspects that the displaced families shared sensitive information with him.

[5] According to the Principal Applicant’s BOC, the FARC first threatened him in November 2013 in Ibague. Frightened, he then quit volunteering and moved to Bogota. In June 2014, the Principal Applicant returned to volunteering, this time in the Bogota area.

[6] Two years later, the Columbian Government and FARC struck a peace agreement, but the Principal Applicant states that not all FARC members are willing to demobilize. He says that on December 24, 2016, he and his wife were again threatened. The Applicants filed a report with the Fiscalia. Although the Fiscalia said they would investigate, the Applicants never heard back from anyone. Fearing for their lives, the Applicants moved to another area of Bogota. On February 15, 2017 and July 25, 2017, the Principal Applicant received death threats over the phone from an unknown male who knew they had moved.

[7] Fearing for their lives, the Applicants left behind their children and came to Canada where they made a refugee claim on September 24, 2017. On November 16, 2017 the Applicants' refugee hearing took place. The Applicants used a translator and were represented by counsel. Their counsel made written submissions post hearing so she could consider the National Documentation Package (the "NDP") in detail.

[8] In a decision dated January 9, 2018, the RPD rejected their refugee claim, finding that the Principal Applicant's testimony was vague and not credible, and also on the basis that an IFA in Cartagena was available.

[9] In regards to credibility, the RPD found that the Applicant was unable to give details about the volunteer work he did with the Olama Foundation, and could only estimate the number of families he has helped. Overall, the RPD found that the Principal Applicant was vague, unclear, and lacking in detail.

[10] The RPD also found the Principal Applicant was not credible in regards to his submission that he was a military target of the FARC. The RPD found that the Principal Applicant's

testimony on this issue was inconsistent, lacked detail, and was omitted from the BOC. The RPD determined that the Principal Applicant did not fit into the NDP profile of a FARC military target.

[11] Based on these findings, the RPD determined that the Principal Applicant was not involved with the Olama Foundation in a meaningful way, he was not a military objective, and that the FARC never threatened the Principal Applicant for volunteering with the Olama Foundation.

[12] Although the Applicants had submitted other evidence (a document about the Olama Foundation, a letter of certification of the Principal Applicant's involvement with the Olama Foundation, a letter from a friend who works at the Olama Foundation, letters from family and friends, and a police report about the December 2016 incident), the RPD found these documents insufficient to overcome the credibility concerns already raised. For example, the RPD said the letters did not have first-hand information, the police report was only the Principal Applicant's own statement but not an investigation, and much of the evidence just repeated allegations the RPD already determined had not happened.

[13] In the alternative, the RPD found that the Applicants have an IFA to the northern city of Cartagena, Columbia. The RPD reviewed the NDP and found that the most recent evidence is that the FARC has been undergoing demobilization and its dissident groups are located in the east and middle-east parts of Columbia. The RPD found that, other than the Applicants' own speculation, there was no evidence to establish that the FARC are in Cartagena on a balance of probabilities.

[14] The RPD also found that the Applicants' relocation to Cartagena was reasonable because they would be able to transition their occupation to the Cartagena tourist industry, and noted that their children are now adults. Moreover, the RPD found that the Applicants' evidence did not establish that their lives would be jeopardized upon relocating.

III. Issues

[15] The primary issues are:

1. Is the RPD's assessment of the evidence unreasonable?
2. Is the IFA finding unreasonable?

IV. Standard of Review

[16] Whether the decision maker applied the right legal test is a question of law reviewed for correctness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51 [*Dunsmuir*]).

[17] The standard of review of the RPD's credibility finding is reasonableness (*Thevarajah v Canada (Citizenship and Immigration)*, 2018 FC 458 at para 7). The standard of review of how the RPD assessed the evidence is also reasonableness (*Zmari v Canada (Minister of Citizenship and Immigration)*, 2016 FC 132 at para 13).

V. Analysis

A. *Is the RPD's assessment of the evidence unreasonable?*

[18] The Applicants' argument can be summarized as saying the RPD unreasonably assessed the evidence. For example, the Applicants have provided a line-by-line comparison of what they describe as clear, simple, detailed, and consistent testimony— but which the RPD characterized

as vague. The Applicants also submit the RPD wrongly rejected a letter written by Mrs. Milena Herrera on the basis it did not contain first-hand evidence. The Applicants further submit that the RPD merely determined one allegation was not credible and then used that determination to subsequently find that any evidence submitted in support of that allegation was also not credible.

[19] The Respondent argues that the Principal Applicant's inability to provide specifics demonstrates his lack of knowledge in an organization he says he volunteered with for several years. The Respondent also submits that the RPD provided detailed reasons for why it found the Applicants' testimony implausible.

[20] A review of the record illustrates that the RPD's assessment of the evidence is unreasonable. For example, in regards to letters submitted by the Applicant, the RPD states that it "finds that these letters repeat the claimants' allegations that the panel has already found lacking in credibility, with no additional details or first-hand knowledge of any events, and therefore places little weight on these letters in establishing the claimants' allegations." Yet this is not the case. As pointed out by the Applicants, Mrs. Herrera Ramirez's letter provides first-hand evidence that she hid the Applicants within her home:

I, SANDRA MILENA HERRERA RAMIREZ...declare for all the situations of threats that lived in Colombia, reason why they provide accommodation during the period December 24, 2016 date in which they had to hide temporarily until February 15, 2017, housing ...

[21] The Applicants also submitted a letter from the Olama Foundation's legal representative stating that the Principal Applicant has worked as a volunteer for them:

The undersigned legal representative of the OLAMA FOUNDATION N.G.O. ...states that Mr. JOSE RODRIGUEZ

CEBALLOS Identified with Citizenship No. 79.636938, I worked in volunteer work for the foundation in work of social work and promotion and accompaniment in projects that the foundation made in the regions of Tolima and the Cauca Antioquia low programs of accompaniment to victims of the Colombian armed conflict and displacement as well as labor social to vulnerable people also highlighting social work and accompanying families of people in reintegration processes and demobilized among others.

[22] The RPD assigned the letter no weight:

[24]...The panel notes that there are no clear details with regards to who or how the principal claimant assisted within the organization. The panel finds that this letter is equally as vague and lacking detail as was his testimony regarding his alleged volunteer work, and assigns this letter no weight with respect to establishing his allegations.

[23] In assigning the letter no weight, the RPD committed a reviewable error. Although the RPD said that it does not contain clear details, the letter states that the Applicant volunteered to help victims of Colombian armed conflict. Generally, relevant and probative evidence cannot reasonably be afforded no weight whatsoever. It must be remembered that each piece of evidence does not need to support an entire claim on its own, and that looking at all the evidence as a whole may still establish a claim.

[24] In summary, the Court finds the RPD's assessment of the evidence is unreasonable. As the RPD went on to make an alternative finding, I shall examine the IFA argument next.

B. *Is the IFA finding unreasonable?*

[25] The Applicants submit that the RPD erred by finding that the country condition evidence did not establish, on a balance of probabilities, that Cartagena is not an IFA. The Applicants also submit that the RPD ignored the country condition evidence (in particular, an Insight Crime

article), which stated that the FARC is still present in peripheral areas. The Applicants argue that Cartagena is one of these peripheral areas. In addition, the Applicants submit that large urban areas cannot be an IFA by virtue of their size alone (*Reynoso v Canada (Minister of Citizenship and Immigration)*, IMM-2110-94; *Sanno v Canada (Minister of Citizenship and Immigration)*, IMM-2124-95).

[26] The Respondent submits that no evidence before the RPD established that Cartagena is a peripheral city controlled by the FARC. The Respondent also submits the Applicants failed to provide any evidence that the FARC pursued them. Without sufficient evidence to refute the IFA finding, the Respondent says the RPD was statutorily obligated to reject the claim.

[27] The Applicants' post hearing submission included a recent article stating that dissident activity "emerged from the north, south, center and east of Colombia, suggesting that breakaway guerrillas are beginning to assert control over key drug trafficking territories." The RPD is presumed to have considered all the evidence (*Florea v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ 598 (FCA) (QL)), but the reasons illustrate that it did not consider this article because it expressly states that no evidence was submitted in regards to the FARC's presence in the north:

[36] ...the [Applicants] did not adduce any evidence on a balance of probabilities to demonstrate that FARC dissident Front 21 faction has any network in the north of Colombia or that FARC dissident groups exist in that region.

[28] In addition to this statement, at paragraph 37, the RPD also states that the Applicant's own speculation is the only evidence of the FARC's presence is in the north. This indicates that

the RPD overlooked the Applicants' evidence in analysing whether there is an IFA. Therefore, this alternative IFA finding is also unreasonable.

VI. **Certified Question**

[29] Counsel for both parties were asked if there were questions requiring certification, they each stated that there were no questions arising for certification and I concur.

VII. **Conclusion**

[30] The RPD unreasonably assessed the evidence when determining that the Principal Applicant was not credible, and the IFA finding ignores the Applicants' evidence that was submitted post hearing. As a result of these errors, the decision is unreasonable and the application for judicial review is allowed.

JUDGMENT in IMM-1298-18

THIS COURT'S JUDGMENT is that:

1. The decision is set aside and the matter referred back for redetermination by a different decision-maker.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1298-18

STYLE OF CAUSE: JOSE UBIER RODRIGUEZ CABELLOS, YADIRA
BELTRAN ROMERO v THE MINISTER OF
CITIZENSHIP, AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: AHMED J.

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