Federal Court  Cour fédérale

Date: 20191114

Docket: IMM-5451-18

Citation: 2019 FC 1431

Toronto, Ontario, November 14, 2019

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

HELBERT ANDRES RUIZ TRIANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario on November 8, 2019 and edited for syntax and grammar with added references to relevant case law)

I. Overview

[1] The board refused the Applicant's refugee claim due to the peace process, and changed country conditions, in his native Colombia. This decision was unreasonable, so I will send it back for redetermination, for the reasons that follow.

[2] The Applicant is now 30 years of age. In 2007, when still in high school, he says that the Fuerzas Armadas Revolucionarias de Columbia, or FARC, stopped him while he was walking home, and attempted to recruit him, claiming they needed young men for their organization. He refused, telling them he does not support their ideology. As a result, they beat and stabbed him. He underwent emergency surgery to repair wounds to his face. His attackers threatened to kill him if he reported the incident to the police. He never did, telling the hospital he had been mugged. He eventually told a psychologist in his country and a psychiatrist in Canada. Between April and June 2009, and then again between 2010 and 2012 before he left Colombia for Canada, the Applicant claims he received phone calls on his cell phone and at his residence from FARC threatening to kill him if he went to the police.

[3] In its 2018 decision, the Refugee Protection Division (or Board) accepted that the Applicant had reason to fear persecution from FARC in the past, stating that "the Board accepts that the claimant would have been a Convention refugee at the time of his departure from Columbia [sic] in 2012." However, the Board decided that he no longer had a valid reason to fear future persecution in light of changed circumstances in Colombia – specifically, the signing of a peace deal between the Colombian government and FARC.

[4] In terms of its first conclusion regarding changed circumstances in Colombia, the Board wrote that it had reviewed the information contained in Colombia's National Documentation Package regarding the most significant developments surrounding the conclusion of a peace deal. It noted that this revealed a largely successful outcome and the restoration of peace between the

government and FARC, based on certain evidence about the successful implementation of the 2016 agreement.

[5] The Board concluded that this change of circumstances was durable, and that the "FARC as a criminal organization no longer exists." While acknowledging that other illegal armed groups continue to commit human rights abuses, it found that the Applicant's fear related only to FARC. While writing that "a minority of dissident guerrilla fighters rejected the terms of the peace agreement, have not disarmed, and continue to commit abuses," the Board was not persuaded that this minority of dissidents detracted from the durability of the change in circumstances. It also noted the United Nation's continued role in working with both sides to ensure the agreement's successful implementation.

[6] The Board, in its second conclusion, found the "compelling reasons" exception to changed circumstances did not apply to the Applicant. The Board accepted that evidence of continuing psychological after-effects is relevant to the determination of whether there are compelling reasons under subsection 108(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act). It considered the Applicant's assessments by professionals both in Colombia and Canada in 2012, and then again in Canada (2018), noting he suffered from depression and Post-Traumatic Stress Disorder (PTSD). The Board gave little weight to the latter assessment, stating it "repeats many of the allegations in the claimant's Personal Information Form and was provided in contemplation of litigation." The Board also noted that there is a report from the Canadian Centre for the Victims of Torture in 2012, that "did indicate that the claimant suffered

from PTSD, although there was no indication that any tests or validation for this diagnosis was made, but that the claimant showed great improvement in his general functioning."

[7] The Board noted that the threshold to find the "compelling reasons" exception is high, and cited several decisions of this Court for the proposition that past persecution must be "appalling and atrocious" in order to constitute compelling circumstances, and that each case must be assessed individually, based on the totality of the evidence. It concluded that the Applicant's current psychological and emotional state is not severe enough to meet the threshold for compelling reasons, writing that:

> While the panel sympathizes with the claimant regarding his past experiences in Columbia, unfortunately they are not unique and are not unlike many other cases that appear before the Board. The compelling reasons provisions are to be applied to a limited number of cases that require special consideration that the abuse suffered alone is compelling reason enough not to return the claimant. Therefore, the panel finds that the claimant's assault by the FARC in 2007 alone are [sic] are not compelling reasons enough not to return the claimant to his country. The panel finds that this case does not satisfy the criteria that need to be met for compelling reasons to be applied based on the evidence before the panel.
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> While the panel acknowledges the harm inflicted/suffered/endured by the claimant, it does not find that the impact of the perpetrated harm on the claimant has been serious enough given his ability to obtain medical and professional help in his home country Columbia [sic], as previously indicated. Based on the analysis above, the panel finds that this claimant can return to Columbia [sic] as subsection 108(4) of the *Immigration and Refugee Protection Act* does not apply in this case.

II. Analysis

[8] The Applicant challenges the Board in its two principle conclusions, namely having found that (1) circumstances in Columbia have changed such that his fear of persecution is no longer well founded; and (2) the "compelling reasons" exception does not apply. These Board findings contain mixed fact and law, and as such must be reviewed on a standard of reasonableness (*Malik v Canada (Citizenship and Immigration)*, 2019 FC 955 at para 16). I find both conclusions were unreasonable.

[9] On the first, while decision-makers need not address every piece of documentary evidence before them, they need to acknowledge and address – at least in brief – important evidence that contradicts their findings (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 17). Here, similar to *Marino Ospina v Canada (Citizenship and Immigration)*, 2019 FC 930, the officer did not address evidence of the ongoing risk posed to the Applicant in his forward looking fear by dissident FARC members (at para 33). While the Board found the Applicant held a subjective fear, it discounted any objective fear. In order to have been reasonable, it needed to engage with the credible sources that reported FARC breakaway individuals and groups that continued to operate underground in Colombia.

[10] To do so by paying lip service in one line in a 14-page Board decision was unreasonable, whereby the panel simply wrote: "However, the peace deal is in place; it is supported by both sides; and the panel is not persuaded that the presence of a minority of dissidents detracts from

the durability of the change of circumstances that has occurred since the claimant left Colombia more than six years ago" and that "FARC as a criminal organization no longer exists."

[11] There is credible evidence that was in the National Documentation package, along with other evidence presented by the Applicant, indicating that a significant portion of FARC persists as a criminal organization, and continues to carry out attacks, either in their own right, or combining forces with other organizations such as the National Liberation Army (ELN). The role of this Court, on judicial review, is not to make a ruling on whether circumstances in Colombia have indeed changed, such that section 108 of the Act applies, but simply to ensure that the Board has adequately engaged with and weighed contradictory evidence in its assessment. It simply did not do so in this decision.

[12] As for the second ground raised by the Applicant, he similarly submits that the Board failed to engage with the evidence as to whether the Applicant met the exception, such that the past persecution was "appalling and atrocious." I indeed agree with the Applicant that the Board committed a similar error here to that which it did on the first ground, in that it failed to engage with the psychological and psychiatric evidence in a meaningful way. This was not just a case of one psychological or psychiatric or medial report based on a two-hour meeting in contemplation of litigation. Rather, there were lengthy reports from various professionals in two different countries, including one or more psychologists, social workers, and doctors, which were given short shrift, as is evident in the extract above.

[13] The most recent psychologic report, which was written some 6 years after the initial reports both from Colombia and Canada, states that the Applicant is continuing to suffer trauma from the stabbing to his face and body, accompanying threats not to go to the police, and subsequent death threats at his places of residence.

[14] The Board failed to provide any analysis as to why (other than the last report being prepared in advance of litigation), this did not meet the high threshold of the "appalling and atrocious" criteria that the Board used (and I acknowledge that there is still debate within the Court as to the test that should be adopted for the compelling reasons exception).

[15] While I applaud Respondent's counsel for her valiant efforts to advocate to uphold the decision of her client and her urging the Court to adopt the approach taken by the Supreme Court in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, I am also mindful of the Supreme Court's more recent admonition in *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para. 27, namely "it is important to maintain the requirement that where administrative bodies provide reasons for their decisions, they do so in an intelligible, justified, and transparent way." Here, that did not occur, and so for the reasons above, this application will be granted.

JUDGMENT in IMM-5451-18

THIS COURT'S JUDGMENT is that:

1. This judicial review is granted.

2. The matter is remitted for redetermination by a different officer.

3. No questions for certification were argued, and I agree none arise.

4. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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