

Federal Court



Cour fédérale

Date: 20191206

Docket: IMM-3010-19

Citation: 2019 FC 1566

Ottawa, Ontario, December 6, 2019

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**JAVIER ANTONIO FUENTES REYES
SANDRA VICTORIA ANDRADE VARGAS AND
CRISTIAN DANIEL LOPEZ ANDRADE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants challenge the decision of a Senior Immigration Officer rejecting their Pre-Removal Risk Assessment [PRRA] application based on the Officer's finding that they would not be subject to a risk of persecution, risk of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to their country of nationality. For the reasons that follow, this application is allowed.

[2] The applicant family members are all citizens of Colombia. The family is wealthy and owned a business in Colombia. They claimed refugee status in Canada alleging that an armed criminal group extorted, detained, and threatened them, thereby forcing them to relocate in Colombia, and ultimately leading to their departure from the country in April 2017. That criminal group goes by many names, including the Urabeños, the Pro-Gaitán Self-Defense Forces of Colombia (Autodefensas Gaitanistas de Colombia – AGC), Clan del Golfo, Clan Úsuga, and Bloque Centrauros. It will be referred to herein as AGC.

[3] The Refugee Protection Division [RPD] rejected their claims based on a general finding that they were not credible given the accumulation of inconsistencies, omissions, and contradictions in their evidence as a whole. The RPD did not believe their claim that the AGC extorted them, detained them at a warehouse for failing to make payments, forced them to relocate to the home of the principal claimant's mother, or subjected them to ongoing threats of harm or death.

[4] With their PRRA application, the Applicants included new information, which, they submitted, rehabilitated their testimony before the RPD. They submitted affidavits and an AGC pamphlet dated October 28, 2018, together with undated letters from two employees of their former store stating that members of the armed group continue to appear there and demand payment. When informed that the Applicants no longer own the business, the armed group said they would find and kill them. In addition, on or shortly after October 20, 2018, one of the employees found the pamphlet submitted with the PRRA application, which lists the Applicants as military targets of the group.

[5] An attestation from applicant Mr. Fuentes Reyes also accompanied the PRRA application. He attests that he has a daughter who lives with her mother, his ex-partner, and that in late summer 2018, she called and told him that two men had come to the house and demanded to know where the Applicants were. When informed that they had left Colombia, they told her that she was to find out where they were and that if she failed, there would be consequences. His daughter and her mother fled to Spain and remain there.

[6] After reviewing the additional evidence, the PRRA Officer concluded that the determinative issue was the availability and competence of state protection in Colombia. The Officer found that the Applicants did not mention how they sought state protection and that the failure to seek it was fatal to their application:

In a democratic country, like Colombia, with functioning police and armed forces, it is incumbent on Colombian citizens fearing threats from criminal organizations to first seek out state protection in their country of citizenship. Only after being refused help from the local, department or national authorities of Colombia or the Applicants are able to show that the Colombian authorities are incapable of protecting its citizens can a claim to protected person status be successful in Canada. In my judgement by not seeking out police help to deal with the threats the Applicants have not rebutted the presumption that adequate state protection is available in Colombia. [emphasis added]

[7] I agree with the Applicants that the Officer has misstated the requirement that in every circumstance one must seek state protection before being accepted as a refugee. Although a claimant cannot simply rely on his own belief that protection will not be forthcoming, a claimant does not need to risk his life to prove that state protection is unavailable: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 20 Imm LR (2d) 85. The Officer's duty is to assess whether the actions taken to seek protection or the actions not taken were reasonable given the

overall context. The Officer here failed to consider whether, on the facts before him, the failure to seek protection was reasonable.

[8] The evidence before the Officer might well lead to a decision that the Applicants' failure to seek protection was reasonable, for the following reasons.

[9] Although the RPD had found the Applicants' claims that they were at risk from the AGC were not credible, the new evidence, which the Officer appears to have accepted, shows otherwise. Specifically, the pamphlet from the AGC states that the Applicants, among others, "are military targets ... as they have failed to meet the demands agreed upon for their own safety and or cause."

[10] The Applicants also provided the Officer with the Immigration and Refugee Board of Canada's Response to Information Request COL.105118E – "What it means to be a 'military objective' (objetivo militar), including who executes these threats and methods of issuing them; whether there is an internal flight alternative for someone who has been issued a threat; state response." That document is strong evidence that there is no state protection available to ordinary citizens such as the Applicants when named as military targets:

The Assistant Professor at Winthrop University noted that if a person receiving a threat "currently holds a position of leadership or power or is a public servant in the judicial system, [they] might receive protection from the authorities, but not otherwise," adding that a citizen (or their family) who has been "victimized (displaced/killed)" may obtain resources from the state but might not receive protection from the police or other forces once the individual has received a threat.

[11] Additionally, the Applicants submitted reports showing that there continues to be collusion between the AGC and the Colombian authorities who would be responsible for protecting the Applicants if protection were sought. They also submitted numerous reports going to the availability, or lack thereof, of state protection in Colombia generally and in some specific areas of the country. These had to be weighed when considering whether it was reasonable for the Applicants to seek state protection.

[12] Notwithstanding the submissions made by counsel for the Respondent, I cannot agree that the submissions made by the Applicants “are based on a fairly granular assessment of the country conditions evidence” and “amounts to a disagreement with the analysis and weighing of the evidence.” The Officer, in my view, did no analysis and weighing of the evidence as to whether it was reasonable for these Applicants not to seek protection in Colombia. In the face of the record before him, and the Court, that is a reviewable error.

[13] The Applicants also alleged the Officer used the incorrect test for determining if state protection is available. That issue will not be addressed, as the Officer’s error that the Applicants had to seek state protection is determinative of this application.

[14] No question was proposed for certification.

JUDGMENT IN IMM-3010-19

THIS COURT'S JUDGMENT is that the application is allowed, the Applicants' PRRA application is to be re-determined by a different officer, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3010-19

STYLE OF CAUSE: JAVIER ANTONIO FUENTES REYES ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 27, 2019

JUDGMENT AND REASONS: ZINN J.

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