Federal Court Cour fédérale

Date: 20200121

Docket: IMM-6298-18

Citation: 2020 FC 84

Ottawa, Ontario, January 21, 2020

PRESENT: Mr. Justice Norris

BETWEEN:

ELIANA MARIA CALLE HENAO AND SARA HOYOS CALLE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The principal applicant, Eliana Maria Calle Henao, and her minor daughter are citizens of Colombia. They claim to have a well-founded fear of persecution in Colombia by the Urabeños, a neo-paramilitary group that is heavily involved in drug trafficking. The group allegedly attempted to extort money from the principal applicant's ex-husband's parents. When her former in-laws did not pay up as demanded, they were murdered in July 2017 in their home in Cartago. The group then turned its attention to the principal applicant, her ex-husband and their daughter.

[2] Fearing for their safety, the three fled Colombia for the United States in August 2017. After staying there briefly, the applicants made claims for refugee protection in Canada at Fort Erie, Ontario, because the principal applicant's sister was already living in Canada. The principal applicant's ex-husband made his own claim for refugee protection separately in the United States.

[3] The applicants' hearing before the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada took place on September 12, 2018. For reasons dated December 6, 2018, the RPD rejected the claims for refugee protection. The determinative issue was the existence of an internal flight alternative [IFA]. The RPD member rejected the claims because he was satisfied, on a balance of probabilities, that the applicants had an IFA in Colombia.

[4] Having no right to appeal this decision to the Refugee Appeal Division (see section 110(2)(d)(i) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]), the applicants now apply for judicial review of this decision under section 72(1) of the *IRPA*. They contend that the RPD's determination that they had an IFA is unreasonable.

[5] As I explain in the reasons that follow, I do not agree. The application for judicial review will therefore be dismissed.

[6] It is well-established that a decision-maker's assessment of an IFA, which involves questions of mixed fact and law, is reviewed on a reasonableness standard: see *Tagne v Canada (Citizenship and Immigration)*, 2019 FC 273 at para 19 and the cases cited therein.

[7] That this is the appropriate standard has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the majority of the Court set out a revised framework for determining the standard of review with respect to the merits of an administrative decision (at para 10). Applying *Vavilov*, there is no basis for derogating from the presumption that reasonableness is the applicable standard of review of the RPD's decision at issue here.

[8] The majority in *Vavilov* also sought to clarify the proper application of the reasonableness standard (at para 143). The principles the majority emphasizes were drawn in large measure from prior jurisprudence, particularly *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 [*Dunsmuir*]. Although the present application was argued prior to the release of *Vavilov*, the footing upon which the parties advanced their respective positions concerning the reasonableness of the RPD's decision is consistent with the *Vavilov* framework. I have applied that framework in coming to the conclusion that the decision of the RPD is reasonable; however, the result would have been the same under the *Dunsmuir* framework.

[9] As discussed in *Vavilov*, the exercise of public power "must be justified, intelligible and transparent, not in the abstract but to the individuals subject to it" (*Vavilov* at para 95). For this reason, an administrative decision maker has a responsibility "to justify to the affected party, in a

manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion" (*Vavilov* at para 96). A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). An assessment of the reasonableness of a decision must be sensitive and respectful yet robust (*Vavilov* at paras 12-13). Here, the onus is on the applicants to demonstrate that the RPD's decision is unreasonable. Before the decision can be set aside on this basis, I must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[10] The test for an IFA is well-known: see *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA); and *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) [*Ranganathan*] (among many other cases). To reject a claim for refugee protection on the basis that there is an IFA, a decision-maker must make two findings. First, the decision-maker must be satisfied on a balance of probabilities that there is no serious possibility that the claimant would be persecuted in the proposed IFA. Second, in all of the circumstances, including the particular circumstances of the claimant, the conditions in the proposed IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[11] The concept of an IFA is an inherent part of the definition of Convention refugee: see *Valasquez v Canada (Citizenship and Immigration)*, 2010 FC 1201 at para 15. If it is objectively reasonable for a claimant to live elsewhere in their country of nationality without fear of

persecution, the claimant is not a Convention refugee, even if they have a well-founded fear of persecution in another part of the country. Where the issue of an IFA is in play, a claimant must surmount a high threshold to demonstrate that a proposed IFA is unreasonable: see *Ranganathan* at paras 15-17. As Justice Kane explains in *Iyere v Canada (Citizenship and Immigration)*, 2018 FC 67 at para 35:

> a refugee claimant cannot seek the refugee protection of another country where there is a place within their own country - even if it may not be ideal or their personal preference - which offers safety from the risk they claim and is not unreasonable in all the circumstances. The refugee claimant bears the onus of establishing with objective evidence that the IFA is unreasonable; i.e., that there is a serious possibility of the claimant being persecuted in the proposed IFA or that the conditions in the proposed IFA make it unreasonable, taking into consideration all the circumstances, including their personal circumstances, for them to relocate to the proposed IFA.

[12] The RPD accepted the fundamental elements of the applicants' account, although it did find in respect of some aspects of the claim that the principal applicant was prone to exaggerate or to leap to conclusions. (For example, the principal applicant believed that it was the Urabeños who broke into her home despite the lack of direct evidence to corroborate this belief (e.g. a note or phone call claiming responsibility)). While the applicants take issue with these somewhat peripheral findings, the determinative issue is the viability of an IFA. The RPD found on the basis of the evidence before it that there was no serious possibility that the claimants would be persecuted by the Urabeños in the proposed IFA and, in all the circumstances, it was not unreasonable for the applicants to relocate there. The applicants contend that both findings are unreasonable. I do not agree.

[13] There is no issue that the RPD framed the test for an IFA correctly.

[14] With respect to the first prong of the test, the applicants submit that the RPD failed to consider objective evidence about the Urabeños' geographical reach and influence. The RPD ignored evidence of the group's presence in the proposed IFA. The RPD also ignored the *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia* published by the United Nations High Commissioner for Refugees [UNHCR] in September 2015, which suggested that individuals targeted by the Urabeños may not have a viable IFA in Colombia.

[15] I do not agree.

[16] The applicants bore the onus of showing that they would face a serious possibility of persecution in Colombia. However, they provided no evidence indicating that the Urabeños had infiltrated the entire country or, in particular, the proposed IFA. The documentary evidence did show that over the years the Urabeños had expanded their sphere of influence from their original territory in the Urabá region in northwest Colombia to many other departments but the department in which the proposed IFA is located is not among those identified as being within the group's sphere of influence. Having regard to the documentary evidence before the RPD, the applicants have not persuaded me that the RPD's determination in this regard is unreasonable.

[17] While the applicants rightly note that the RPD did not expressly consider the UNHCR *Eligibility Guidelines* upon which they relied, this is not fatal to the ultimate determination. The *Guidelines* do not mention the presence of the Urabeños in the proposed IFA; rather, they simply confirm generally the group's widespread presence in Colombia and neighboring countries. At

most, the *Guidelines* emphasize that in considering the viability of an IFA, a decision-maker should consider the national reach of the “new armed groups” generally and the Revolutionary Armed Forces of Colombia in particular and their ability to carry out attacks widely across the country. Even if the RPD did not advert to the *Guidelines* expressly, it applied the same analytical framework found there to the question of whether there was a serious risk of persecution by the Urabeños in the proposed IFA. While the *Guidelines* caution that on a case by case basis it can be difficult to find an IFA in Colombia, they fall well short of showing that it was unreasonable for the RPD to conclude that the applicants did not face a serious possibility of persecution by the Urabeños in the proposed IFA. Finally, and perhaps most importantly, the RPD was not satisfied that the applicants had established that the Urabeños had an ongoing interest in them, let alone an interest that would motivate them to persecute the applicants in an area of the country in which they did not operate.

[18] Turning to the second prong of the test, the applicants submit that the RPD failed to take their particular circumstances into account, including their lack of family and social support in the proposed IFA, and failed to refer to objective evidence concerning the impediments they would face in gaining access to employment, education and health care there. Furthermore, the RPD failed to consider evidence of the qualitative differences between Cortaga and the proposed IFA. Finally, the applicants submit that the RPD failed to apply the *Chairperson’s Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* [*Gender Guidelines*] in a meaningful way.

[19] Once again, I do not agree.

[20] The RPD was alive to the applicants' objections to the proposed IFA but was not persuaded on the basis of the objective evidence that the applicants would "face serious social, economic, or other barriers" to relocating there. Consequently, the RPD concluded that "it would not be unreasonable, in all the circumstances including those particular to the claimants" for the applicants to seek refuge in the proposed IFA. In effect, the applicants are asking me to reweigh the relevant factors considered by the RPD and come to a different conclusion. That is not my role.

[21] I acknowledge that the RPD's express reference to the *Gender Guidelines* is very brief. However, the applicants have not been able to point to any flaws in the RPD's reasoning or its analysis of the evidence which suggest that the RPD failed to give due consideration to the *Gender Guidelines* to the extent that they applied in the circumstances of this case. On the contrary, the RPD's reasons demonstrate a clear understanding of the particular challenges the principal applicant would face as a single mother. The RPD was simply not satisfied that these challenges were such as to make it unreasonable for the applicants to relocate to the proposed IFA. The RPD's reasoning in support of this conclusion is sound and supported by the evidence.

[22] In summary, the applicants have failed to demonstrate that the RPD's conclusion that there was a viable IFA available to them is unreasonable. This application for judicial review will therefore be dismissed.

[23] The parties have not proposed any serious questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-6298-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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