Federal Court  Cour fédérale

Date: 20200219

Docket: IMM-2239-19

Citation: 2020 FC 264

Ottawa, Ontario, February 19, 2020

PRESENT: Mr. Justice Boswell

BETWEEN:

CLAUDIA CECILIA ESTRADA MEJIA,
JUAN MANUEL ARANGO ESTRADA
AND ALEJANDRO ARANGO ESTRADA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of Colombia who claimed refugee protection on the day they arrived in Canada in September 2017. The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected their claims in September 2018 on the basis that they failed to demonstrate the absence of an internal flight alternative [IFA] in either Bogota or Cartagena.

[2] The applicants appealed the RPD's decision to the Refugee Appeal Division [RAD] of the IRB. The RAD dismissed the appeal in a decision dated March 19, 2019 and, pursuant to paragraph 111(1) (a) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], confirmed the RPD's decision.

[3] The applicants have now applied under subsection 72(1) of the *IRPA* for judicial review of the RAD's decision. They ask the Court to set aside the decision and return the matter for redetermination by another member of the RAD. This request for relief requires the Court to determine whether it was reasonable for the RAD to dismiss the appeal.

I. Background

[4] The applicants fear harm in Colombia from a drug trafficking group they believe to be associated with the Revolutionary Armed Forces of Colombia [FARC]. Ms. Estrada Mejia's husband, Manuel Jaime Arango, was murdered in July 2017. He was the principal of a school in Medellin, Colombia, where he introduced measures to reduce drug trafficking and drug use at and around the school.

[5] Before his murder, Mr. Arango received two threats, one in January 2017, and another in June 2017. After the first threat, he opened a claim at the attorney general's office. On the day of the murder, two youths visited Mr. Arango at his office and threatened him to relax the rules and surveillance at the school; the threat also included ending the monitoring of student entry and exit from the school. He refused to comply, so the youths killed him. The murder became known at a national level.

[6] Following her husband's murder, Ms. Estrada Mejia attended the attorney general's office to inquire about the claim her husband had made and to give information about her husband's death. She returned to the attorney general's office in late August 2017. In mid-September 2017, Ms. Estrada Mejia received a death threat by telephone; the caller told her to stop cooperating with the authorities. This prompted her to resign her job and then travel to Canada with her two sons in late September 2017.

II. The RAD's Decision

[7] The RAD dismissed the applicants' appeal in a decision dated March 19, 2019. Like the RPD, the RAD found the applicants were credible. In the RAD's view, the RPD did not err in its IFA analysis that the applicants had a viable IFA in Bogota or Cartagena.

[8] The RAD considered the applicants' evidence, the *Chairperson's Gender Guidelines*, the applicants' social and cultural context, the country conditions, and the *Chairperson's Guidelines on Children Refugees*. The RAD noted that since the applicants had not presented new evidence, it did not need to consider whether an oral hearing should be conducted.

[9] The RAD outlined the applicants' arguments. The applicants claimed the RPD erred in finding the identification of the agents of persecution was not necessary. They argued that the RPD misinterpreted the objective documentation, which did not speak to the issue of reach, means, or ability of illegal groups to track down those who have been targeted. The RAD acknowledged the applicants' argument that the documentation showed the FARC, or its dissident groups, continued to operate in Colombia.

[10] The RAD found the RPD had considered the appropriate two-prong test to determine if an IFA is suitable in any particular case; namely, whether there is a serious possibility of persecution in the IFA location, and whether the IFA is reasonable in all the circumstances. The RAD referenced the RPD's finding that the FARC is no longer a major concern in any urban area in Columbia.

[11] The RAD determined that, in any event, there was no evidence the applicants had been declared a military objective by the FARC or of any of its derivative or dissident groups; nor was there evidence that those who threatened the applicants continue to search for them in Colombia. The RAD concluded that the applicants had not established there was more than a mere possibility that the FARC or its dissident groups would have the motivation or the capacity to locate them in the IFA locations.

[12] The RAD found that although the individuals who threatened Ms. Estrada Mejia were apparently able to learn about her conversations with local law enforcement authorities, this did not establish they would have the same capacity or motivation to influence law enforcement or prosecutorial authorities throughout Columbia. In the RAD's view, there was no evidence Ms. Estrada Mejia would have any information that would threaten those she fears in Colombia, even if she was asked in the future to testify against them.

[13] The RAD agreed that, while the applicants did not need to establish the specific identities of the agents of persecution, the onus remained on them to establish, on a balance of

probabilities, that those they fear have the motivation and ability to locate them in Bogota or Cartagena. The RAD found the applicants had not met this onus.

[14] With respect to the second branch of the test for an IFA, the RAD found the RPD had appropriately acknowledged that conditions in the IFAs were such that it would not be objectively unreasonable or unduly harsh, in all the circumstances, for the applicants to relocate. The RAD noted that the RPD had proposed an IFA in Bogota or Cartagena, which are large urban areas and economic centres that would offer employment opportunities for Ms. Estrada Mejia and educational opportunities for her sons.

[15] The RAD found the RPD had correctly observed the case law, which states that to meet their burden the applicants had to present actual and concrete evidence of conditions that would jeopardize their life and safety in temporarily relocating to a safe area. The RAD referenced case law that holds that the fact the applicants have no friends or relatives, and may not be able to find suitable employment in the proposed IFA, does not make the IFA unreasonable.

[16] The RAD found no reason why the applicants could not adapt or integrate into a different community in Colombia where they speak the language and are familiar with the culture. In the RAD's view, the RPD had carefully considered the applicants' testimony, their personal characteristics, and properly determined that the applicants had failed to establish they would be at risk of persecution or harm or that it would be unreasonable in all the circumstances for them to relocate to the IFA locations.

III. What is the Standard of Review?

[17] The Supreme Court of Canada has recently recalibrated the framework for determining the applicable standard of review for administrative decisions on the merits.

[18] The starting point is the presumption that a standard of reasonableness applies in all cases. A reviewing court should derogate from this presumption only where required by a clear indication of legislative intent, or when the rule of law requires the standard of correctness to be applied (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16 and 17 [*Vavilov*]; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27). Neither circumstance is present in this case to justify a departure from the presumption of reasonableness review.

[19] Reasonableness review is concerned with both the decision-making process and its outcome. It tasks the Court with reviewing an administrative decision for the existence of internally coherent reasoning and the presence of justification, transparency and intelligibility; and, also, with determining whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 12, 86 and 99; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[20] If the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome; nor is it the function of the reviewing court to reweigh the evidence

(*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 6; *Vavilov* at para 125).

[21] The reasonableness standard applies to a determination on the availability of an IFA (*Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at para 14). Precedents that align with the principles in *Vavilov* continue to provide helpful guidance (*Vavilov* at para 143).

IV. The Parties' Submissions

A. *The Applicants' Submissions*

[22] The applicants say there is no viable IFA for them in Bogota or Cartagena, and that the RAD unreasonably determined that the agents of persecution would not be motivated to pursue them to either proposed IFA. According to the applicants, the RAD unreasonably based its conclusions on two facts; namely, that there was no military objective to the threat made against them, and that there was no follow-up by the agents of persecution.

[23] In the applicants' view, the RAD had a responsibility to explain in its reasons how it arrived at conclusions that are contrary not only to documentary country-specific evidence supporting their allegations but also to Ms. Estrada Mejia's credible evidence supporting their claims.

[24] The applicants point out that, while the National Documentation Package documents report that most of the armed groups in Colombia have issued threats declaring a person a

military objective, this is not always the case. The applicants note that, since the agents of persecution have not been identified, it is not reasonable to rely on the fact that the FARC or its dissident groups have not made the applicants a military objective. According to the applicants, the agents of persecution may not have been among the armed groups that issue this type of threat. In the applicants' view, the evidence was insufficient for the RAD to conclude that an armed group that issues this type of threat threatened them.

[25] The applicants say the RAD's conclusion - that if the agents of persecution were motivated and capable of locating them there would have been evidence of these groups' continuous efforts finds them - is an implausibility finding which is not based on reasonably drawn inferences. According to the applicants, plausibility findings should only be made in the clearest of cases and should not be based on a solely Canadian perspective of what is plausible. In the applicants' view, the RAD's finding in this regard is not the clearest of cases and is susceptible to other reasonable possibilities.

[26] According to the applicants, the future actions of the agents of persecution are speculative. The applicants say that, while the RAD is entitled to make reasoned inferences based on the evidence, it failed to indicate the evidence that supports its conclusion concerning the agents of persecution's motivation and ability to locate the applicants.

[27] In the applicants' view, the evidence before the RAD showed there are agents of persecution in Colombia that operate country-wide and some agents of persecution have the capacity to carry out attacks in all parts of Colombia and to infiltrate law enforcement and

prosecutorial authorities through corruption. The applicants say this evidence is relevant to the ability and motivation of illegal groups to find the applicants in the proposed IFAs. The applicants further say this relevant evidence directly conflicts with the RAD's determination.

B. *The Respondent's Submissions*

[28] The respondent says the applicants disagree with the RAD's assessment of the evidence, arguing that there are more dissidents than the RAD believes, that some are located in urban areas, including the proposed IFAs, and that even with reduced numbers dissidents may try to find the applicants. In the respondent's view, it is the RAD's role to weigh the evidence, not the Court's.

[29] According to the respondent, the applicants failed to adduce evidence to show there are dissidents in Bogota or Cartagena, and that the agents of persecution have a national reach and the capacity or motivation to penetrate or influence law enforcement and prosecutorial authorities throughout Columbia. The respondent says it was open to the RAD to prefer the documents in the country documents package over the applicants' evidence.

[30] With respect to the first prong of the IFA test, the respondent says the RAD recognized there was insufficient evidence that the FARC or dissident groups who threatened the applicants have declared them a military target. The respondent notes that the RAD found the FARC's ability to track people was scarce, and that aside from the incident where the agents of persecution were able to learn the applicants' whereabouts through a conversation with local law enforcement, there was no other evidence that they have the capacity to locate the applicants

nationally. The respondent argues that the fact no dissidents have contacted the applicants' relatives supports the RAD's conclusion that they can safely relocate to the proposed IFAs.

[31] With respect to the second part of the IFA test, the respondent notes that the RAD found the applicants have employment and education opportunities open to them in the proposed IFAs. In the respondent's view, the applicants have not supplied actual and concrete evidence of conditions that would jeopardize their life and safety in travelling to the IFAs or temporarily moving there.

V. Analysis

[32] This application for judicial review raises one primary issue: was the RAD's decision that the applicants have a viable IFA in either Bogota or Cartagena reasonable?

[33] The RAD's reasons are to be assessed as a whole and not on a microscopic basis (*Medina v Canada (Minister of Employment and Immigration)*, [1990] FCJ No 926 at para 4; *Lebedeva v Canada (Citizenship and Immigration)*, 2011 FC 1165 at para 38).

[34] This Court noted in *Huerta Morales v Canada (Citizenship and Immigration)*, 2009 FC 216, that:

> [11] …it is not appropriate to assess words in isolation – one must examine the whole of the decision. The question to be asked is whether, on a reading of the whole of the decision, one is left in doubt as to whether the Board applied the right test [for determining the existence of an IFA]. If so, then the matter is reviewable. If there is no doubt that the correct test was applied, then the decision is not reviewable.

[35] In this case, there is no doubt that the RAD applied the correct test for determining the existence of an IFA.

[36] The applicants' argument that there are more dissidents than the RAD believes, that some are located in urban areas (including the proposed IFAs), and that even with reduced numbers dissidents may try to find the applicants, is not convincing. This argument amounts to a request for the Court to reweigh the evidence before the RAD. The RAD's role was to weigh the evidence. It is not the function of the Court on judicial review to reweigh the evidence.

[37] The RAD acknowledged that the applicants had not identified the agents of persecution. It was reasonable for the RAD to identify the agents of persecution as the "FARC or any of its derivative or dissident groups" throughout the decision to reflect this.

[38] The RAD did not, as the applicants argue, make an implausibility finding which was not based on reasonably drawn inferences. It was reasonable for the RAD to conclude that if the agents of persecution were motivated and capable of finding the applicants, there would be evidence of their continuous efforts to find the applicants.

[39] The RAD did not make adverse findings of credibility. Ms. Estrada Mejia's credibility was not at issue. Rather, the determinative issue was the RAD's finding that the applicants did not supply sufficient evidence to satisfy their onus to demonstrate that the agents of persecution would locate them in the proposed IFAs.

VI. Conclusion

[40] The RAD's decision to dismiss the appeal and confirm the RPD's decision is within the range of possible and acceptable outcomes. The RAD's reasoning is internally coherent, transparent, and intelligible. Its decision is justified in relation to the relevant factual and legal constraints that bear upon the decision.

[41] This application for judicial review is therefore dismissed.

[42] No question of general importance is certified.

JUDGMENT in IMM-2239-19

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; and no question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2239-19
STYLE OF CAUSE:	CLAUDIA CECILIA ESTRADA MEJIA, JUAN MANUEL ARANGO ESTRADA AND ALEJANDRO ARANGO ESTRADA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 19, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	BOSWELL J.
DATED:	FEBRUARY 19, 2020

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