

Date: 20080328

Docket: IMM-2976-07

Citation: 2008 FC 401

Ottawa, Ontario, March 28, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

**ROSMIRA GERARDO DE VON
JEFFREY VON
MEE LAY VON GERARDO**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Rosmira Gerardo De Von, her son Jeffrey Von, and her daughter Mee Lay Von Gerardo, are citizens of Colombia who claimed refugee protection, although Jeffrey withdrew his claim before it was heard. Ms. Gerardo De Von and her daughter claimed to have a well-founded fear of persecution from the Fuerzas Armadas Revolucionarias de Colombia (FARC). Their claims were dismissed by the Refugee Protection Division of the Immigration and Refugee Board (RPD) because it found that their testimony was not credible and that, in any event, they have a viable internal flight alternative in Bogota.

[2] This application for judicial review of that decision is dismissed because the RPD made no reviewable error in coming to those conclusions.

The Nature of the Applicants' Claim

[3] Ms. Gerardo De Von and her husband owned and operated a restaurant in Cartagena, Colombia.

[4] In December of 2000, Ms. Gerardo De Von's husband allegedly received threats and extortion demands from three men, who identified themselves as members of the FARC. Neither Ms. Gerardo De Von nor her husband reported these threats to the police because they believed that the FARC had informants within the police forces. Ms. Gerardo De Von and her husband decided to leave Colombia for the United States.

[5] Ms. Gerardo De Von and her husband have three children: Jeffrey, Elaine, and Mee Lay. The family left Colombia for Miami, Florida, departing as follows:

- Jeffrey and Elaine left on January 18, 2001;
- Mee Lay left on February 1, 2001, after renewing her passport on January 23, 2001;
- Ms. Gerardo De Von left on February 16, 2001; and
- Ms. Gerardo De Von's husband left in March of 2001, after collecting money owed to him by customers.

[6] The family sought asylum in the United States. On January 17, 2006, their claims were denied on the basis of an “adverse credibility finding.”

[7] On October 3, 2006, Ms. Gerardo De Von, her daughter, Mee Lay, and her son, Jeffrey, travelled to Canada. They later claimed refugee protection. Ms. Gerardo De Von’s husband remained in the United States. He has since been deported to Colombia.

The Decision of the RPD

[8] On the issue of credibility, the RPD expressed its concerns regarding five aspects of the applicants’ claim:

1. The RPD noted the delay in leaving Colombia following the alleged threats by the FARC. The RPD pointed specifically to the two-month delay of Ms. Gerardo De Von’s husband, observing that it did not stand to reason that he would run the risk of being killed so that he could collect money from his customers. Given that the FARC had shown that they were watching the family, they would have taken notice that his wife and children had left Colombia between January 18 and February 16, 2001. The RPD concluded that this delay belied the applicants’ subjective fear.
2. The RPD noted the return of Ms. Gerardo De Von’s son, Jeffrey, to Colombia and his approximate one-month stay there. While the RPD acknowledged that Ms. Gerardo De Von did not want him to go, the RPD questioned why her husband would not stop him. Instead, her husband paid for the trip. The RPD concluded that Jeffrey’s safe return cast serious

doubt on the applicants' claim that the FARC would kill them upon their return to Colombia.

3. The RPD noted the two-week stay of Ms. Gerardo De Von's husband in Colombia following his deportation from the United States. Given Ms. Gerardo De Von's testimony that her husband was of Chinese ancestry and therefore easily recognizable, the RPD noted that the likelihood of the FARC finding out about his return was even higher, despite the short duration of his stay. The RPD concluded that the absence of any evidence that the FARC contacted, or took action against, Ms. Gerardo De Von's husband cast doubt on whether there was cause for the applicants to be afraid and on whether the FARC was still interested in them.
4. The RPD noted the contradiction between the narrative contained in Ms. Gerardo De Von's personal information form, her point of entry interview, and her oral testimony. Ms. Gerardo De Von's personal information form and her point of entry interview were silent as to whether her husband had paid any money to the FARC and indicated only that he had refused the FARC's demands; however, she testified that her husband had in fact made such payments in January and February of 2001. The RPD concluded that this contradiction added to the incredulity of the applicants' claim.
5. The RPD noted the fact that the applicants' asylum claim in the United States had been rejected on the basis of an "adverse credibility finding" added to its credibility concerns. Ms. Gerardo De Von's disposal of the materials relating to that claim was viewed with suspicion by the RPD, who observed that the materials may have contained information detrimental to the claim being made in Canada. The RPD concluded that, while not

determinative of the issue of credibility, the earlier negative finding gave an indication of the applicants' lack of credibility.

[9] Taking all of the above matters together, the RPD found that the applicants' claim was not credible.

[10] "Even if credibility [was] not an issue," the RPD went on to consider the availability of an internal flight alternative. The RPD found that there was a viable internal flight alternative in Bogota, noting that there had been prior, uneventful re-availment experiences by other family members and that six years had passed since the applicants left Colombia. After noting the size of Bogota and its distance from the applicants' home in Cartagena, the RPD concluded that there was no serious possibility that the applicants would be discovered. The RPD did note that reasonable precautions would have to be taken by the applicants when informing relatives of their change in location. The RPD also noted that the applicants had experience in running a business and that it was reasonable to expect that Ms. Gerardo De Von's husband would return to the family as he was without status in Venezuela.

The Standard of Review

[11] The recent jurisprudence of this Court was to the effect that the RPD's conclusions on matters of fact, including findings of credibility and the existence of an internal flight alternative, were reviewable on the standard of patent unreasonableness.

[12] Counsel were not prepared to address at the hearing the impact of the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9. Specifically, they were asked to address whether the appropriate standard of review to be applied to the RPD's findings of fact remains as set out in paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, or is reasonableness, or whether the two standards are similar in this context.

[13] After hearing argument with respect to the substantive issues, I advised counsel that it was not necessary for them to provide written submissions on the standard of review. I am satisfied that the RPD's findings withstand scrutiny on any standard of review. It is therefore not necessary to further consider the issue of standard of review.

The RPD's Credibility Findings

[14] In my view, the RPD articulated clear reasons for its findings, which were based upon the evidence. Specifically:

1. The threat said to be made by the FARC was that, if Ms. Gerardo De Von's husband failed to pay a certain amount of money to the FARC, he or other family members would be killed. Given the nature of the threat, it was open to the RPD to draw a negative inference from the fact that Ms. Gerardo De Von's husband remained in Cartagena for two months collecting accounts.
2. Ms. Gerardo De Von's son returned to Colombia for approximately 6 weeks, during which time he stayed with family members and encountered no difficulty. Given the length of the son's stay with family members and the lack of evidence that he was

hiding during that time, the RPD's conclusion that this sojourn cast doubt on the validity of the claim that the FARC remained interested in the family was reasonable.

3. The evidence was that, for one of the two weeks following his deportation to Colombia, Ms. Gerardo De Von's husband returned to Cartagena. Ms. Gerardo De Von and her daughter both testified that he was physically very recognizable and that he had an uncommon surname. On the evidence, it was not unreasonable for the RPD to draw a negative inference from that stay.
4. The failure of Ms. Gerardo De Von to state in her personal information form that her husband had made payments to the FARC was a material omission. When confronted with this omission, Ms. Gerardo De Von's testimony was vague. The RPD's conclusion that this harmed Ms. Gerardo De Von's credibility was reasonable.
5. When further questioned about why she disposed of the documents related to the asylum claim in the United States, Ms. Gerardo De Von conceded that her husband had given untrue evidence in that proceeding. This reasonably gave rise to the RPD's concerns.

[15] I conclude that the RPD properly articulated the reasons for its credibility findings. The RPD's ultimate conclusion as to credibility cannot be said to be outside the range of acceptable outcomes that are defensible on the evidence before the RPD. The decision was, therefore, reasonable.

The Finding of an Internal Flight Alternative

[16] Because the RPD found no risk to the applicants upon their return to Colombia, and therefore no well-founded fear of persecution, it is not necessary to consider its finding that an internal flight alternative existed in Bogota. However, for completeness, I make the following brief comments.

[17] The applicants submit that the documentary evidence establishes that there is no viable internal flight alternative in Colombia.

[18] As conceded by the Minister, the documentary evidence presents a mixed picture. A request for information document contains the following information:

[T]he guerrillas and paramilitary groups often employ highly sophisticated data bases and computer networks. An individual who is threatened in one area of the country will not be notably safer by relocating to another. Depending on the nature and reasons for the threat, the victims can be pursued relentlessly. There are countless stories of men and women receiving threats in Bogotá or Medellín after relocating from another area and attempting to live anonymously in the big city. Many have been killed after seeking refuge in another part of the country. There are also cases of people leaving the country for a period of months or years, and then being killed after returning. Memories are long and data is systematically recorded and analysed. [footnotes omitted and emphasis added]

[19] By contrast, the same document also states:

[R]elocating elsewhere in Colombia can usually bring some increased safety, unless one is a national figure [...]

While both the FARC and AUC do have the capacity to act throughout Colombia, the “overwhelming majority of threatened and displaced persons are of limited interest to [these groups] once they stop their community/political activities and leave” their region [...]

For [refugee] applicant[s] to use the claim that they cannot flee internally, [they] must satisfy the interviewing officer that they have a stature and role in the conflict that would justify a high level of motivation in FARC or the AUC to follow them across a large country [...]

[T]he likelihood of relocation ending the threat posed by an armed group is dependent on two principal factors. First, one must consider the reach of the armed group in question, with the FARC for example having a significantly higher capacity to act throughout the country than the ELN. Second, one must assess the reasons why an individual is being sought. If, for example, the targeted individual is a witness in a court case and can identify an important member of an armed group, every effort will be made to locate and kill this person, regardless of where he or she may be hiding. However, even in instances where there is less motivation to track down threatened individuals, [...] they would still have to relocate to a new residence if they live in Bogotá, or leave their hometown if they reside elsewhere. [footnotes omitted and emphasis added]

[20] Based upon the latter evidence, and its finding that the FARC is no longer interested in the applicants, the RPD's conclusion that an internal flight alternative existed was grounded in the evidence and was not unreasonable.

[21] However, the RPD's analysis of this issue was sparse. Had this been the only basis for dismissing the applicants' claim, the RPD's analysis may well not have satisfied the requirement that the decision be properly justified.

Conclusion

[22] For these reasons, the application for judicial review will be dismissed. Counsel posed no question for certification, and I agree that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2976-07

STYLE OF CAUSE: ROSMIRA GERARDO DE VON ET AL., Applicants
and
MINISTER OF CITIZENSHIP AND IMMIGRATION,
Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 18, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: MARCH 28, 2008

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