

Date: 20080716

Docket: IMM-5290-07

Citation: 2008 FC 872

Calgary, Alberta, July 16, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**RAVINDER KAUR SANDHU
RAYINDER SINGH SANDHU
SATIPRIT SINGH SANDHU**

Applicant(s)

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent(s)

REASONS FOR ORDER AND ORDER

[1] The Applicants in the present Application are a mother (the Principal Applicant) and her two children who are seeking refugee protection in Canada because of the persecution that they suffered as immigrants of Indian descent living in Argentina. Their claim was rejected by the Refugee Protection Division of the Immigration and Refugee Board (RPD) because the RPD found that the Applicants have an internal flight alternative (IFA) in the city of Buenos Aires.

[2] The Principal Applicant was originally a citizen of India, who moved to Bolivia in 1994 to marry her husband. She and her husband lived in Bolivia until 1997, during which time the two

minor applicants were born, before moving to Argentina because they were receiving death threats. The Principal Applicant is now a citizen of Argentina. After their arrival in Argentina, the Principal Applicant and her husband opened a general grocery store in the town of Trancas, Tucman province. They were very happy living in Argentina until they began receiving threats from people telling them to close down their grocery store and leave Argentina. Their store was also looted a number of times. Although she and her husband reported these threats and lootings, the police did not provide them with assistance. As the situation got worse, the Principal Applicant and her husband hired local people in Trancas to assist with their grocery store so that they would not be noticed in the store by customers, but this did not improve the situation. Her family was harassed any time they went out and her children were harassed at school.

[3] In March and April of 2006, their grocery store was looted by people who told them not to involve the police and to leave Argentina otherwise their children would be abducted and killed. At the end of April 2006 the Principal Applicant's husband was kidnapped and she and her children received threats to leave the country. She then consulted with some friends who advised her to leave Argentina. The Applicants arrived in Canada on May 3, 2006.

[4] At the hearing, the Principal Applicant testified that the reason she and her family were targeted was because they were Indian immigrants:

Q. Okay. So what was the reason for your problems in Argentina?

A. I don't know. They give a hard time to all those people who are from India and living there. They don't like them.

Q. Okay.

A. They are biased against – they are biased. They don't like them.

(Tribunal Record, p.55)

[5] In its decision rejecting the Applicants' claim the RPD did not make a clear negative credibility finding with respect to the Applicants, and, therefore, it is presumed to have accepted all of their evidence. However, the RPD came to the conclusion that the Applicants' had an IFA in Buenos Aires. The Applicants argue that in coming to this conclusion the RPD misconstrued the Applicant's claim and, in so doing, arrived at a conclusion that is not supported in the evidence. I agree.

[6] The RPD canvassed the documentary evidence with respect to anti-immigrant sentiment in Argentina and found that many immigrants experience severe discrimination, including those living in Buenos Aires:

Many immigrants complain of discrimination and racism in Argentina which drew large flows of immigrants from neighbouring countries during the relative economic prosperity and stability of the early to mid 1990s, and in earlier periods as well. According to a survey carried out in 2000 by the New Majority Studies Centre, 65 percent of Bolivian respondents said that they did not feel safe in Argentina. In 2000, more than 80 Bolivian families were the victims of a wave of violent assaults. The attackers broke into the homes of immigrants who were taking of the summer of homes of middle class and wealth Buenos Aires residents, on the outskirts of the city. The Bolivians were beaten, tortured with electric shocks for several hours, robbed and told that they had better not report the incident, according to the Buenos Aires Province of the public prosecutor.

[...]

During his investigations, a sociologist said he found in Argentina's public hospitals "immigrants seeking medical attention are met with

mountains of red tape, and once they deal with that, find themselves treated by very prejudiced doctors who consider them inferior.” Researchers also found a difference in treatment or outright acts of discrimination from other public institutions such as the police and schools.

(Decision, pp. 3-4)

Based on this information, the RPD accepted that racism and discrimination exists in Argentina and, in relation to the Applicants, the RPD found as follows:

Based upon the foregoing documentary evidence, I accept that some more recent immigrants to Argentina have been the victims of societal discrimination and abuse by reason of their former country of origin and/or because of their race or ethnicity. Based upon the principal claimant’s and her husband’s East Indian race or ethnicity, I find it plausible that they and the minor claimant’s may have been the victims of such anti-immigrant or racial discrimination while operating a grocery store in Trancas, in the state of Tucuman, Argentina between 1997 and May 2006. Based upon this documentary evidence and the principal claimant’s testimony, I also find it plausible that the principal claimant and her husband may have been the victims of criminal lootings or robberies that took place in their grocery store business in Trancas, Argentina. However, one of the determinative issues for me in the claimants’ refugee protection claims was whether the claimants have a viable internal flight alternative in Argentina, outside of province of Tucuman, Argentina, as this issue was raised with the claimants before and at their refugee protection claim hearing. For the following reasons, I find there is no serious possibility of the claimants being subjected to serious harm amounting to persecution if they were to relocate to the Buenos Aires, the capital city of Argentina, where a viable internal flight alternative exists for the claimants.

At the hearing, the principal claimant testified that there is no viable internal flight alternative for her and the minor claimants in Buenos Aires, Argentina because these same acts of racial or country of origin discrimination against foreigners and immigrants take place everywhere in Argentina – and that her sons could be the victims of a kidnapping like her husband was. The principal claimant also testified that she and her husband received anti-immigrant or racial

receiving threats in Argentina and had their grocery store business in Trancas was looted or robbed approximately three or four times – and a few months prior to her husband’s kidnapping in April 2006 and her and the minor claimant’s departure from Argentina in May 2006.

According to the principal claimant’s PIF, all of the foregoing immigrant or racially-motivated problems experienced by the claimants occurred in the province of Tucuman, Argentina and not elsewhere in Argentina – such as in Buenos Aires. In addition, according to their PIFs, the claimants have been away from Argentina since May 3, 2006 – a period of approximately one and one-half years. According to her PIF, the principal claimant resided in Bolivia between June 1994 and September 1997, but she is not a national or citizen of Bolivia. Although, the principal claimant is of East Indian ethnicity, she cannot be classified as an indigenous national of Bolivia. There is no evidence before me that would indicate that those local people or criminals in Trancas, Tucuman province that threatened the claimants, looted their grocery store and kidnapped the principal claimant’s husband in April 2006 would have any interest in pursuing the claimants if they were to relocate the Argentine capital city of Buenos Aires. For these reasons, I find on a balance of probabilities that these same anti-immigrant or racist and criminal elements in Trancas, in the province of Tucuman, Argentina would have no interest in pursuing [sic] the claimants and would have no knowledge that the claimants were residing in Buenos Aires, if they were to relocate to Buenos Aires.

[Emphasis added]

(Decision, pp. 5 – 6)

[7] With respect to the Applicants’ claim for protection, the RPD was required to determine whether there is more than a mere possibility they would be persecuted should they return to Argentina. The Applicants bears the evidentiary burden to prove that this risk exists and that it would be present throughout Argentina. Indeed, the RPD found that this prospective risk of persecution does exist for the Applicants in Argentina because of their combined identity as

immigrants from Bolivia and as East Indians. However, while the RPD accepted the Principal Applicant's evidence that there is no internal flight alternative anywhere in Argentina, the RPD gave this evidence no weight based on a finding that the past violence suffered is exclusive to the location in which the Applicants were living, and, as such, would not reoccur in Buenos Aires. On this basis, Buenos Aires is identified as a safe haven. In my opinion these central findings are fundamentally flawed.

[8] The evidence produced by the Applicants of past persecution contains no basis for finding that violence arising from racism in Argentina occurs by location. The thrust of the evidence is that overt and violent racism occurs throughout Argentina against people of colour. Indeed, there is no evidence that overt and violent racism does not occur in Buenos Aires. Therefore, in my opinion, there is no evidence upon which the RPD could base its finding that Buenos Aires is a safe haven for the Applicants.

[9] As a result, I find that the RPD's decision is not based on the evidence on the record, and, thus, is made in reviewable error.

ORDER

THIS COURT ORDERS that:

Accordingly, the RPD's decision is set aside and the matter is referred back to a differently constituted panel for redetermination.

There is no question for certification.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5290-07

STYLE OF CAUSE: RAVINDER KAUR SANDHU, RAYINDER SINGH SANDHU, SATPRIT SINGH SANDHU v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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