

Date: 20081216

Docket: IMM-2839-08

Citation: 2008 FC 1381

Toronto, Ontario, December 16, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

VICTOR HUGO LARGO CARDENAS and DEISY JOHANNA LOPEZ CESPEDES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are adult male (Cardenas) and adult female (Cespedes) both citizens of Colombia. Their claim for protection as refugee claimants was rejected in a written decision of a Member of the Immigration and Refugee Board dated June 9, 2009. This is a judicial review of that decision.

[2] For the reasons that follow I find that the application is dismissed.

[3] The Applicants' claim for protection is based upon political opinion and membership in a particular social group. Particularly, the female Applicant's mother is said to have been a social worker and community activist in Columbia. She is alleged to have received a series of threats from FARC guerrillas, including at least one threat directed to her daughter, the female Applicant. Evidence concerning conditions in Colombia and the risk to persons of profiles like that said to be similar to the female Applicant's mother, was received. Certificates from persons in Colombia as to the mother's circumstances were put evidence.

[4] The female Applicant's mother appears to be presently a resident of the United States in the Miami area. The mother fled Colombia in about 2000 and for several years has resided in the United States where she married a United States citizen. The female Applicant preceded her mother in coming to the United States having lived there for about one year before her mother's arrival. The female Applicant and her mother made a joint claim for asylum in the United States. That claim was denied.

[5] While in the United States the female Applicant married the male Applicant, also a citizen of Colombia, who was living without status in the United States. The two Applicants came to Canada in 2007 and made their claim for refugee status here.

[6] The basis of the refugee claim has to do with the female Applicant's mother. It is alleged the mother made certain remarks about FARC and drug trafficking at a conference when she was in Colombia which resulted in threats of violence from FARC. The female Applicant alleges that it

was at her mother's insistence, for fear of threats to the female Applicant, that she fled Colombia for the United States. When her claim for asylum in the United States was unsuccessful, she came to Canada.

[7] The Member of the Board determined that the female Applicant has not established that it was more likely than not that, if she returned to Colombia she would be pursued by FARC. The male Applicant stated in examination at the hearing before the Board that he had no fear and no one wanted him if he returned to Colombia. It was because he was married to the female Applicant that he feared returning to Colombia.

[8] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] S.C.R. 190 has established that in matters not pertaining to legal questions but to matters where discretion and weighing evidence is concerned, a standard of reasonableness is to be applied, with deference being given to tribunals whose expertise lie in the subject matter under review. This is such a matter. The evidentiary issues, while involving the female Applicant's mother, had to come down to whether the female Applicant, not her mother, had been threatened and the consequences flowing from that. There is only one scant reference to a threat directed to the female Applicant and that is in a narrative provided by her mother, similar to a Canadian PIF, to the United States authorities. The mother herself has provided no evidence of any kind in the proceedings before the Board in Canada which is remarkable since she lives in the United States and one would have presumed that she would be supportive of her daughter's claim.

[9] Applicants' counsel asks this Court, and previously the Board was asked, to draw a number of inferences from the fact that the daughter stayed in the United States and was joined by her mother. Counsel pointed to numerous occasions during the oral testimony of the female Applicant before the Board where corroborative evidence was asked for and none given. The Board was right, given the scanty evidence, to seek corroboration and not simply to draw inferences.

[10] Counsel for the Applicants argued that the Board Member applied the wrong test as to the burden of proof. The Member at one point in the Reasons said that the evidence was weighed on the basis as to whether "it was more likely than not" that those threatening the female Applicant would continue to pursue her. Counsel for the Respondent agreed that the test has been stated in the cases more correctly as "seriously possibility" or "more than a mere possibility" and pointed out that the Member stated in conclusion that the test applied was "...on the balance of probabilities, (is there) a serious possibility that they would be persecuted..."

[11] I am satisfied that the Member was addressing the correct test and that the evidence as to persecution or risk to the two Applicants was, at best, very scanty and provides no basis even on the "more than a mere possibility" standard for supporting a refugee claim.

[12] The application will be dismissed. No Counsel requested certification and none will be made. There is no special reason to award costs.

JUDGMENT

For the Reasons given:

1. The application is dismissed;
2. There is no question for certification;
3. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2839-08

STYLE OF CAUSE: VICTOR HUGO LARGO CARDENAS and DEISY JOHANNA LOPEZ CESPEDES v. MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 16, 2008

REASONS FOR JUDGMENT AND JUDGMENT: HUGHES, J.

DATED: December 16, 2008

APPEARANCES:

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