

Federal Court



Cour fédérale

Date: 20100409

Docket: IMM-2510-09

Citation: 2010 FC 364

Ottawa, Ontario, April 9, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**KELLY JOHANNA BARRERO,
NICOLE CASTILLO AND
CAMILA BARRERO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Kelly Johanna Barrero came to Canada in 2008. She claimed refugee protection based on her fear of persecution in Colombia. She maintains that the Revolutionary Armed Forces of Colombia (FARC) tried to enlist her assistance in recruiting other young people to its cause. Having left Colombia in 2001 when she was 13, she spent the intervening years in the United States where her two children were born.

[2] A panel of the Immigration and Refugee Board denied Ms. Barrero's claim for a lack of evidence. Ms. Barrero argues that the Board erred in its treatment of the evidence and asks me to order a new hearing before a different panel. I agree that the Board erred and will grant this application for judicial review.

II. Analysis

(a) Factual background

[3] From 1999 to 2001, Ms. Barrero was involved with her student council at school. A man approached her to persuade some of her classmates to attend meetings he had organized. She did. At the meetings, the man presented lectures and showed videos of youths marching in uniforms. The videos included information on producing and selling narcotics to finance the group. After she stopped going to the meetings, the man came to her house to persuade her to join the group. He threatened her and her mother when they refused. Ms. Barrero went to live with her grandmother until she obtained a visa to travel to the United States.

(b) The Board's decision

[4] In rejecting Ms. Barrero's claim, the Board noted the following areas of concern with the evidence:

- Ms. Barrero was not sure whether the person who tried to enlist her assistance was associated with FARC or some other group;
- Ms. Barrero stated that her grandmother had informed her in 2008 that six young people from her high school had gone missing but, given that this happened seven years after she left Columbia, there was no apparent connection with the events in 2001;
- There was no reason to believe that the man who approached Ms. Barrero in 2001 would still be looking for her or be able to find her if she returned to Colombia and lived in Bogota or Cartagena.

(c) The evidence

[5] Ms. Barrero testified that she was sure the man who approached her was with FARC. She recognized the uniforms in the video from the television news. The Board member asked her if the group might have been the United Self-Defence Forces of Columbia (AUC), another paramilitary group, but Ms. Barrero said she had not heard of that group. Still, the Board concluded from her evidence that the group “pretty well could have been the AUC, which has largely demobilized”. I do not see any support for that conclusion in the evidence.

[6] Regarding the missing youths, the applicant had said that her grandmother provided her with this information in 2008, not that the youths had disappeared in 2008. The Board erred when it concluded that the disappearances had taken place seven years after Ms. Barrero left Colombia.

[7] As for the likelihood that the agents of persecution would be interested in her or capable of finding her, the Board relied on its own appreciation of what was plausible in the circumstances. It noted that there was no certainty that the man who originally approached her was still alive. He had not approached her step-father's family, still in Colombia. Further, if her family kept her whereabouts secret, no one would be able to find her when she returns.

[8] The Board's analysis is based on the assumption that the risk to Ms. Barrero derives from a single individual, rather than an organized paramilitary group. Her evidence was clear that it was FARC she feared. There is nothing inherently implausible about Ms. Barrero's characterization of FARC as having a long institutional memory, an extensive network of contacts, and the ability to persuade family members to disclose the whereabouts of loved ones.

[9] In my view, the Board's conclusion that there was no objective basis for Ms. Barrero's claim is unreasonable in the sense that it does not fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47).

III. Conclusion and Disposition

[10] In my view, the Board's conclusion was unreasonable because it was not supported by the evidence before it. Accordingly, I must grant this application for judicial review and order another panel of the Board to reconsider Ms. Barrero's claim. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2510-09

STYLE OF CAUSE: BARRERO, ET AL v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: January 12, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: April 9, 2010

APPEARANCES:

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