

Federal Court



Cour fédérale

Date: 20101012

Docket: IMM-1851-10

Citation: 2010 FC 1006

Ottawa, Ontario, October 12, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

WILLINGTON VIVEROS VELES

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division (the Board), dated January 21, 2010, where Wellington Viveros Veles (the applicant) was found not to be a Convention refugee or a person in need of protection.

[2] The application for judicial review shall be dismissed for the following reasons.

[3] The applicant is a refugee claimant from Colombia who fears persecution by the Revolutionary Armed Forces of Colombia (FARC).

[4] The applicant decided to flee Colombia out of fear for his safety in July 2001. He stayed in the United States for a period of approximately seven years before coming to Canada on May 12, 2008, where he claimed asylum.

[5] The main issue in this case is whether or not the determination by the Board that the applicant had an Internal Flight Alternative (IFA) in Cartagena is reasonable.

[6] The standard of review applicable to issues relating to an IFA is reasonableness *Guerilus v Canada (Citizenship and Immigration)*, 2010 FC 394. Consequently, the Court will only intervene if the decision does not fall within “a range of possible, acceptable outcomes which are defensible in respect of the facts and the law” (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, para 47).

[7] In *Thirunavukkarasu v Canada (Employment and Immigration)*, [1994] 1 FC 589, the Court stated :

The question is whether, given the persecution in the claimant’s part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?

An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or staying there.

[8] In the case at bar, I find that the Board stated and applied correctly the two-pronged test for an IFA in Cartagena.

[9] First, the Board did not accept that the incidents – the disappearance of the applicant's brother, Jorge in 2005; the death of another brother, Hector in 2006; and the assault on his father in 2005, were linked to the FARC or to the applicant.

[10] The Board gave cogent reasons to come to such a conclusion (see paras 15 to 17 of the decision).

[11] Second, the Board asked itself if FARC would be a threat to the applicant if he were to move to Cartagena. Following an analysis of the alleged events that took place in 2001 and a subsequent incident with the applicant's sister combined with the country conditions, the Board determined that the applicant's fear in Cartagena was not personal but generalized risk.

[12] There is no reason to substitute my opinion to the Board's conclusion on this first part of the test.

[13] Third, the Board went on to see if it would be reasonable for the applicant in the circumstances to relocate to Cartagena.

[14] In its decision the Board stated at paragraph 27:

The claimant is well-placed to seek safety in another Colombian city such as Cartagena. Each is young and has a wide variety of work experience such as an auto repairs, construction and sales. Certainly, it would be a big step to move to a new location but the claimant has already indicated his willingness to make such a step by fleeing first to the United States than Canada, where he had to start a new job, as well as learn a new language and culture. The claimant would not be required to encounter great physical danger or to undergo hardship in traveling to or staying in Cartagena. In this case, the claimant could reasonably be expected to take advantage of an internal flight alternative in Cartagena.

[15] There is no reviewable error here also.

[16] Fourth, the Board distinguished properly the persuasive decision MA4-04467 of the Refugee Protection Division with the facts it had to consider in the case at bar (para 29 of the decision).

[17] In conclusion, I find that the determination by the Board that the applicant had an IFA in Cartagena was reasonable.

[18] No question of general importance was submitted and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

APPENDIX

Immigration and Refugee Protection Act, S.C. 2001, c. 27.

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et

inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1851-10

STYLE OF CAUSE: WILLINGTON VIVEROS VELES
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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DATED: October 12, 2010

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