

Federal Court



Cour fédérale

**Date: 20101021**

**Docket: IMM-504-10**

**Citation: 2010 FC 1035**

**Ottawa, Ontario, October 21, 2010**

**PRESENT: The Honourable Mr. Justice Crampton**

**BETWEEN:**

**GONZALEZ OSPINA, Jose William**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Jose William Gonzalez Ospina is a citizen of Colombia. He claims to have fled Colombia on the basis that he feared harm from the United Autodefenses of Colombia (AUC). He arrived in Canada in 2007 and claimed refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

[2] In January 2010, the Refugee Protection Division (RPD) of the Immigration and Refugee Board rejected his claim.

[3] The Applicant seeks to have the decision set aside on the basis that the RPD erred by:

- i. concluding that he had not established a nexus to any basis for protection contemplated by section 96;
- ii. finding that the objective basis for his claims was not credible or otherwise well-founded;
- iii. concluding that he lacked a subjective fear of persecution;
- iv. ignoring or misinterpreting important evidence, in reaching its conclusions regarding the adequacy of state protection and the availability of an internal flight alternative (IFA) in Bogota; and
- v. concluding that he did not face a personalized risk contemplated by section 97 of the IRPA.

[4] For the reasons that follow, this application is dismissed.

**I. Background**

[5] Mr. Ospina claims that in October 2001, he and his family were confronted at their family farm near Cali, Columbia by three armed members of the AUC who demanded that the Applicant's father pay them 40 million pesos. Those individuals also threatened to take the Applicant hostage in order to ensure payment. After negotiating with the men, the Applicant's father persuaded them to accept 10 million pesos in two equal instalments.

[6] The day before the first instalment was to be paid, the Applicant's father reported the extortion to the National Police and the Anti-Kidnapping and Extortion Unit of Investigation (GAULA). The GAULA set up an ambush at the family farm, resulting in a well-publicized fire-fight in which the AUC men were repelled and some of them were wounded. Afterwards, the Applicant and his family did not return to the farm.

[7] Shortly after that ambush, the Applicant claims that he and his family began receiving threatening phone calls and letters at their home in Cali. In the first of those letters, dated December 16, 2001, the Applicant's father and his family were declared a military target. In a second letter, dated June 2002, they were ordered to pay the sum of 100 million pesos. The Applicant's father reported those letters to the authorities and, together with the Applicant and other members of his family, petitioned a number of other institutions in Colombia for protection. Those petitions were unsuccessful.

[8] In August 2002, the Applicant claims that he was approached by two men while waiting at a bus stop. They told him that they belonged to the AUC and that his father now owed them 100 million pesos. They threatened to kidnap him, but he was able to escape. A few days later, he and his family received a "funeral card" in the mail, which suggested that they would be massacred, "because those who are not with us are against us". These incidents were also reported. After the Applicant's father refused a recommendation by the police that he and his family relocate to another city, the Applicant fled to the United States in February 2003. He remained there until he came to Canada in 2007. His parents remained in Colombia until 2007, when they departed for the United States under the sponsorship of the Applicant's sister.

## **II. The Decision under Review**

[9] The RPD rejected the Applicant's claim for protection on multiple grounds. It characterized the determinative issue as being the Applicant's credibility as to the well-foundedness of his stated fears. However, it also found that the Applicant had not established a nexus to a ground for protection contemplated by section 96 of the IRPA or a personalized risk contemplated by section 97. In addition, it found that he had not established a subjective fear of persecution and that, in any event, he had a viable IFA in Bogota.

[10] With respect to the nexus issue, the RPD concluded that the AUC individuals in question had acted as common criminals, for purposes other than political. The RPD added that, in any event, its analysis regarding the objective well-foundedness of the Applicant's stated fears, as well as its analysis regarding his subjective fear, were applicable to both sections 96 and 97.

[11] The RPD then turned to the Applicant's credibility and the objective well-foundedness of his stated fears. In short, the RPD found that the absence of any follow-up by the AUC on its threats prior to when the Applicant departed in February 2003 and prior to when his parents departed in 2007, was "incredible in light of the allegations of the claimant." After also noting that the Applicant's father "was able to sell the farm in 2005 literally under the nose of the AUC," the RPD stated that it was unable to conclude that the Applicant is a target of the AUC.

[12] Against this backdrop, the RPD also disbelieved the Applicant's claim that he was threatened by two representatives of the AUC at a university bus stop. In addition, the RPD found that the letters and other correspondence that the Applicant claims was sent to his family by the AUC likely "were made up to embellish the [Applicant's] claim."

[13] The RPD then considered the Applicant's delay in seeking asylum. The RPD noted that the Applicant spent 14 or 15 days in Mexico and approximately four years in the United States without ever having sought asylum and without ever having even consulted a lawyer. The RPD rejected the Applicant's explanation that he thought that only a politician could claim asylum. As a result, the RPD concluded that the Applicant lacked a subjective fear of persecution or harm at the hands of the AUC.

[14] The RPD then identified the existence of an IFA in Bogota as an independent basis for rejecting the Applicant's claims. In considering this issue, the RPD reviewed various country documents, almost all of which dealt with the Revolutionary Armed Forces of Colombia (FARC). The RPD found this documentation to be "indicative of the state of the AUC ... which ... [has] largely deteriorated into small bands of outlaws." Based on its view that the Applicant would not be at risk from the FARC in Bogota, the RPD concluded that the Applicant also would not be at risk from the AUC in Bogota.

[15] Finally, the RPD found that the risk identified by the Applicant was generalized, rather than personalized, as contemplated by section 97 of the IRPA. In short, the RPD had concluded that the AUC now consists of "roving bands of criminals bent on drug trafficking and extortion rather than any semblance of political purpose." Accordingly, it characterized the fear claimed by the Applicant as a fear of being a victim of crime, as a member of a group of people perceived to be wealthy in Colombia. The RPD described this risk as being a generalized risk faced by a sub-group (i.e., landowners) of the population at large, and thereby excluded under paragraph 97(1)(b).

### **III. Standard of review**

[16] The issues raised by the Applicant are issues of fact or of mixed fact and law. These issues are reviewable on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paras. 51-56). In short, the RPD's decision will stand unless it does not fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47).

### **IV. Analysis**

#### *A. Did the RPD err by concluding that a nexus to a Convention ground had not been established?*

[17] The Applicant alleges that the RPD erred (i) by ignoring extensive documentary evidence in finding that he had not established a nexus to his claim of having been persecuted on political grounds; and (ii) by failing to provide any evidence to support this conclusion.

[18] The documentary evidence to which the Applicant referred in his written submissions describes extensive criminal activities and human rights abuses perpetrated by the AUC and other paramilitary organizations. References to politically motivated activities are scarce. Importantly, none of that evidence refers to any political activities engaged in by the Applicant or his family. It also does not suggest that the Applicant or his family may have been targeted as a result of their perceived political views.

[19] As to the second of the two alleged errors mentioned above, I am satisfied that the RPD did in fact provide evidentiary support for its conclusion on the nexus issue. In this regard, it specifically based its conclusion on (i) the AUC's "action of extortion and acting like common criminals in threatening their targets, the claimant's family"; and (ii) "the fact that the subject AUC men were

actually ambushed and attacked by a joint police-GAULA-armed force, on the basis of complaints made by the claimant and his father”.

[20] Based on the foregoing, and in the absence of any evidence whatsoever to suggest that the Applicant and his family were targeted because of their actual or imputed political views, I am satisfied that it was reasonably open for the RPD to find that the Applicant and his family had not been targeted because of their political views, but because of their perceived wealth as landowners (*Montoya v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 63, at paras. 17 to 24) and because of their failure to accede to the AUC’s extortionist demands.

B. *Did the RPD err in assessing the Applicant’s credibility and the well-foundedness of his stated fears?*

[21] The Applicant alleges that, in concluding that his testimony was not credible, the RPD ignored significant amounts of evidence, including his family’s denunciations to the police; police reports referencing the incident at the bus stop, the threatening letters and the “funeral card”; a news report of the police ambush at his family’s farm; a letter from the Representative’s Office to the Sixth Specialized Prosecutor corroborating the foregoing matters; a letter from the Interior Ministry denying protection to the family; and a 2004 Order of the Superior Court of the Judicial District of Cali ordering protection of the Applicant’s father and family.

[22] The Applicant further submits that the RPD (i) relied on plausibility findings, particularly with respect to the threatening letters, funeral card and bus-stop encounter mentioned above, and (ii) ignored the presumption of truthfulness outlined in *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302.

[23] I do not agree with these submissions.

[24] It is clear from the RPD's decision that its adverse finding regarding the objective well-foundedness of the Applicant's stated fear that he remains a target of the AUC was based on the following facts:

- i. the AUC never took any action whatsoever in furtherance of its threats;
- ii. the AUC never confronted or visited the Applicant or any member of his family at their family home;
- iii. the AUC never personally confronted or visited the Applicant's father, the principal target, when he went back to the family farm to sell it in 2005, or in the two subsequent years that he remained in Colombia prior to his departure to the United States in 2007; and
- iv. the AUC never personally confronted the Applicant prior to his departure from Columbia in February 2003.

[25] Immediately following its discussion of the foregoing facts, the RPD stated its conclusion that it did not believe that the claimant is a target of the AUC.



[26] The RPD then noted that the Applicant's "father was able to sell the farm in 2005 literally under the nose of the AUC." In this regard, the RPD found it incredible that (i) "the AUC, who was supposed to be in control of the farm area, was not aware of or did not go after the proceeds of sale," and (ii) "the AUC did not simply have the father sign over title of the farm to an AUC representative who could then have sold it."

[27] It was only after stating three more times in its decision that it did not believe that the Applicant faces a risk at the hands of the AUC, that the RPD then observed that it disbelieved, on a balance of probabilities, (i) that the alleged encounter with AUC representatives at the bus-stop ever happened; and (ii) that "the letters or notes were made up to embellish [his] claim." Indeed, the RPD repeated its conclusion a fourth time between making these two observations.

[28] In the context of the foregoing, it is clear that the RPD used the word "credibility" to mean the objective well-foundedness of the Applicant's claim that he continues to be a target of the AUC, if he ever was such a target at all.

[29] Particularly based on the RPD's findings summarized at paragraph 24 above, I am satisfied that its adverse conclusion regarding the objective well foundedness of the Applicant's stated fear of future persecution or harm at the hands of the AUC was not unreasonable. In my view, this conclusion was well within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47), even if the Applicant may have had a well-founded fear of the AUC at the time he left Colombia in early 2003.

[30] Given that the objective well-foundedness of the Applicant's stated fear was explicitly identified as the determinative issue in the RPD's decision, it is not necessary to address the remaining issues raised by the Applicant.

**V. Conclusion**

[31] The application for judicial review is dismissed.

[32] There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES THAT** this application for judicial review is dismissed.

“Paul S. Crampton”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-504-10

**STYLE OF CAUSE:** OSPINA v. THE MINISTER OF  
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