

Federal Court



Cour fédérale

Date: 20110203

Docket: IMM-3174-10

Citation: 2011 FC 123

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, February 3, 2011

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

DAVID STEPHEN LLORENS FARFAN

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) dated April 28, 2010, in which the panel determined that the applicant was not a Convention refugee or a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The applicant failed to demonstrate that the panel's findings, based on the lack of subjective and objective fear, were unreasonable.

I. Facts

[3] The applicant is a citizen of Colombia. He left his country to go study in the United States in August 2000.

[4] While he was in the United States, his mother was persecuted by the Revolutionary Armed Forces of Colombia (FARC) and, after having been kidnapped, she left Colombia for the United States in 2002. She, along with the applicant and his sister, filed a claim for asylum in the United States, which was rejected in 2006.

[5] The applicant alleges that his mother then left the United States without his knowledge and claimed refugee protection in Canada. This claim was granted by the RPD on September 26, 2007.

[6] The applicant claims that he did not know that his mother had taken refuge in Canada until July 2007. He arrived in Canada on January 9, 2008, and claimed refugee protection that same day. Essentially, he claims to have a fear of the FARC because they had allegedly threatened his mother that her children would be harmed if she refused to co-operate.

II. Impugned decision

[7] The panel determined that the applicant had not established a credible subjective fear of persecution, in that he did not behave in a manner that is compatible with that of someone who fears

for his life. The applicant testified that he married an American woman in 2005, but did not raise the possibility of sponsorship and/or permanent residence in the United States until 2006. Questioned on this topic, he explained that the delay was due to procrastination.

[8] Moreover, the panel found that it was not plausible or logical for his mother to leave for Canada without telling him, despite the fact that she had told him not to go back to Colombia and that she had included him in her claim for protection by the United States.

[9] Finally, the RPD said it was also of the view that if the applicant genuinely feared for his life, he would have immediately left the United States to follow his mother to Canada in July 2007 rather than waiting six months, allegedly to complete a course he had begun and has still not completed anyway.

[10] The panel also rejected the applicant's claim for refugee protection on the ground that his fear was not objectively well-founded. Not only does his mother's persecution go back more than nine years, but also the documentary evidence shows that the situation in Colombia has improved a great deal. In short, the panel found that the applicant had not established the existence of a serious possibility of persecution if he had to return to his country now.

III. Issue

[11] The only issue in this case is that of determining whether the panel's findings are reasonable.

IV. Analysis

[12] It is undisputed that the appropriate standard of review with respect to credibility is reasonableness. The same is true for the panel's findings on the lack of objective fear. The onus was therefore on the applicant to establish that the panel's decision with respect to these two points did not fall within the range of acceptable outcomes defensible in respect of the facts and law.

[13] This Court's case law clearly establishes that refugee claimants must establish that they have a subjective fear of persecution in their country of origin and that this fear is objectively well-founded: see, for example, *Canada (Attorney General) v Ward*, [1993] 2 SCR 689; *Bondar v Canada (Citizenship and Immigration)*, 2010 FC 972.

[14] The panel was entitled to hold against the applicant the inconsistencies and implausibilities of his evidence and his delay in claiming refugee status or in removing himself from danger and the changes to his testimony: *Lin v Canada (Citizenship and Immigration)*, 2010 FC 183, at para 19; *Sinan v M.C.I.*, 2004 FC 87, at paras 10-11; *Gabeyehu v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1493, at para 8.

[15] The applicant claims that he knew since 2002 that he could not return to Colombia. However, he did not take any steps to legalize his status in the United States after his marriage. Even after his request for asylum was refused in 2006, he did not accompany his mother to Canada for reasons that are not entirely clear. Worse yet, he waited until January 2008 before coming to Canada when he knew in July 2007 that his mother was in Canada and in August 2007 that she had been granted refugee status.

[16] The panel certainly could take this behaviour into account in assessing the applicant's subjective fear of being persecuted: *Espinosa v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324, at paras 16-17. Moreover, the lack of subjective fear is fatal to a refugee claim: *Perez v Canada (Citizenship and Immigration)*, 2010 FC 345, at para 33.

[17] Furthermore, the panel did not simply find that there was a lack of subjective fear, but continued its analysis by assessing the objective basis of the fear alleged by the applicant. In this regard, a few remarks are necessary.

[18] First, I note that a parental relationship with a person who has been persecuted is not in itself sufficient to establish refugee status; it must still be shown that the family, as a social group, has been persecuted: *Garcia Garcia v Canada (Citizenship and Immigration)*, 2010 FC 847. What is more, the mere fact that the applicant's mother was recognized as a refugee in another proceeding is not sufficient to grant him the same status: *Bakary v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1111, at para 10.

[19] Moreover, the applicant had never been personally targeted and was never the victim of persecution. However, it is true that the applicant testified that the FARC could use him to draw his mother out and make her return to the country. His mother also stated in her own Personal Information Form that the FARC had threatened to go after her family. I am therefore prepared to admit that perhaps the panel did not give full weight to the possible connection between the applicant and his mother's fear.

[20] That being said, the panel emphasized that the events which Mr. Llorens Farfan's application are based on date back nine years and that the situation in Colombia has improved considerably since then. The panel conducted a comprehensive analysis of the situation in its reasons and stated that it was of the opinion that the violent acts attributed to the FARC have decreased considerably in recent years. Furthermore, the panel relied on the documentary evidence in finding that the applicant would not be of any particular interest to the FARC. Such a conclusion does not seem unreasonable to me, especially when taking into account that the alleged risk must be prospective, not retrospective: *Pour-Shariati v M.E.I.*, [1995] 1 F.C. 767, at para 17; *Katwaru v Canada (Citizenship and Immigration)*, 2010 FC 196, at para 29.

[21] Taking all this into consideration, I find that the RPD's decision to reject the applicant's refugee claim falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The parties have not submitted questions for certification and none warrants certification.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question is certified.

Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3174-10

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DATED: February 3, 2011

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