

Federal Court



Cour fédérale

Date: 20110627

Docket: IMM-6955-10

Citation: 2011 FC 785

Ottawa, Ontario, June 27, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**E.A.DS.
J.M.S.A.
E.C.S.A.**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (“IRPA”) of the decision dated October 26, 2010 wherein the Refugee Protection Division of the Immigration and Refugee Board determined that the applicants are not Convention refugees or persons in need of protection.

[2] The decision under review pertains only to the principal applicant and her children.

Although the principal applicant's husband's claim was heard together with the applicants', he was found to be excluded from refugee protection under Article 1F of the Convention. That decision was the subject of a separate application for judicial review. Because of the facts of this case, initials will be substituted for the name of the principal applicant and her children and their names shall not appear in the style of cause of these Reasons for Judgment and Judgment.

BACKGROUND

[3] The applicants are citizens of El Salvador who fear being targeted by organized crime, in particular the Mara Salvatrucha. Back home, the applicants had successful businesses in money lending and farming. In October 2006 the Maras attempted to extort the principal applicant's husband. Threats continued after the husband reported the problems to the police.

[4] The applicants acceded to the extortionists' demands. However, after having given them a total of \$25, 000 US over 10 months, the extortionists demanded \$3000 US monthly. The applicants could not afford this and at the end of October they went to the police. Because they had no evidence to identify the extortionists the police said there was nothing they could do. The principal applicant resigned from work due to her fear of the children being kidnapped.

[5] On one occasion, the principal applicant was in a motel that the family owned. She was robbed and raped by five individuals and was told that this was just the beginning. They demanded \$75, 000 US and the family was given a deadline of two months to pay. The principal applicant did

not report the robbery or the rape to the police because she was fearful and embarrassed. She sought medical attention, including psychological help.

[6] The applicants entered Canada on February 1, 2008 and made a refugee claim on February 23, 2008. Their claims were heard on July 28 and October 14, 2010.

DECISION UNDER REVIEW

[7] On October 26, 2010, the Board concluded the applicants were not refugees or persons in need of protection. It found that the perpetrators were criminals and the fear experienced by the applicants of this criminal behaviour did not provide a link to one of the Convention refugee grounds. The risk they faced was generalized in nature.

[8] In light of the rape, the Board initiated a gender-based analysis on whether there was a nexus between the Convention grounds and the crime. The Board found that the principal applicant was a victim of crime and did not fall into the five enumerated grounds. It concluded that their section 96 claim must fail.

[9] Insofar as the section 97 analysis was concerned, the Board found the Maras to be a widespread group engaged in criminal activities, mainly extortion. The Board held that the applicants were part of a large subgroup of the population, that is, business people, and the risk they faced was also a risk faced by others in El Salvador.

ISSUES

[10] The issues raised by the applicants are as follows:

- (1) Did the Board err in its treatment of section 97 of the IRPA?
- (2) Did the Board err in failing to find a nexus between the female applicant and the Convention?

ANALYSIS

Standard of Review

[11] The issues raised in this judicial review, i.e. the Board's decisions with respect to its section 97 analysis of the IRPA and its consideration of the nexus between a Convention ground and a particular claimant's story, are questions of mixed fact and law and must be reviewed on the standard of reasonableness: *Gabriel v. Canada (Citizenship and Immigration)*, 2009 FC 1170; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 53.

Did the Board err in its treatment of section 97 of the IRPA?

[12] Risk faced by the general public, by a significant portion of the population or by a subgroup of the population does not constitute personalized risk: *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, 70 Imm. L.R. (3d) 128, appeal dismissed at: 2009 FCA 31, 387 N.R. 149.

[13] It has further been held by this Court that past threats to individuals from the Maras gangs cannot amount to personalized risk: *Gonzalez v. Canada (Minister of Citizenship and Immigration)*,

2010 FC 991 at para. 18. Similar to the case at bar, the applicant in *Gonzalez* was a citizen of El Salvador who worked as a business manager and was forced, under threat of death, to pay \$100 per month to members of the Mara Salvatrucha. After paying the amount for 8 months and refusing to pay thereafter, the applicant and his family were subject to threats and intimidation. The Court dismissed the application. See also: *Arias v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1029 at para. 47.

[14] Here, there was evidence before the Board, both documentary and oral testimony, that business owners throughout El Salvador are targeted for extortion and are victims of criminal activity by extortionists. An excerpt from the transcript highlights this unfortunate reality:

MEMBER: I just have a few questions and then we will take a break. You indicated to, and this is directed to the principal applicant... you indicated that you were targeted for extortion because you had several businesses. Is that correct?

CLAIMANT: Yes.

MEMBER: Is it not true that this is the case in El Salvador with other individuals who have successful businesses?

CLAIMANT: I do not know, maybe, probably, most likely.

[15] As such, the Board concluded that the risk faced by the applicants is a risk faced generally by others in El Salvador and is not personalized to them. It follows that the applicants are not afforded section 97 protection, despite having been threatened in the past. That finding was reasonable.

Did the Board err in failing to find a nexus between the female applicant and the Convention?

[16] As the respondent points out, the applicants' claim was based on their extortion by the Maras. This is evidenced from the principal applicant's PIF narrative where she states that she and her husband were being targeted by the gang – "We were being extorted particularly by a Gangster group" – and from the In-Person Refugee Intake where the principal applicant explained the reason they were seeking protection in Canada was because they "were being extorted by Mara Salvatrucha". The principal applicant confirmed this again at the hearing:

RPO: You fear the Mara Salvatrucha.

CLAIMANT: Yes I fear them.

RPO: And their motive to harm you is based on the extortion terms, is that correct?

CLAIMANT: Yes.

RPO: Is there any particular reason, you know of, that you were made a target of these threats as opposed to somebody else?

CLAIMANT: Because we had businesses and I had a good job.

[17] The appearance of wealth does not amount to a Convention refugee nexus: *Martinez Menendez v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 221, 14 Admin. L.R. (5th) 151 at para. 27. The Board was thus justified in finding that there was no nexus between the risks faced by the applicants and the Convention grounds.

[18] With respect to the applicants' claim that the Board erred in failing to properly analyse the *Gender Guidelines* as applied to issues of nexus, it should be noted that the principal applicant's gender was not even raised at the hearing. Nonetheless, the Board itself initiated an analysis based

on the *Gender Guidelines*. In the circumstances of this particular case, the Board was correct to conclude that the rape was an act of violence that flowed from the generalized criminality experienced by those being targeted by the Maras in El Salvador.

[19] There is no doubt that rape is a grave violation against human rights and human dignity. However, in this case, it cannot be said that the principal applicant was being persecuted through rape, or, due to her membership in a particular social group. For this reason, the instant case can be distinguished from *Josile v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 39, relied upon by the applicants.

[20] The Board provided clear and comprehensive reasons taking into account all of the evidence. The decision, therefore, falls within the range of acceptable outcomes justified on the facts and the law. The application is dismissed.

[21] The parties proposed no questions for certification and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. the application for judicial review is dismissed;
2. initials are substituted for the name of the principal applicant and the names of the children and their names shall not appear in the style of cause of this Judgment and Reasons for Judgment.
3. No questions will be certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6955-10

STYLE OF CAUSE: E.A.DS.
J.M.S.A.
E.C.S.A.

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 9, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** MOSLEY J.

DATED: June 27, 2011

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