

Federal Court



Cour fédérale

Date: 20110729

Docket: IMM-777-11

Citation: 2011 FC 950

Ottawa, Ontario, July 29, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**ALBA ROSA BANGUERA PALACIOS AND
VICTOR MANUEL BANGUERA PALACIOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Alba Rosa Banguera Palacios and her son, Victor, sought refugee protection in Canada after fleeing their country of origin, Colombia. They claimed to be targeted by the FARC guerrilla group. FARC killed Ms. Banguera Palacios' cousin and kidnapped Victor for eleven days.

[2] A panel of the Immigration and Refugee Board dismissed the applicants' claim, finding that they were not persecuted on grounds recognized by the Refugee Convention. Rather, they were targeted because of their perceived wealth. Further, the Board found that the risk of being a victim of crime is a general one in Colombia, not one that is personal to the applicants.

[3] Ms. Banguera Palacios argues that the Board erred by not recognizing that she was persecuted as a member of a particular social group and by finding that the risk to her and Victor in Colombia was a generalized one. She asks me to quash the Board's decision and order a new hearing. However, I cannot find a basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review.

[4] The issues are:

1. Did the Board err in its finding that Ms. Banguera was not targeted as a member of a particular social group?
2. Did the Board err in its finding that the risk in Colombia was a generalized one?

II. Factual Background

[5] Ms. Banguera Palacios alleges that, in March 2008, while driving between Cali and Buenaventura with her cousin, their vehicle was stopped by masked men who shot and killed her cousin, robbed her and kidnapped Victor. His captors called later with ransom demands.

[6] Victor claims that his captors were members of FARC. Luckily, eleven days after the kidnapping, he escaped.

[7] The applicants left Colombia and travelled through Central America to Mexico. They arrived in Canada in October 2009. Since they left Colombia, Ms. Banguera Palacios claims that her parents have received anonymous telephone threats.

III. The Board's Decision

[8] Ms. Banguera Palacios claimed that she was targeted because of her race, perceived political opinion, and membership in a particular social group, namely, unmarried Afro-Colombian women with children.

[9] However, the Board found that the applicants did not have a political opinion on the situation in Colombia. Nor were they targeted because their family was headed by a single mother. Further, there did not appear to be a racial aspect to their claim.

[10] Instead, the Board found that the risk the applicants faced was based either on actual or perceived wealth. This risk was particularly acute in the case of persons, like the applicants, who had returned to Colombia after spending a number of years in the United States. The Board concluded that any risk the applicants faced was unconnected to a Convention ground.

[11] The Board referred to UNHCR Eligibility Guidelines for Colombia that highlighted the risk to women of certain profiles and the particular risk faced by Afro-Colombians and children due to race, gender or a combination of factors. The Board found, however, that the circumstances described in this documentary evidence did not apply to the applicants. As urban-dwelling people with financial resources, the Board found that the applicants did not face a risk of the kind of targeting discussed in the UNHCR report – i.e., guerrilla recruitment or internal displacement.

[12] Instead, the Board found that FARC targeted the applicants simply because of their perceived wealth. As this did not establish a nexus to a Convention ground, the Board rejected their claim under s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], (see Annex A for statutory references); *Cius v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1.

[13] The Board then considered the applicants' claim for protection under paragraph 97(1)(b). The Board acknowledged that the applicants had been specifically targeted, but noted that the risk they faced was experienced generally by others in Colombia. The Board found that kidnapping and extortion by criminal groups, including FARC, was pervasive in Colombia.

[14] While the applicants had stated that their situation was unique because they had returned from the United States and were perceived to be wealthy, the Board noted that perceived wealth is not a basis for a claim under section 97: *Prophète v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31.

[15] Thus, the Board found that even though the applicants' fear was credible, they did not face a personal risk different from that faced by the general population of Colombia. Accordingly, the applicants' claims under both sections 96 and 97 were refused.

IV. Issue One - Did the Board err in its finding that Ms. Banguera Palacios was not targeted as a member of a particular social group?

[16] The applicants submitted that they had been targeted on the basis of race, perceived political opinion and, for Ms. Banguera, membership in a particular social group, namely, unmarried Afro-Colombian women with children.

[17] As I read the Board's decision, it addressed all of these possibilities. It also explored them in questions to the applicants at the hearing. There was simply no evidence to support a connection to any of the proposed Convention grounds.

[18] The applicants rely heavily on the 2010 UNHCR Eligibility Guidelines. Those guidelines note that "Colombian women with certain profiles, in particular those living in areas affected by the armed conflict, are at risk on account of their membership in a particular social group. These include women victims of violence at the hands of illegal armed groups, forcibly recruited women, indigenous women or women of Afro-Colombian descent, and women who are victims of domestic violence."

[19] However, I cannot find that the Board erred when it found that this evidence was not applicable to the applicants given that they lived in the city and had financial resources. Therefore, I cannot conclude that the Board erred in finding that there was insufficient evidence to support the applicants' refugee claim on the basis of membership in a particular social group.

V. Issue Two - Did the Board err in its finding that the risk in Colombia was a generalized one?

[20] A generalized fear of crime is insufficient to justify granting protection under section 97. A claimant must establish that there is a personalized risk based on his or her personal circumstances: *Jean et al v Canada (Minister of Citizenship and Immigration)*, 2010 FC 674 at para 32; *Marcelin Gabriel v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1170 at paras 13-18 [*Marcelin-Gabriel*].

[21] Even a high risk that a person will be targeted as a victim of crime is not necessarily a particularized risk: *Cius v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1 at paras 22-25. Further, the class of relatively wealthy people from Colombia is too wide and does not satisfy the requirement for a personalized risk: *Marcelin Gabriel*, above at paras 21-23; *Rodriquez Perez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1029 at para 35; *Saint Hilaire v Canada (Minister of Citizenship and Immigration)*, 2010 FC 178 at para 17.

[22] Based on the law and the evidence before it, I cannot find any error in the Board's conclusion that the risk faced by the applicants was a generalized one, not coming within the

protection provided under s 97 of IRPA.

VI. Conclusion and Disposition

[23] I can find no error in the Board's conclusions that the applicants' claim did not fall within sections 96 or 97 of IRPA. Accordingly, I must dismiss this application for judicial review. 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 dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex “A”

Immigration and Refugee Protection Act, SC 2001, C-27

Loi sur l’immigration et la protection des réfugiés, LC 2001, ch 27

Convention refugee

Définition de « réfugié »

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,

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) 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

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) 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.

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.

Person in need of protection

Personne à protéger

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

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

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

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

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

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

(ii) the risk would be faced by the person

(ii) elle y est exposée en tout lieu de ce

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

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

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

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

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-777-11

STYLE OF CAUSE: ALBA ROSA BANGUERA PALACIOS, ET AL v
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

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

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