Federal Court  Cour fédérale

Date: 20111107

Docket: IMM-1011-11

Citation: 2011 FC 1265

Ottawa, Ontario, November 7, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

JOHN GABRIEL RIVERA MEJIA
BETTY JAMIYE YEPES GARCES
JUAN ESTEBAN RIVERA YEPES
SARA RIVERA YEPES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek an order setting aside the January 7, 2011 decision of the Refugee Protection Division of the Immigration Refugee Board of Canada (the Board), which found the applicants to be neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). For the reasons that follow this application for judicial review is dismissed.

Facts

[2] Mr. Mejia is a citizen of Colombia. He left Colombia on February 20, 2008 due to his fear of the Revolutionary Armed Forces of Colombia (FARC). Upon reaching the Canadian border via transit through the United States (U.S.), he made his refugee claim. Mr. Mejia claims that he was initially threatened by another paramilitary organization, the Autodefensas Unidas de Colombia (AUC), before coming to the conclusion that it was FARC that was actually targeting him. Although Mr. Mejia testified that he was a "military target" for six years, he never suffered any violence nor received any extortionary threats until December 2007. On December 7, 2007 he said FARC made a demand for some wares from his uniform and clothing shop as well a demand for 10,000,000 pesos - about $5,000 CDN. He filed a denunciation with the Colombian Attorney General following this incident. The Office of the Attorney General assured him an investigation of the incident would follow. Two months later Mr. Mejia was on his way to Canada.

[3] Mr. Mejia's refugee claim, and consequentially the claims of his wife and children were rejected by the Board on the basis that Mr. Mejia lacked credibility and that his testimony at the hearing contradicted documentary evidence. Furthermore, the Board found that Mr. Mejia had failed to rebut the presumption of existing adequate state protection in Colombia.

[4] The issue in this application for judicial review is confined to two questions; whether the Board's credibility findings are reasonable and, whether the finding that he had failed to rebut the assumption of existing adequate state protection can be sustained. Both answers are, in this case, to be assessed against the standard of reasonableness: *Dunsmuir v New Brunswick,* 2008 SCC 9, [2008] 1 SCR 190 holds that a decision will be reasonable if it falls within the range of possible,

acceptable outcomes in light of the facts and law, provided it demonstrates transparency, intelligibility, and justification. The Court will not disturb decisions by administrative decision-makers provided they are reasonable, even if the decisions are not those which the Court would have come to itself: *Aguebor v (Canada) Minister of Employment & Immigration*, [1993] FCJ No 732.

[5] The Board rejected Mr. Mejia's testimony because it found that his claim lacked credibility. The Board made its finding on the basis that Mr. Mejia did not clearly articulate his agent of persecution, did not fit the profile of a person who would be targeted by the FARC, did not include an important piece of information in the denunciation he filed with the Attorney General, did not accurately recall the title of the job which he had held for more than a decade, did not make a claim for asylum in the U.S. when he had several opportunities to do so and re-availed to Colombia. The Board also drew a negative inference from what it called the "timing" of Mr. Mejia's refugee claim. After rejecting his claim on the basis of these credibility findings, the Board conducted a state protection analysis. It found that the presumption of state protection had not been rebutted.

Analysis

[6] I accept that the Board unreasonably speculated when it concluded that Mr. Mejia did not fit the profile of a person who would be targeted by FARC; however, this speculation is not sufficient to render the decision, as a whole, unreasonable.

[7] Similarly, the Board found that in the report filed with the Colombian Attorney General's office Mr. Mejia did not mention that it was FARC who last contacted him, and not AUC, as Mr.

Mejia had initially thought. Mr. Mejia claims, however, that he was told by the Attorney General's office that another department was responsible for handling the extortion demand and that is why it is not included in the report. This is not a valid reason, on its own, to necessarily reject Mr. Mejia's credibility or the credibility of his claim.

[8] Nevertheless, notwithstanding these two findings it cannot be said the Board's decision is unreasonable. Mr. Mejia could not consistently offer a plausible reason why he was declared a "military target" and continued to receive anonymous phone calls, or as to who was the agent of persecution. When asked who was threatening him Mr. Mejia responded: "I don't have the foggiest idea."

[9] More significantly, the Board found that the credibility of Mr. Mejia's claim was impugned by his failure to claim asylum in the U.S. While the jurisprudence recognizes that attempting to reunite with family is a valid reason for not seeking asylum in a country en-route to that reunification, in this particular case, Mr. Mejia was in the U.S. twice before entering a third time to get to Canada and never made a claim for asylum. His explanation that he had "no intention of abandoning his country" and was merely in the U.S. to "rest" was not accepted by the Board. He also has a sister in the U.S. Thus, the applicant's failure to claim at the first opportunity was not legally consistent with the exception. The Board's finding that Mr. Mejia's re-availment to Colombia was inconsistent with the conduct of someone whose life, for six years, was allegedly being threatened by unknown persons, perhaps even a terrorist organization, is reasonable.

[10] The Board member considered the evidence and determined that adequate state protection exists. Canadian jurisprudence has demonstrated refugee protection in Canada is meant to be of a surrogate type, and that a state can and will provide protection to those who request it to do so. A claimant must make efforts to seek the protection of his or her home country before seeking refugee protection in this country. Here, Mr. Mejia left Colombia two months after the last threat, during which time he received no additional threats and before giving the authorities a chance to address the statements made in his denunciation. For this reason I find the state protection findings reasonable.

[11] Finally, I turn to the argument that the Board did not refer to an expert report addressing the ability of Columbia to provide state protection and detailing the nature and extent of FARC operations.

[12] There is no requirement for the Board to refer to every piece of documentary evidence or every passage from sources relied on by the claimant which contradict the information relied on by the Board. The constraint is whether, in examining the record as a whole, including the contradictory evidence, the decision is reasonable: *Raclewiski v Canada (Minister of Citizenship and Immigration)*, 2010 FC 244; *Valez v Canada (Minister of Citizenship and Immigration)* 2010 FC 923.

[13] In this case the Board conducted a thorough review of country condition reports and relied on reports which were more recent than the report in question. While it would have been preferable

that the Board indicate why it chose not to rely on the report, the decision is, even in light of that report and its conclusion, reasonable.

[14] It is true that a refugee claimant need not risk his or her life to demonstrate that adequate state protection is unavailable: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689. The documentary evidence before the Board showed that Colombia may indeed be able to provide adequate and effective, if not perfect, state protection. The finding that Mr. Mejia failed to rebut the presumption of existing adequate state protection, a necessary perquisite to a successful refugee claim, was reached following the correct legal analysis of facts which were rooted in the record before the Board.

[15] For the foregoing reasons, the application is dismissed. No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1011-11
STYLE OF CAUSE:	JOHN GABRIEL RIVERA MEJIA BETTY JAMIYE YEPES GARCES JUAN ESTEBAN RIVERA YEPES SARA RIVERA YEPES v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto
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