Federal Court  Cour fédérale

Date: 20120119

Docket: IMM-3903-11

Citation: 2012 FC 69

Montreal, Quebec, January 19, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

VERONICA BEATRIZ FERNANDEZ RAMIREZ
ROBERTO CARLOS JIMENEZ CANO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] As challenging as it might be for judicial officers (who are but judicial officers, neither legislators nor members of the executive branch) to watch or to be made aware of the effects of generalized criminality in certain countries, as per the jurisprudence in application of the legislation, generalized criminality, viewed as a generalized risk to segments of a certain population or a significant segment of a certain population, cannot, in and of itself, be a reason to grant refugee status. (National entities or countries must take responsibility for the safety of their populations in

protecting such populations from generalized criminality; such is not the legal responsibility of refugee receiving States.)

II. Judicial Procedure

[2] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of a decision made by the Refugee Protection Division of the Immigration and Refugee Board [Board], rendered on May 17, 2011, wherein it was determined that the Principal Applicant is not a Convention refugee nor a person in need of protection, pursuant to sections 96 and 97 of the *IRPA*.

III. Facts

[3] The Principal Applicant, Ms. Veronica Beatriz Fernandez Ramirez, and her common-law husband, Mr. Roberto Carlos Jimenez Cano, are citizens of El Salavador. They allege a fear of persecution by members of the Maras Salvatrucha gang [Maras], should they return to El Salvador.

[4] The Principal Applicant alleges that, in 2004, she became a victim of harassment by an individual by the name of Alberto, a member of the Maras in her neighborhood.

[5] The Principal Applicant's family owns a gardening business which hires local youth. She alleges that, on July 12, 2005, her brother was robbed, late at night, on his way to work. He was also shot.

[6] After this incident, the Principal Applicant went into hiding with her brother.

[7] The Principal Applicant alleges she and her brother were located by the gang and, for this reason, they moved to a friend's home nearby and then relocated to their grandfather's home in Suchitoto. In January 2006, their sister, harassed by a gang member, had joined them. The Principal Applicant and her sister subsequently returned home and her brother remained in hiding until December 2006.

[8] The Principal Applicant alleges that the police raided the family's neighborhood in November 2006 and many gang members fled, were arrested or were killed. According to the Principal Applicant, gang-related problems in 2007 were infrequent.

[9] In March 2007, Alberto returned to the neighborhood and again harassed her.

[10] The Principal Applicant left El Salvador and arrived in Canada on July 25, 2007 as a temporary foreign worker.

[11] In April 2009, her family was a victim to vandalism and extortion because the Maras discovered that the Principal Applicant sent money from Canada.

[12] On February 9, 2010, the Principal Applicant filed a refugee claim in Canada.

IV. Decision under Review

[13] The Board did not question the Principal Applicant's credibility. The Board concluded that the Principal Applicant is not a refugee. The Board determined that the Principal Applicant's fear resulted from generalized criminality; therefore, the Board concluded that the Principal Applicant did not qualify as a person in need of protection, pursuant to section 97 of the *IRPA*.

[14] In accordance with the documentary evidence, the Board found that criminality is a wide-spread problem in El Salvador; and, the risk that the Principal Applicant faces is experienced by a certain considerable segment of the population of her country. Consequently, the Board concluded that no personalized risk exists.

V. Issue

[15] Did the Board err in its analysis of section 97 of the *IRPA*?

VI. Relevant Legislative Provisions

[16] Sections 96 and 97 of the *IRPA* are applicable in these proceedings:

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 themself 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

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

Personne à protéger

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 themself of the

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

protection of that country,	
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(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) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	Personne à protéger
(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.	(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.

VII. Position of the parties

[17] The Principal Applicant submits that the wide-spread violence as documented in the country condition evidence demonstrates a well-founded fear of persecution; thus, the Board erred when it

concluded that the Principal Applicant was not personally targeted. Furthermore, the Board should have considered that the Principal Applicant's brother had been shot and that the Maras had planned to kill her.

[18] The Respondent submits that the Board was justified in finding that the Principal Applicant and her family had been victims of generalized violence by the Maras due to the financial situation derived from their family business. Due to an exposure to the same risk as the general population in El Salvador, the Board determined that the Principal Applicant does not face a personalized risk.

VIII. Analysis

[19] The standard of review is one of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[20] In cases of generalized risk, this Court has said, as it has, in *Gonzalez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 991:

> [15] In *Innocent v. Canada* (*Citizenship and Immigration*), 2009 FC 1019, [2009] F.C.J. No. 1243, at para. 67, the Court found that a person who has personally been a victim of crime is not, by that fact alone, a person in need of protection under section 97 of the IRPA. The case of *Acosta v. Canada* (*Citizenship and Immigration*), 2009 FC 213, [2009] F.C.J. No. 270, dealt with facts similar to those in this case in that the applicant had been personally targeted by the Maras in Honduras and had established that the gang was still looking for him. The Court reiterated the principles set out in *Prophète* and concluded that:
>
> > … It is no more unreasonable to find that a particular group that is targeted, be it bus fare collectors or other victims of extortion and who do not pay, faces generalised violence than to reach the same conclusion in respect of well known wealthy business men in Haiti who were clearly found to be at a heightened risk of facing the violence prevalent in that country (paragraph 16).

> [16] In *Ventura De Parada*, Justice Zinn reiterated these same principles and stated the following at paragraph 22:
>
> > I agree with my colleagues that an increased risk experienced by a subcategory of the population is not personalized where that same risk is experienced by the whole population generally, albeit at a reduced frequency. I further am of the view that where the subgroup is of a size that one can say that the risk posed to those persons is wide-spread or prevalent then that is a generalized risk.
>
> [17] The same principles were also applied by Justice Boivin in *Perez*.
>
> [18] I understand that the applicant is likely to be subject to extortion and threats again from gangs if he returns to El Salvador, but his risk is comparable to that which the general public is subject to. The fact that he has already been a victim of extortion by the Maras is not sufficient to make his risk recognized as a personalized risk, because all citizens of El Salvador are subject to a risk of extortion by gangs. The evidence does not support a finding that a person who has already been a victim of extortion by gangs is more likely to again be subject to extortion. Therefore, I consider that the Board's finding is reasonable: it is based on the evidence, is well articulated and falls within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). [Emphasis added].

[21] In the present case, the Board's finding is supported by the evidence; and, it does appear that the motivation for the Maras having approached the Principal Applicant's family is due to the family's financial situation.

[22] The risk faced by the Principal Applicant was reasonably characterized by the Board as one of extortion; one, which the Principal Applicant admits is faced by many due to the Maras.

[23] The Principal Applicant submits that her presence in Canada increased the extent of extortion demands. In this regard, the Principal Applicant made her claim only in February 2010 even though she has been in Canada as a temporary worker since July 2007.

[24] Due to her perceived wealth, the Principal Applicant fears being further targeted should she be made to return to her country of origin. According to the jurisprudence, this is not a case of personalized risk as decided in *Guifarro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 182:

> [32] Given the conjunctive nature of the two elements contemplated by paragraph 97(1)(b)(ii), a person applying for protection under section 97 must demonstrate not only a likelihood of a personalized risk contemplated by that section, but also that such risk "is not faced generally by other individuals in or from that country." Accordingly, it is not an error for the RPD to reject an application for protection under section 97 where it finds that a personalized risk that would be faced by the applicant is a risk that is shared by a sub-group of the population that is sufficiently large that the risk can reasonably be characterized as being widespread or prevalent in that country. This is so even where that sub-group may be specifically targeted. It is particularly so when the risk arises from criminal conduct or activity.
>
> [33] Given the frequency with which claims such as those that were advanced in the case at bar continue to be made under s. 97, I find it necessary to underscore that is now settled law that claims based on past and likely future targeting of the claimant will not meet the requirements of paragraph 97(1)(b)(ii) of the IRPA where (i) such targeting in the claimant's home country occurred or is likely to occur because of the claimant's membership in a sub-group of persons returning from abroad or perceived to have wealth for other reasons, and (ii) that sub-group is sufficiently large that the risk can reasonably be characterized as being widespread or prevalent in that country. In my view, a subgroup of such persons numbering in the thousands would be sufficiently large as to render the risk they face widespread or prevalent in their home country, and therefore "general" within the meaning of paragraph 97(1)(b)(ii), even though that subgroup may only constitute a small percentage of the general population in that country. [Emphasis added].

[25] To warrant the intervention of this Court, the Principal Applicant must demonstrate that the Board's decision is unreasonable in respect of the evidence. The Principal Applicant is not in a position to simply substitute her opinion for that of the Board.

VIII. Conclusion

[26] The specific circumstances of this case, when considered in their entirety, do reflect outcomes determined by the jurisprudence above. Consequently, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that that the application for judicial review be dismissed. No question of general importance for certification.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3903-11
STYLE OF CAUSE:	VERONICA BEATRIZ FERNANDEZ RAMIREZ ROBERTO CARLOS JIMENEZ CANO and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	January 18, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	January 19, 2012

APPEARANCES:

Juan Marquez de Cardenas	FOR THE APPLICANTS
Charles Junior Jean	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Juan Marquez de Cardenas Montréal, Quebec	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT