

Federal Court



Cour fédérale

**Date: 20120123**

**Docket: IMM-657-11**

**Citation: 2012 FC 86**

**Ottawa, Ontario, January 23, 2012**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**JOSE FERNANDO ACEVEDO MUNOZ  
OLGA LUCIA VALENCIA HERRERA  
JUAN FERNANDO ACEVEDO VALENCIA  
SANTIAGO ACEVEDO VALENCIA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Jose Fernando Acevedo Munoz [the Principal Applicant], Olga Lucia Valencia Herrera, Juan Fernando Acevedo Valencia and Santiago Acevedo Valencia [the Applicants], seek judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated January 6, 2011, wherein the Board determined that the Applicants are not Convention refugees or persons in need of protection [the Decision].

[2] For the reasons that follow, the Applicants' application will be allowed.

[3] The Applicants are husband and wife and their two minor sons. They are citizens of Colombia who fear the Revolutionary Armed Forces of Columbia [the FARC].

[4] The following facts are taken from paragraphs 4 to 6 of the Decision:

In 1998, [the Principal Applicant] owned a farm in Abejorral in the Verada area of Antioquia, while living with his family in nearby Medellin. He was involved with the Community Action Group (JAC) in Verada. He said that in March 1999, he received his first note from [FARC] threatening him with trouble for interfering with FARC activities, which he believed had to do with his work with the JAC youth programs, which tried to counter youth recruitment in the area by the FARC. In April 1999, a water diversion project of the JAC was dynamited by the FARC, who left notes asserting the FARC's control of the area. JAC sought help from the local police, who said there was nothing they could do. In May 1999, he said he evaded a truck that appeared to be following him when he stopped beside a transport truck being loaded with bananas. When he later arrived at his farm, the foreman gave him his second note from the FARC, which had been left by 2 men in a truck saying that he had evaded them this time but that he was in their sights, which he took to be from FARC. A month later, he said the FARC left a third note on the body of a cow they had killed on his farm threatening him with death the next time. He reported this again to the local police who said there was little they could do as this involved only the killing of two of his cows and this area was known "red" zone of the FARC. Despite all these, he persisted with attending at his farm, until July 1999, when he was shot in the back while fleeing the presence of guerrillas at the farm. He had managed to reach a neighbouring farm where his neighbour drove him to a doctor in Abejorral for treatment.

In August 1999, while recovering from his wound at home in Medellin, his wife received a *sufragio* (condolence note) from the FARC offering condolences for his death. He also received a call from a colleague at JAC, a Father Leonardo, that some FARC

guerrillas who recently were caught by authorities had a list of targets, which included his name among other members of JAC.

As they already had U.S. visas they had applied for in 1998 for a vacation in the U.S., the principal claimant and his family left Colombia for the U.S. on August 18, 1999.

[5] In May 2006, the Applicants filed an asylum claim in the United States but it was denied on October 1, 2009. Just before the U.S. claim was filed, the Principal Applicant's nephew sent him a note from the FARC.

[6] On November 18, 2009, the Applicants came to Canada and claimed refugee protection on arrival.

## **THE DECISION**

[7] The Board concluded as follows under the heading "Determination":

The panel finds there is adequate state protection for the claimants in Colombia and they are, therefore, neither Convention refugees nor persons in need of protection.

[8] The Board also dealt *in obiter* with other matters including:

- Whether the Principal Applicant should have made greater efforts to seek state protection in 1999;
- Whether the absence of the notes received from the FARC in 1999 cast doubt on the credibility of the Principal Applicant's account of relevant events; and

- Whether the note from the FARC produced by the Principal Applicant's nephew in 2006 was fraudulent and whether the Board should have raised its concerns about this note at the hearing.

[9] It is clear that the Decision actually depends only on the Board's conclusions that (i) when it issued the Decision in January 2011, Columbia was a functioning democracy and (ii) the Applicants had not rebutted the presumption that state protection was available.

[10] In these circumstances, I do not propose to deal with issues described above which were the subject of *obiter dicta*. I will deal only with the reasonableness of the Board's conclusion about the availability of state protection.

[11] The Principal Applicant says that the Board misapprehended the basis of his refugee claim in its analysis about the current availability of state protection.

[12] The Principal Applicant notes that he was declared a military target by the FARC along with other JAC members and that his Personal Information Form shows that his refugee claim is based on his political opinion. His view is that the FARC sees him as a political enemy principally because, through his volunteer work, he interfered with its recruiting efforts by teaching young men skills and trades.

[13] The Principal Applicant says that the Board appears to have believed that his fear was of extortion by the FARC and not based on his membership in the JAC.

[14] The Board's overall conclusion reads as follows:

[...] Documentary evidence shows that the FARC still targets high-profile politicians, major human rights defenders and senior members of the army, police and judiciary in certain parts of the country. In November last year, they took credit for kidnapping a Governor of a department and killing him. Documentary evidence does not, however, support the point that the FARC is targeting people for petty extortion and or keeping track of them all over this vast country.

[my emphasis]

[15] In my view, this conclusion suggests that the Board only considered whether those at risk of petty extortion would be tracked and targeted by the FARC if they returned to Colombia.

[16] As well, when the Board dealt with the UNHCR Refugee Eligibility Guidelines it said:

[...] This highly respected source also lists 11 groups that are targeted by the FARC, similar to the target identified by the U.S. DOS earlier. Noteworthy is that there is no reference to the FARC targeting people for their failure to *pay* the demanded extortion.

[my emphasis]

[17] Again, in my view, it appears that the Board reviewed the document only to see whether those at risk of extortion were targets of the FARC.

[18] Further, when dealing with the UK Home Office's Operational Guide Note for Colombia, the Board said:

[...] It should be noted that the inadequacy of protection refers to persons outlined in para.3.6.4 above and not ordinary victims of attempted extortion [...]

[my emphasis]

[19] I note that the Board refers to the Principal Applicant specifically in para. 34 of the Decision when it says:

[...] Based on the description of his activities and work as stated in his Allegations, I do not find the principal claimant, on a balance of probabilities, to have the profile of a value of target [sic] to the FARC as described.

[20] However, the Board does not specifically state its understanding of the allegation and, given its earlier focus on victims of extortion, I am not satisfied that the Board accurately understood the Principal Applicant's claim.

[21] In the third last paragraph of the Decision, the Board again makes specific reference to the Applicants saying:

Furthermore, with FARC's significantly diminished capacity, territory, fragmentation and destroyed central command, plus the 10 years they had been away from Colombia, I do not believe, on a balance of probabilities, the principal claimant and co-claimants to still be in FARC data banks of military targets.

[22] This passage shows that the Board was aware that the Principal Applicant had been listed as a target of the FARC but does not, in my view, clearly show an appreciation that the targeting was a result of the Applicants' political opinion as a member of the JAC.

[23] For all these reasons, I have concluded that the Decision is unreasonable because the Board analyzed state protection under the misapprehension that the Principal Applicant feared extortion at the hands of the FARC.

[24] Given this conclusion, it is not necessary to consider the Applicants' allegations that the Board failed to properly consider the evidence about state protection filed on their behalf.

### **CERTIFIED QUESTION**

[25] The Applicants' counsel posed the following question for certification:

Does the principal stated in *Rahim* in visa cases that where the decision maker suspects there are fraudulent documents, the decision maker must give the person concerned a chance to address that suspicion apply to Refugee cases?

[26] Counsel for the Respondent submitted that the answer to the question would not be determinative in this case because the Decision is based on the availability of state protection. I agree and therefore decline to certify the question.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the issue of the availability of state protection for the Applicants in present day Colombia is to be reconsidered by a different member of the Board who is to determine:

- (i) Whether the FARC would be interested in tracking and attacking the Principal Applicant because of his volunteer membership in the JAC which caused his name to appear on a list of FARC targets. In other words, does the Principal Applicant fit the profile of current targets of the FARC? And, if the answer is yes;
- (ii) Whether the FARC presently has the capacity to track persons returning from abroad. And, if the answer is yes;
- (iii) Whether state protection would be available to the Applicants.

The Applicants may file fresh material on the reconsideration.

“Sandra J. Simpson”  
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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-657-11

**STYLE OF CAUSE:** JOSE FERNANDO ACEVEDO MUNOZ et al v MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 10, 2011

**REASONS FOR JUDGMENT:** SIMPSON J.

**DATED:** January 23, 2012

**APPEARANCES:**

Jack C. Martin FOR THE APPLICANTS

Alexis Singer FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Jack C. Martin FOR THE APPLICANTS  
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario