

Federal Court



Cour fédérale

**Date: 20120502**

**Docket: IMM-4047-11**

**Citation: 2012 FC 506**

**Ottawa, Ontario, May 2, 2012**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**LUZ STELLA CASTRO NINO  
LUZ STEPHANIE TAMAYO CASTRO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Ms. Luz Stella Castro Nino and her daughter, Luz Stephanie Tamayo Castro, sought refuge in Canada based on their fear of political persecution in their native Colombia. Ms. Castro Nino claimed that she was threatened by the Revolutionary Armed Forces of Colombia [FARC] because her son and daughter-in-law were politically active. In 2005, FARC threatened Ms. Castro Nino in an effort to locate her son and daughter-in-law, who had left Colombia to seek asylum in the United

States. Ms. Castro Nino moved and changed her phone number to avoid further threats. In 2006, she fled to the United States with her daughter and lived there illegally until arriving in Canada in 2010.

[2] A panel of the Immigration and Refugee Board heard their claims and concluded that they were neither refugees nor persons in need of protection because state protection was available to them in Colombia. Ms. Castro Nino argues that the Board's conclusion was unreasonable in light of the evidence before it about the situation in Colombia. She asks me to quash the Board's decision and order another panel of the Board to reconsider her claim.

[3] I can find no basis for overturning the Board's decision. In my view, its analysis of the evidence and its conclusion were not unreasonable, considering the evidence relating to state protection before it. The evidence also showed that Ms. Castro Nino had not taken steps to obtain state protection and had successfully evaded FARC simply by moving and changing her phone number.

## II. The Board's Decision

[4] The Board found there was adequate state protection in Colombia. Still, it observed that Colombia continues to face challenges in dealing with FARC. FARC is still active in some areas, but its activities tend to be on a small scale, such as kidnapping and extortion, particularly of business people and public figures.

[5] The Board also noted that the Colombian government is making significant progress in combating these problems. The government has increased its military and police resources, and has had some success in curbing FARC's activities. There was conflicting evidence on whether FARC is still capable of pursuing targets that relocate to another area, or tracking them over an extended period of time.

[6] The Board also considered a report from the Canadian Council for Refugees (*The Future of Colombian Refugees in Canada: Are We Being Equitable?*) [CCR Report] which concludes that state protection in Colombia is inadequate. However, the Board preferred the other evidence before it showing significant success in defeating FARC and enhancing the security of Colombian citizens.

[7] After considering this evidence, the Board found that FARC would be unable or unwilling to pursue the applicants on their return to Colombia. They had managed to elude FARC from November 2005 to April 2006 simply by changing their phone number and living for short periods with family. Further, Ms. Castro Nino did not have the profile of someone in whom FARC would continue to be interested. Indeed, she was not a direct target; FARC was interested in her only as a source of information about the whereabouts of her son and daughter-in-law.

[8] In addition, Ms. Castro Nino had made no effort to seek state protection after receiving telephone threats. She explained that she did not believe state protection would be forthcoming because the threatening messages were "simply calls", and because the FARC had infiltrated the police. However, she had no personal knowledge or evidence to support her belief.

[9] Based on its finding that there was adequate state protection in Colombia, the Board concluded that the applicants were not Convention refugees or persons in need of protection.

III. Was the Board's Conclusion on State Protection Unreasonable?

[10] Ms. Castro Nino argues that the Board made a number of errors.

[11] First, the Board stated that Ms. Castro Nino was not a direct target of FARC. However, she testified that she was personally threatened and, therefore, was clearly a direct target.

[12] Second, the Board found that FARC did not bother to find the applicants between November 2005 and April 2006. However, during that period of time, Ms. Castro Nino changed her phone number, took her daughter out of school, and moved. She maintains that she successfully eluded her persecutors. There was no basis for the Board's finding that FARC was not interested in finding them.

[13] Third, the Board concluded that FARC primarily targets politicians and businessmen, not ordinary citizens. However, the documentary evidence showed that FARC targets a broad range of adversaries and maintains the capacity to strike individuals. The UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Colombia* states that those at risk include "Women of a Certain Profile" and "Present and Former Members and Supporters of one of the Parties to the Conflict".

[14] In my view, the Board was clearly aware that FARC threatened Ms. Castro Nino and her daughter. However, FARC was mainly interested in her son and daughter-in-law. Ms. Castro Nino was threatened in an effort to ascertain their whereabouts. The Board described the applicants as “indirect” targets which, in the factual context, was not incorrect.

[15] It is true that Ms Castro Nino took steps to avoid being threatened. At the same time, however, there was no evidence before the Board showing that FARC continued to pursue the applicants or would be interested in them now. The Board did not conclude that there was no basis for their fear of FARC, a finding that would be considered “perverse” in the circumstances (*Sabaratnam v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 901 (CA)).

[16] Finally, the Board did not conclude that FARC only pursues a narrow range of targets. It found that there are many groups of interest to FARC. However, it did not appear that the applicants fell within any those categories, including those identified in the UNHCR *Guidelines*.

[17] Further, the Board considered evidence that both supported and contradicted its conclusion that Colombia had successfully curtailed FARC’s activities. However, it preferred the evidence that the protection offered by Colombia was adequate. This was not an unreasonable assessment of the evidence.

[18] Finally, Ms. Castro Nino did not actually make any effort to seek state protection. She testified that the threats she received were “simply calls” and she believed that the police had been infiltrated by FARC. However, there was no evidence to support that belief.

[19] Looking at the evidence and the Board's reasons as a whole, I cannot find that its conclusions were unreasonable.

IV. Conclusion and Disposition

[20] The Board's conclusion that state protection was available to the applicants fell within the range of defensible outcomes based on the facts and the law and, therefore, was reasonable.

Consequently, 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”

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Judge

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

**DOCKET:** IMM-4047-11

**STYLE OF CAUSE:** LUZ STELLA CASTRO NINO, ET AL  
v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** January 12, 2012

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

**DATED:** May 2, 2012

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