Federal Court Cour fédérale

Date: 20120925

Docket: IMM-6831-11

Citation: 2012 FC 1129

Toronto, Ontario, September 25, 2012

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

NANCY HERRERA ARBELAEZ, HERNANDO VILLEGAS SOLARTE AND ESTEFANIA VILLEGAS HERRERA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mrs. Nancy Herrera Arbelaez (the "Principal Applicant"), her husband Hernando Villegas Solarte and their daughter Estefania Villegas Herrera (collectively the "Applicants") seek judicial review of a decision made by the Immigration and Refugee Board, Refugee Protection Division (the "Board"). In that decision, dated September 12, 2011, the Board determined that the Applicants are not Convention refugees pursuant to section 96 of the *Immigration and Refugee Protection Act*, S.C.

2001, c. 27 (the "Act") and are not persons in need of protection pursuant to subsection 97(1) of the Act.

[2] The Applicants are citizens of Colombia. They based their claim upon threats and extortion from the Revolutionary Armed Forces of Colombia (the "FARC"). This began in May 1992.

[3] In December 1991, the Principal Applicant had begun working with a political party where she recruited people, organized meetings, collected food, and the like, to assist poor people.

[4] In May or June 2000, the Principal Applicant began to receive threatening phone calls, telling her not to get involved in matters that did not concern her. She received calls at work and at home. In December 2000, the callers began to mention her daughter. Later that month, the Principal Applicant took her daughter to the United States of America to live with her husband who had left Colombia in 1999.

[5] The Principal Applicant returned to Colombia in January 2001. She received two threatening calls and a threatening letter in March 2001; that letter was signed by the FARC. She did not report these threats to the police because she feared a police report would make her life more dangerous.

[6] In August 2001, the Applicant suffered the theft of her purse at work. She reported this incident to the police. A few days later, she received a phone call from the FARC that indicated they had stolen the purse which included all her identification.

[7] In September 2001, the Principal Applicant was hospitalized after developing medical problems from the stress and a nervous breakdown. After her recovery, she left Colombia for the United States in November 2001, together with her mother, and reunited with her husband and their daughter. They claimed political asylum in the United States in November 2002 but this claim was denied. Their final appeal process in the United States was dismissed in August 2010. In October 2010, the Applicants came to Canada and claimed refugee protection.

[8] In its decision, the Board assessed the Applicants' claim entirely on the availability of state protection. It concluded that the Applicants had not provided evidence that state protection in Colombia was inadequate. This conclusion was based upon a review of current country conditions in Colombia, specifically advances in state protection and the decline of the FARC, in recent years.

[9] The Board noted the particular circumstances of the Applicants, including their ownership of real estate in Colombia and the Principal Applicant's failure to seek police protection during the period of the threatening phone calls and letters. The Board found that the Applicants had not rebutted the presumption of state protection with clear and convincing evidence, and further, that they did not take any steps to avail themselves of protection before making a claim for refugee protection.

[10] The dispositive issue in this application for judicial review is the availability of state protection. This is a question of mixed fact and law and is reviewable on the standard of reasonableness. In that regard, I refer to the decision in *Hinzman v. Canada (Minister of Citizenship and Immigration)*, (2007) 362 N.R. 1 at para. 38.

[11] In challenging the Board's finding on state protection, the Applicants argue that the Board erred in its analysis of state protection and ignored or misconstrued evidence, including the most recent Immigration and Refugee Board responses to information requests about Colombia, a document dated April 5, 2011, the US Department of State Report on Human Rights and the United Nations High Commissioner for Refugees ("UNHCR") report entitled "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia".

[12] The Minister of Citizenship and Immigration (the "Respondent") replies that the Applicants' submissions amount to an invitation to this Court to re-weigh the evidence that was before the Board. The Respondent submits that this is not the function of the Court in an application for judicial review.

[13] Upon reviewing the evidence contained in the certified tribunal record and the submissions of the parties, I am not persuaded that the Board erred in any way in reaching its conclusion. The Board reviewed the evidence and assessed the evidence, both the personal evidence of the Applicants and the documentary evidence. Its conclusion is reasonable. The Board referred to conflicting pieces of evidence; it considered and weighed them. That is the function of the Board. It is not this Court's role to engage in re-weighing the evidence.

[14] In its recent decision in *Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 S.C.R. 708 at para. 15, the Supreme Court of Canada observed that a reviewing Court should examine the record to determine if there was a reasonable basis for the decision. If there is, there is no basis for judicial intervention. In my opinion, that is the

case here. There is a reasonable foundation for the Board's decision and the Applicants have not shown any error upon which judicial intervention would be justified.

[15] The Applicants also argue that the Board's reasons are inadequate. This argument cannot succeed in light of the decision in *Newfoundland and Labrador Nurses Union*, *supra*.

[16] In that case, the Supreme Court clearly said that the "adequacy of reasons" is not an independent ground of review, as long as the decision-maker has provided reasons. When reasons are provided, review will proceed upon the basis of the reasonableness analysis (*Newfoundland and Labrador Nurses Union*, *supra*, at paras. 14, 22). As discussed in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para. 47, reasonableness is a deferential standard which is concerned with the justification, transparency and intelligibility of the decision-making process. A decision is reasonable if it falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law. The Board's decision meets this standard.

[17] In the result, this application for judicial review is dismissed, there is no question for certification arising.

ORDER

This application for judicial review is dismissed, no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6831-11
STYLE OF CAUSE:	NANCY HERRERA ARBELAEZ, HERNANDO VILLEGAS SOLARTE AND ESTEFANIA VILLEGAS HERRERA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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