

Federal Court



Cour fédérale

Date: 20130130

Docket: IMM-3251-12

Citation: 2013 FC 103

Ottawa, Ontario, January 30, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

RICHARDO MARIO WILSON

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Richardo Mario Wilson [the Applicant] applies for judicial review of a decision of a member of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated March 13, 2012, wherein the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection [the Decision]. The application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The Applicant fears returning to Jamaica, his country of citizenship, because of ongoing threats by gang members who demanded monthly “protection payments”. The attempts at extortion began in the summer of 2008. When the Applicant refused to meet the gang members’ demands he was shot. The threats continued until the Applicant’s departure from Jamaica in April 2010. At his refugee hearing the Applicant testified that he was at risk because of the gang’s perception that he is a wealthy businessman. He also testified that gangs target all Jamaican business owners whom they perceive to be wealthy.

[3] The Board dismissed the Applicant’s claim under both sections 96 and 97 of the Act. However, the Applicant only challenges the Board’s finding that he is not a person in need of protection under section 97. The Board concluded that the Applicant fears generalized crime and violence in Jamaica rather than a personal risk of harm and is therefore excluded from protection by paragraph 97(1)(b)(ii) of the Act. It also determined that the shooting and the threats of violence in this case were “part and parcel” of the gang’s criminal extortion business rather than a personal vendetta against the Applicant.

[4] The Applicant argues that the Board’s findings are unreasonable because the Board failed to recognize that the Applicant was specifically and individually targeted once he refused to comply with the gang’s demands. The Applicant submits that prior jurisprudence of this Court warrants a finding that he was targeted, relying on *Martinez Pineda v Canada (Minister of Citizenship and Immigration)*, 2007 FC 365; *Munoz v Canada (Minister of Citizenship and Immigration)*, 2010 FC 238 and *Barrios Pineda v Canada (Minister of Citizenship and Immigration)*, 2011 FC 403.

[5] On the other hand, the Respondent submits, and I accept, that the Applicant's refusal to pay the gang members and their subsequent violence is part of the ongoing criminal act of extortion, since anyone who refuses to pay is subject to reprisals. I also accept the Respondent's submission that the cases relied on by the Applicant are distinguishable from the present case because, in those cases, the risks faced by each of the applicants arose from their particular circumstances and attributes and were risks not faced by the general population.

[6] In my view, Chief Justice Crampton's decision in *Paz Guifarro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 182 is applicable. In that case, the claimant was a business owner who had fled Honduras because he was threatened and beaten by members of a criminal gang when he repeatedly refused to pay a "war tax". The Board found that the claimant did not satisfy the requirements of paragraph 97(1)(b)(ii) of the Act because the risk of extortion was a widespread risk for all employed Honduran citizens. In dismissing the claimant's application for judicial review of the Board's decision, Chief Justice Crampton stated that claims based on past and likely future targeting of a claimant will not meet the requirements of paragraph 97(1)(b)(ii) of the Act where the targeting 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 that sub-group is sufficiently large that the risk can reasonably be characterized as being widespread or prevalent in that country.

Conclusions

[7] In this case, the Applicant is a successful Jamaican businessman who conceded that all such Jamaicans are at risk of extortion at the hands of criminal gangs. As well, the documentary evidence before the Board indicated that Jamaica has one of the highest rates of crime in the world and that extortion is prevalent. I have not been persuaded by the Applicant's argument that the risk to him became personalized once he refused to comply with the demands of the criminal gang. In my view, those who refuse to meet criminal extortion demands face the risk of harm because gangs seek to make examples of them in order to dissuade others from refusing to pay.

[8] For these reasons, I find that the Board's analysis of the risk faced by the Applicant was reasonable.

[9] Neither party posed a question for certification under section 74 of the Act.

ORDER

THIS COURT ORDERS that:

The application for judicial review of the Decision is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3251-12

STYLE OF CAUSE: Richardo Mario Wilson v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 12, 2012

REASONS FOR JUDGMENT: SIMPSON J.

DATED: January 30, 2013

APPEARANCES:

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