Federal Court  Cour fédérale

Date: 20120524

Docket: IMM-6049-11

Citation: 2012 FC 632

Toronto, Ontario, May 24, 2012

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

HOOVER SIERRA RIANO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

MOSLEY J.

[1] The applicant is 47 years old and a citizen of Colombia. He asks Canada for protection from the FARC guerillas in Colombia, where his wife and daughter continue to live.

[2] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act* SC 2001, c 27 for judicial review of a decision, dated 8 August 2011, in which the Refugee Protection Division of the Immigration and Refugee Board denied the applicant's claim for refugee protection.

[3] For the reasons that follow, the application is dismissed.

BACKGROUND:

[4] When he lived in Cali, Colombia, the applicant was a member of a non-governmental organization affiliated with the Social Indigenous Alliance Party. He helped with projects directed at improving the lives of the poor. In 2002 he was approached by FARC members and accused of working with the Colombian government. He went to Bogotá but returned to Cali within two weeks. A leader of the organization he worked for was kidnapped and later killed by the FARC. In 2003, while assisting with the campaign of a candidate for a municipal office he received threatening telephone calls.

[5] The applicant went to the United States of America in 2006. After staying in the USA for five months on a tourist visa, he returned to Colombia. A person claiming to be a FARC member telephoned the applicant in March 2007. The caller informed him FARC considered him a military objective because of his political activities. The applicant continued to receive threatening telephone calls until 2010.

[6] In February 2010, he received a further telephone threat during which he argued with the caller over the allegation he had worked for the government. The applicant did not contact the police or any other authority for protection. He and his wife decided they should leave Colombia. They agreed he would leave first and establish himself elsewhere; then his wife and daughter would follow.

[7] The applicant travelled to the USA in May 2010. He did not claim asylum there. He left the USA for Canada early in July 2010 and claimed refugee protection on 12 July 2010. The Board heard his claim on 29 July 2011.

DECISION UNDER REVIEW:

[8] The Board found that the applicant's actions were inconsistent with a subjective fear of persecution in Colombia. However, taking his claim at its highest, it found that he had a viable Internal Flight Alternative (IFA) in Bogotá.

[9] The Board noted that the applicant returned to Colombia following his visit to the USA in 2006. It rejected his two explanations for this return: that his wife was experiencing a high-risk pregnancy and he did not want to overstay his visa in the USA. Had he truly feared persecution or harm in Colombia, the Board considered, he would not have returned there and would have attempted to remain in the USA. The Board found that it was unreasonable for him not to investigate any avenues of protection in the USA on the occasions he was there in 2006 and 2010.

[10] The Board instructed itself on the test set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA). The Board found that the applicant would face no more than a mere possibility of targeting by the FARC in Bogotá. The Board referred to the applicant's extended family as similarly situated persons in Colombia and found there was no evidence that any of them had experienced threats or harm from the FARC in the applicant's absence. It also found there was no persuasive documentary evidence before it which would show that the FARC is currently interested in people like the applicant.

[11] With respect to the first branch of the test for an IFA, the Board found that the applicant could live in Bogotá without fear of persecution, a risk to his life, or a risk of cruel and unusual treatment or punishment. Concerning the second branch, the Board noted that the applicant had been able to successfully adapt to life in Canada. It found that he would have an easier time relocating to Bogotá because he had knowledge of the local language and culture. This meant, the Board concluded, that it was not objectively unreasonable to expect him to relocate to Bogotá where his wife and child were living. Since both branches of the test were met in its view, the Board refused the applicant's claim for protection.

ISSUES:

[12] The sole issue on this application is whether the Board's finding that the applicant had an internal flight alternative in Bogotá was reasonable.

ANALYSIS:

Standard of review;

[13] The parties and the Court agree that the standard of review applicable to an IFA determination is reasonableness (see *Gonzalez Martinez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 5 at para 8; *Barbosa Ponce v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1360 at para 13; and *Trevino Zavala v Canada (Minister of Citizenship and Immigration)*, 2009 FC 370 at para 5.

Was the Board's determination of an IFA reasonable?

[14] The Board drew an adverse inference from the applicant's failure to claim asylum in the USA and his reavailment to Colombia. It found that this cast doubt on his credibility and subjective fear of persecution. However, the Board assumed that the events in his story occurred as he had described.

[15] The applicant submits that the Board's analysis of whether he had an IFA was unreasonable because it selectively relied on portions of a report prepared by the Canadian Council of Refugees which he had submitted. This report indicated that in recent years a substantial proportion of the internally displaced persons killed in Colombia had died in Bogotá. There was an exceptionally high level of impunity for such crimes in Bogotá. The report suggests that persons returning from abroad would be treated as internally displaced persons. The applicant contends that the Board interpreted the report's contents to fit its conclusion.

[16] The Board referred to reports from the International Crisis Group for 2008 and 2009 which indicated that the FARC had been weakened in the nine years since the applicant had been first

threatened and that its support in urban areas had greatly diminished. While a report from the US Department of State advised that persons with specific profiles were at risk of harm from FARC, the Board found that the applicant did not fit any of those profiles.

[17] The applicant submits that these reports were contradicted by a 2010 report from the UNHCR which states that civil society and human rights activists were at risk from the FARC and that he came within those categories of risk. The Board did not acknowledge a conclusion in the UNHCR report that an IFA was generally not available.

[18] I agree with the respondent that the Board's decision based on its assessment of the documentary evidence in this matter was within the range of acceptable outcomes defensible on the facts and the law. The reasons provided for its decision are transparent, intelligible and justified. The Board is entitled to choose the evidence it prefers and is not required to mention every piece of evidence which is before it. That is not to say that the Board ignored any evidence or misrepresented the evidence submitted by the applicant. Its conclusion was based on the preponderance of the evidence which was before it.

[19] The Board did not rely on the Canadian Council of Refugees report only to support its findings. It referred to views expressed in that report which contradicted its findings. But it was open to the Board to prefer other evidence such as a statement by a Political Counsellor at the Canadian Embassy in Bogotá quoted in the report to the effect that urban security had improved dramatically in the past eight years. Nor does it follow that the Board failed to properly consider the UNHCR report because it did not find that the applicant fit one of the risk profiles the report

describes. As stated in the report, an IFA "… may be available in certain circumstances and in accordance with the framework of the relevance and reasonableness test…"

[20] As in *Ramos v Canada (Minister of Citizenship and Immigration)*, 2011 FC 15, it was not an error for the Board to conclude that the applicant had an IFA in the face of evidence which provided differing opinions on Bogotá's safety. See also *Guevara v Canada (Minister of Citizenship and Immigration)*, 2011 FC 242; *Rodriguez Moreno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1273; and *Ruiz Hurtado v Canada (Minister of Citizenship and Immigration)*, 2008 FC 634.

[21] The Board properly articulated and applied the test for an IFA. It was open to the Board to analyze the information before it and to draw a conclusion as to the availability of an IFA to the applicant, which it did. This is not a case where the Board ignored clearly relevant evidence pertaining to the risk alleged. It was entitled to put differing weight on the evidence. It is not for this Court to substitute its own opinion of how the determination should have been made: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61.

[22] The decision was reasonable and the application for judicial review must be dismissed. No question for certification was proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question is certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6049-11
STYLE OF CAUSE:	*HOOVER SIERRA RIANO v. MINISTER OF CITIZENSHIP AND IMMIGRATION*
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 23, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	MOSLEY J.
DATED:	MAY 24, 2012

APPEARANCES:

D. Clifford Luyt	FOR THE APPLICANT
Sally Thomas	FOR THE RESPONDENT

SOLICITORS OF RECORD:

D. Clifford Luyt Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT