

Federal Court



Cour fédérale

Date: 20131106

Docket: IMM-11723-12

Citation: 2013 FC 1124

Ottawa, Ontario, November 6, 2013

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**FANY MARIA FLORES ESPINOZA
ILICH ROBERTO RAMIREZ PAVON
ILICH ADRIAN RAMIREZ FLORES
EYLEEN GISSELLE RAMIREZ FLORES**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision holding that the applicants were not Convention refugees or persons in need of protection.

[2] For the reasons which follow, the application is denied.

Background facts

[3] Mr Ramirez Pavon, his wife, and their two children are Honduran citizens. They arrived in Canada on May 18, 2011 and immediately claimed refugee status.

[4] In mid-June 2010, Mr Ramirez Pavon, the owner of a second-hand car dealership, had received a phone call demanding a payment of 5,000 lempiras from the Mara criminal gang. He pretended not to hear well and hung up, but the caller phoned again and said that the Maras were waiting for him at his business. He stayed home from work for two days, then changed his routine to vary his comings and goings. After a few days he thought the caller had forgotten about him. Then, on June 30, 2010, at the end of the work day, three men on two motorcycles arrived at his dealership and identified themselves as being from the Mara. They demanded payment and threatened him at gunpoint, as well as threatening to kill his family. He paid the 14,000 lempiras he had on hand.

[5] When he got home, he called an aunt who is a journalist but worked for the police. She advised him not to make a complaint but to shut down the business and leave the country. He could not afford to do that immediately, so he moved his daughter to a school with more security. He started clearing out his stock of cars.

[6] On August 1, 2010, a friend of his saw two men on motorcycles watching the business. By August 31, he had disposed of all of the second-hand cars and returned the keys of the rented

premises to the owner. At this point he decided to file a police report. He described the men who had extorted the money and asked for police protection. He was told that the police would patrol his neighbourhood more frequently but could not provide round-the-clock protection. He was given a telephone number and told that if he saw something suspicious he should call and they would send someone. He was also given general security advice and he was told that a gang of police were working for the Mara.

[7] On September 18, the Maras called the house and threatened his wife. She took them to her grandmother's house. He joined them there and they stayed at that house, which was very close to a police station, until they could leave the country. His wife had to finish a job contract, then resigned at the end of October. A cousin auctioned off the contents of their house and sold the house, providing funds for their departure. They left Honduras on December 20, 2010.

Impugned decision

[8] The Board reviewed the file and for purposes of analysis accepted all of the allegations as fact. However, it concluded that Mr Ramirez Pavon and his family had not established that they were persecuted based on a Convention ground listed in section 96 of the *IRPA*, as their fear was related to criminal extortion. The Board further concluded that the Honduran state and police were not the agents of persecution, therefore ruling out a claim under section 97(1)(a) of the *IRPA*. Finally, it assessed that the claimants did not face a personalized risk but a generalized one, therefore not falling under section 97(1)(b) of the *IRPA*.

[9] Mr Ramirez Pavon argued that he had been individually targeted because he had been identified as wealthier than other businessmen. The Board reviewed the documentation on Honduras, noting that the country has one of the highest murder rates in the world and suffers from “endemic poverty, ultra-violent street gangs, fragile institutions and severe political crisis [. . .] terrible Mexican drug cartels [. . .] kidnappings.” Business owners and transportation service operators were targets of substantial pressure from gangs. The Board concluded that the claimant’s risk did not differ from that of other business owners. The Federal Court had determined in *Paz Guifarro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 182 that being perceived as more fortunate than others did not meet the requirement of section 97(1)(b)(ii) of the *IRPA*, and nor did a generalized fear of crime (*Prophète v Canada (MCI)*, 2008 FC 331; *Laurore Jean v Canada (MCI)*, 2010 FC 674). The Board therefore rejected the family’s claims.

Issue

[10] The issue is whether the Board’s decision was unreasonable.

Standard of review

[11] The standard of review for a Board’s assessment of claims under sections 96 and 97, a question of mixed fact and law, has been determined by previous jurisprudence to be reasonableness (see for instance *Casteneda v Canada (MCI)*, 2011 FC 1012 at para 13).

Analysis

[12] The principal applicant argues that his risk differed from that of the rest of the Honduran population. The Board accepted all of the facts he alleged. He was a well-known and prosperous

businessman, who had already paid a large amount of money to the Maras. The Maras had told him that they knew everything about him and his family. He had made a police report even though the Maras had warned him not to and had said that they would seek revenge against his family if he did, and even though his aunt who worked in the administrative department of the police had recommended against it. He had described the gang members in detail. The police had told him that the amount he had paid was a good reason for the Maras to continue to target him. He believes that the Maras could even seek revenge against him for having closed down his business to escape them.

[13] He submits that the Board erroneously focussed on the generalized risk to business owners and failed to consider that the risk had become personalized in his particular case. It failed to consider that he had “ratted” on the gang, to use his counsel’s description and personalized his risk taking it outside of the risk faced by a significant group of the population (*Portillo v Canada (MCI)*, 2012 FC 678, at paras 40-50). A claim for protection requires a forward-looking assessment; the Board should have determined whether, if the family were returned to Honduras, they would face a greater risk than the rest of the population given that Mr Ramirez Pavon is well known to the gang, has already paid extortion money, made a police report, and shut down his business and fled to escape paying any more.

[14] The respondent submits, however, that, as confirmed by the Federal Court in *Cortes v Canada (MCI)*, 2012 FC 1378, at para 29, even a credible applicant has the burden of demonstrating that his risk is personalized. In the present case, the applicant was a member of the sub-group of used car dealers, which was identified as being a generalized risk. The applicant did not distinguish

his situation from that of other used car dealers who are extorted because they belong to this group of business people (see *Fenek v Canada (MCI)*, 2012 FC 178, at para 47).

[15] The applicant was specifically asked by the tribunal as to what facts made his situation personalized and different from other business persons extorted by gangs. His only answer referred to the larger amount of money that he had paid making him more of a target than others. No reference was made to the fact that he had gone to the police to ask for protection, which is often the case in any event, as there is normally required some demonstration of an unsuccessful search for state protection by targeted persons seeking refugee status as a last resort.

[16] While I accept that the Board found Mr Ramirez Pavon to be credible and that the documentation provided supports his story, I find that he did not provide convincing evidence to distinguish his situation from that of other second-hand car dealers in Honduras facing a generalized risk of extortion. The Board therefore reasonably concluded that he did not fall within the scope of sections 96 and 97 of the *IRPA*, and neither did the other applicants, whose claims relied on his risk narrative.

Conclusion

[17] As I find that the Board's decision was reasonable, representing a possible and acceptable outcome reached in a transparent and intelligible fashion, the application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-11723-12

STYLE OF CAUSE: FANY MARIA FLORES ESPINOZA, ILICH ROBERTO
RAMIREZ PAVON, ILICH ADRIAN RAMIREZ
FLORES, EYLEEN GISSELLE RAMIREZ FLORES v
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 4, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** ANNIS J.

DATED: NOVEMBER 6, 2013

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