

Federal Court



Cour fédérale

Date: 20161109

Docket: IMM-1811-16

Citation: 2016 FC 1248

St. John's, Newfoundland and Labrador, November 9, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**MARIA VICTORIA FORERO CONSTAIN
NATALIA ROZO FORERO**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] Mrs. Maria Victoria Forero Constain (the “Principal Applicant”) and her daughter Natalia Rozo Forero (the “Minor Applicant”), collectively the “Applicants”, seek judicial review of the decision made by the Immigration and Refugee Board, Refugee Protection Division (the “Board”), dismissing their application for protection pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are citizens of Colombia. They allege a fear of persecution at the hands of the Revolutionary Armed Forces of Colombia (the “FARC”), based upon the alleged interest of that organization in the Principal Applicant’s son and two mugging incidents committed against the Minor Applicant, allegedly committed by members of the FARC.

[3] The Board found that there was no persuasive evidence to show that the FARC was interested in the Principal Applicant. It further found a lack of evidence that the FARC was a threat to the Minor Applicant.

[4] The Applicants argue that the Board erred in dismissing their claims. First, they submit that no negative credibility findings were made against the Minor Applicant. Next, they submit that the Board applied the wrong test for persecution when it said “there is no evidence before the panel that the minor claimant was targeted in a serious, systematic, repetitive, persistent, or relentless manner.”

[5] The Applicants also argue that the Board unreasonably found that the lack of contact by the FARC with other family members in Colombia undermines any claim that the FARC is interested in family members of the Principal Applicant’s son.

[6] The Minister of Immigration, Refugees and Citizenship (the “Respondent”) submits that the Board committed no reviewable error in its decision and that its conclusions were reasonable.

[7] The decision of the Board involves a question of mixed fact and law, that is assessment of the evidence against the relevant statutory criteria; see the decision in *Sanchez et al. v. Canada (Minister of Citizenship & Immigration)* (2007), 360 N.R. 344 (F.C.A.) at paragraph 9. Such questions are reviewable on the standard of reasonableness; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[8] According to the decision in *Dunsmuir*, a decision meets the standard of reasonableness when the reasons are justifiable, transparent and intelligible. The decision will be reasonable when it “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”, see *Dunsmuir, supra* at paragraph 47.

[9] Considering the submissions of the parties, the decision and the evidence of the Applicants, I am not persuaded that the Board committed any reviewable error in making its decision.

[10] There is no requirement for particular formulaic language in describing the test for persecution and the Board did not err, in this case, in its choice of words to describe the test of persecution. The absence of credibility findings, *per se*, does not mean that the Applicants satisfied the test for obtaining protection.

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

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, there is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1811-16

STYLE OF CAUSE: MARIA VICTORIA FORERO CONSTAIN ET AL v.
MIRC

PLACE OF HEARING: TORONTO

DATE OF HEARING: NOVEMBER 2, 2016

JUDGMENT AND REASONS: HENEGHAN J.

DATED: NOVEMBER 9, 2016

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