

Federal Court



Cour fédérale

**Date: 20161202**

**Docket: IMM-566-16**

**Citation: 2016 FC 1334**

**Ottawa, Ontario, December 2, 2016**

**PRESENT: The Honourable Mr. Justice Bell**

**BETWEEN:**

**L.A., C.R., G.H., F.H.**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board in which the RPD rejected the Applicants' refugee claims and found that they are not persons in need of protection, as contemplated by sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] For the reasons set out below, I would dismiss the application for judicial review.

## II. Background

[3] The four Applicants are members of the same family from Colombia. L.A. [the male Applicant] was the owner of a prosperous farm in Columbia. In February 2013, the Revolutionary Armed Forces of Colombia [FARC] demanded extortion money from the Applicants. When they failed to comply, C.R. [the female Applicant] was raped in March 2013. While the rape and the circumstances surrounding it are not in dispute, there is some dispute as to whether it was perpetrated by FARC members or others.

[4] Following the events of March 2013, the family moved to Bogota. In July 2013, the male and female Applicants reported the two incidents (the extortion and the rape) to the Unit for Attention and Reparation for Victims of the Armed Conflict [the Unit] established by the Colombian government. The Unit accepted that the Applicants were victims of the armed conflict and awarded compensation, including funding for psychological services.

[5] In January 2015, after the FARC declared a truce with the Colombian government, the Applicants returned to their farm. At that time, a number of FARC members allegedly detained and threatened them, stole their cell phones, and recorded their address in Bogota. The Applicants escaped from the farm and returned to Bogota. They did not report this incident to the police until August 2015, shortly before their departure from Colombia. In October, 2015 they arrived in Canada via the United States of America and made their refugee claims.

### III. Impugned Decision

[6] The RPD first addressed the credibility of the female Applicant, who testified on behalf of the family. Despite testifying that she mentioned the FARC in her 2013 complaint to the Unit, the RPD noted that the victim reparation report does not refer to FARC as the agent of persecution. Further, the Applicants were unable to produce a copy of the complaint made to the Unit, which, according to country condition documents, is easily obtainable. In making its credibility finding, the RPD also took into consideration the Applicants' failure to report the January 2015 incident until August 2015, only two months before departing Colombia. It concluded the August 2015 report was made with a view to substantiate the impending refugee claim. As a result, the RPD concluded the female Applicant lacked credibility, and, on a balance of probabilities, the January 2015 incident did not occur.

[7] After considering the country condition documents on Colombia, the impugned credibility of the female Applicant, and its conclusion that the January 2015 incident did not occur, the RPD found the Applicants had not rebutted the presumption of state protection with clear and convincing evidence (*Canada v Ward*, [1993] 2 SCR 689, [1993] SCJ No 74). The RPD also found that there was an Internal Flight Alternative [IFA] in Bogota.

[8] In the course of rendering its decision, the RPD referred to *The Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [the Guidelines]. It found, however, that the Guidelines were of limited use because the female Applicant did not claim gender violence arose from the alleged 2015 incident, she had reported and been compensated

for the 2013 incident, and the RPD did not require her testimony about the 2013 incident. The female Applicant's request that she be declared a "vulnerable person", which would have permitted her lawyer to question her first, was denied.

#### IV. Issues

[9] The Applicants contend that the RPD's decision is unreasonable in that it failed to take into account the Guidelines when assessing the female Applicant's credibility and it failed to declare her a "vulnerable person". They also contend that, generally, the decision is unreasonable with respect to the issues of state protection and the IFA.

#### V. Standard of Review

[10] When this Court is asked to review questions of fact, including credibility findings, it is settled law that the standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47-48; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA)). This Court may only intervene if the decision fails to demonstrate justification, transparency and intelligibility and falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above, at para 47).

## VI. Analysis

### A. *Credibility*

#### (1) Application of the Guidelines

[11] The Applicants contend the RPD did not consider the Guidelines when making credibility findings regarding the female Applicant, even though she was a victim of gender violence in March 2013. While the RPD referred to the Guidelines, it expressed uncertainty as to their application in circumstances where the female Applicant sought and received state protection for the gender-related incident, and where that incident occurred two years prior to her departure from Colombia. I note that the Guidelines specifically refer to women who fear persecution “at the hands of private citizens from whose actions the state is unwilling or unable to adequately protect the concerned persons”. The Respondent contends that, because the female Applicant sought and obtained state protection for the gender-related incident, the Guidelines are unhelpful in explaining the delay in bringing the refugee claim. I agree. At the refugee hearing, the RPD did not question whether or not the events of 2013 actually occurred. It accepted the evidence of gender-related violence and did not question the female Applicant regarding that evidence. The only issue related to the 2013 incident was whether or not the FARC was the perpetrator of the gender violence.

[12] With respect to the delay in reporting the January 2015 incident, the female Applicant testified that she was afraid to file a report with the police. However, she did just that in August 2015, “shortly before they left [Colombia]”. In my view, it was open to the RPD to find that the

late filing of that report was an attempt to substantiate the female Applicant's future refugee claim.

[13] I will conclude this part of my analysis by observing that it is not necessary to consider the Guidelines with respect to testimony unrelated to gender violence. Furthermore, the Guidelines are not binding: *Ahmed v Canada (Citizenship and Immigration)*, 2012 FC 1494 at para 34, [2012] FCJ No 1598. I find the RPD's approach to the utility of the Guidelines with respect to the issue of the female Applicant's credibility to be reasonable in the circumstances.

(2) Declaration of Vulnerable Person

[14] The Co-ordinating Member [the Member] of the RPD concluded that the female Applicant's request to be declared a "vulnerable person" did not rise to the level of "exceptional circumstances". She therefore denied the request. The Applicants contend this decision was unreasonable in the circumstances. I note the Member referred to a psychological report, to which she gave limited weight, and the fact RPD members receive sensitivity training. A review of the file would also indicate the late reporting of the January 2015 incident which was, of course, not gender related. On the basis of those observations, I am satisfied the RPD's decision with respect to the female Applicant's vulnerability meets the test of reasonableness.

(3) Implausibility Finding

[15] The Applicants contend the RPD's finding regarding the motivation behind the reporting of the 2015 incidents is speculative and implausible. They cite *Valtchev v Canada (MCI)*, 2001 FC 776 at para 7, [2001] FCJ No 1131:

A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

[16] In my view, there was sufficient evidence for the RPD to reach the conclusion it did. The RPD considered evidence of early reporting of the 2013 incident which resulted in compensation and the delay in reporting the January 2015 incident until shortly before the Applicants' departure from Colombia. Essentially, the Applicants request this Court re-weigh the evidence on this issue, something it is not permitted to do: *Khosa v Canada (Minister of Citizenship and Immigration)*, 2010 FC 83 at para 37, [2010] FCJ No 99. In my view, the RPD was faced with an evidentiary foundation upon which it could make its plausibility finding.

VII. State Protection

[17] The Applicants submit the RPD's decision on state protection was largely premised on the adverse credibility finding of the female Applicant. I disagree. The RPD's decision was based on the documentary evidence before it, as well as the Applicants' failure to promptly seek out state protection following the January 2015 incident. The RPD concluded as follows:

While it's clear that the government of Colombia has not completely succeeded in defeating FARC and the ELN both groups are significantly weaker than they had previously been and over the past year the government has entered in peace negotiations with both groups and the developments in the news on a regular basis show that this has been a very successful process...

[18] The onus to disprove the presumption of state protection rests with the Applicants (*Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 at para 42, [2013] FCJ No 1099; *Canada (AG) v Ward*, [1993] 2 SCR 689, [1993] SCJ No 74). They provided no clear and convincing evidence on this before the RPD. I find the RPD's finding on state protection to be reasonable in the circumstances.

#### VIII. Internal Flight Alternative

[19] The findings on credibility and state protection are sufficient to dispose of the Applicants' claim. It is therefore unnecessary to address the Applicants' contentions regarding the IFA in Bogota, and I respectfully decline to do so.

#### IX. Conclusion

[20] For the reasons outlined above, I would dismiss the application for judicial review.

### **JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed without costs. No question is certified.

“B. Richard Bell”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-566-16

**STYLE OF CAUSE:** L.A., C.R., G.H., F.H. v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 19, 2016

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

**DATED:** DECEMBER 2, 2016

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