

Federal Court



Cour fédérale

Date: 20170515

Docket: IMM-5000-16

Citation: 2017 FC 501

Toronto, Ontario, May 15, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**GIULIANNA CABAL QUIROZ
JAIRO ANDRES LAMPREA ORTEGON
MARIA PAULA LAMPREA RODRIGUEZ**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEE AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

[1] The present Application concerns a decision by the RPD to deny the Applicants' claim for protection based on fear of the FARC in their native Colombia.

[2] At the opening of the hearing, the presiding Member made the following statement:

The issues this afternoon are the following, the credibility of the claimants, their political opinions, the delay in leaving their

country, the failure to claim in the United States and whether there is an Internal Flight Alternative (CTR p 362).

[3] Following the presentation of the female Applicant's (Applicant) evidence, the presiding Member made the following statement with respect to the post-hearing submissions to be made by Counsel for the Applicants:

My concerns would be the subjective fear which includes the delay in leaving, the failure to claim in the United States. I don't need to hear from you on Internal Flight Alternative (CTR p 388).

[4] The decision rendered in dismissing the Applicants' claim for protection centres on negative credibility findings with respect to the Applicant's evidence.

[5] At the opening of the hearing of the present Application, Counsel for the Applicants stated that the decision under review was rendered in a breach of a duty of fairness because he understood the Member's statement at the end of the hearing as a direction that credibility was not in issue in rendering the decision. Counsel for the Applicants also confirmed that nothing occurred during the course of the hearing to alert him that credibility was a live issue in reaching a decision.

[6] Counsel for the Respondent argues that credibility is always in issue in a refugee claim. That may be the case, as it is in all trials where witnesses give evidence, unless the decision-maker states it is not in issue prior to decision. In my opinion that is what happened with respect to the decision under review either by design or error. Either way, I accept Counsel's statement that he had valid grounds to believe that did not need to address credibility in the post-hearing

argument. The difference between the Member's statements as to the factors in issue at the beginning of the hearing, which included credibility, compared to the factors stated at the end of the hearing, which did not include credibility, provide the valid grounds.

[7] As a result, I find the decision under review was rendered in breach of a duty of fairness owed by the Member to the Applicants, which required the Member to verify that directions are accurately and clearly made, and understood by those to whom they are directed.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5000-16

STYLE OF CAUSE: GIULIANNA CABAL QUIROZ, JAIRO ANDRES
LAMPREA ORTEGON, MARIA PAULA LAMPREA
RODRIGUEZ v THE MINISTER OF IMMIGRATION,
REFUGEE AND CITIZENSHIP CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 11, 2017

JUDGMENT AND REASONS: CAMPBELL J.

DATED: MAY 15, 2017

APPEARANCES:

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Nimanthika Kaneira FOR THE RESPONDENT

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