

Federal Court



Cour fédérale

Date: 20171006

Docket: IMM-1120-17

Citation: 2017 FC 888

Ottawa, Ontario, October 6, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**JONATHAN CASTRO SALOMON
ANA MILENA MORENO ROMERO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. NATURE OF THE MATTER

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (RPD) dated February 9, 2017. The RPD denied the Applicants' claim for refugee protection.

II. FACTS

[2] Jonathan Castro Salomon (Principal Applicant) and his spouse Ana Milena Moreno Romero (Female Applicant; collectively referred to as the Applicants) are citizens of Colombia. They allege a fear of the Revolutionary Armed Forces of Colombia (FARC).

[3] The Principal Applicant is a highly qualified welder. He claims that, in August 2016, he was threatened by members of the FARC at his place of work after he refused their request that he assist the organization in the construction of a submarine for the purposes of transporting arms and drugs. The Applicants tried but failed to obtain police protection. The Applicants left Colombia on September 3, 2016. The Principal Applicant entered Canada on September 12, 2016, and initiated his refugee claim. In the interim, he spent seven days in Miami, Florida. The Female Applicant returned to Colombia. She travelled to the US again on October 25, 2016, and entered Canada on October 31, 2016, initiating her refugee claim at the Canadian border. Both claims were joined for the purposes of the RPD's decision.

III. IMPUGNED DECISION

[4] The RPD's primary concerns were credibility, lack of nexus to a Convention refugee ground, generalized risk, and state protection. Applying its mandate to assess whether or not the Applicants are Convention refugees or persons in need of protection (under sections 96 or 97 of the IRPA), the RPD found that the Applicants did not meet the requisite criteria, and rejected the claims accordingly.

[5] With regard to credibility, the RPD found that:

1. The Applicants' testimony and allegations were very vague and evasive;
2. The Applicants' explanation for coming to Canada instead of claiming asylum in the US was not reasonable;
3. The Female Applicant's explanation for her return to Colombia was not reasonable;
4. The coincidental timing of the Applicants' obtaining visas to travel to the US and the threats from FARC did not have a ring of truth; and
5. The Principal Applicant's explanation as to why FARC would be interested in him but not in any of his fellow welders was not persuasive.

[6] Though the RPD observed that many of the foregoing credibility issues were not determinative on their own, they added to the panel's concerns. That said, it is not clear that any single credibility concern is not dependent on others. Accordingly, an error in one credibility finding may affect the RPD's overall conclusion on credibility.

[7] With regard to the RPD's finding that the Applicants have no nexus to a Convention refugee ground, this is not in dispute, and need not be discussed further herein.

[8] With regard to the RPD's finding that the Applicants have only a generalized risk, the panel concluded that the Applicants' risk in Colombia is no higher than that faced by other persons in Colombia. It appears that this conclusion is grounded on a disbelief that the Principal Applicant was specifically targeted by FARC.

[9] Finally, the RPD concluded that the Applicants had not met their burden to show that adequate state protection was not available in Colombia.

IV. ISSUES

[10] The Applicants argue that the RPD erred in respect of the following issues:

1. Assessment of credibility;
2. Assessment of generalized risk; and
3. Assessment of state protection.

V. ANALYSIS

A. *Standard of Review*

[11] The parties agree, and I concur, that the standard of review applicable to all of the issues is reasonableness.

B. *Credibility*

[12] In my view, the RPD erred in at least two respects in its assessment of credibility. Specifically, I conclude that it was unreasonable for the RPD (i) to draw an adverse inference from the Applicants' decision to travel through the US to Canada before claiming asylum; and (ii) to conclude that the coincidental timing of the Applicants' obtaining visas to travel to the US and the threats from FARC did not have a ring of truth.

[13] With respect to the Applicants' decision to travel through the US to Canada before claiming asylum, the RPD concluded that the Applicants' explanation that they did not have relatives in the US (as they do in Canada) was not reasonable. Considering that the Applicants were in the US legally on a valid visa (and therefore not in imminent danger of being deported), it is my view that the RPD's expectation that persons who are genuinely at risk would necessarily seek asylum at the first opportunity is unreasonable in that it is not adequately justified, transparent and intelligible. I do not understand why the RPD was not satisfied that people in the position that the Applicants alleged they were in might want to come to Canada to seek asylum.

[14] With regard to the coincidental timing of the Applicants' planned travel to the US and the threats from FARC, the problem is that the RPD effectively concluded that it was implausible that the two events could be unrelated. While this coincidence may indeed be considered suspicious, a finding of implausibility should be made only in the clearest of cases: *Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776 at para 7. This is not such a case. It is quite conceivable that the Applicants' travel plans and the FARC threats were entirely unrelated to one another.

[15] In my view, none of the remaining reasonable credibility concerns cited by the RPD is sufficient to maintain its conclusion that the Principal Applicant's allegations of threats from FARC lack credibility.

C. *Generalized Risk*

[16] The RPD's conclusion on this issue cannot stand because it was based on the erroneous conclusion that the Principal Applicant was not directly targeted by FARC.

D. *State Protection*

[17] In my view, the RPD's assessment of state protection in Colombia was likewise faulty. The RPD committed the error of focusing on the state's efforts at protection rather than on the adequacy of the protection that could be offered to the Applicants as a result of those efforts: *Muvangua v Canada (Citizenship and Immigration)*, 2013 FC 542 at para 9.

[18] Though the Applicants bore the burden of establishing that state protection in Colombia was not adequate, they were entitled to a reasonable assessment of the evidence that they submitted in that regard.

VI. CONCLUSION

[19] Based on the foregoing discussion, I conclude that the application should be granted.

[20] The parties are agreed that there is no serious question of general importance to be certified.

JUDGMENT in IMM-1120-17

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended with immediate effect to reflect the correct respondent, the Minister of Citizenship and Immigration;
2. The present application for judicial review is granted.
3. The decision of the Refugee Protection Division is set aside and the matter is remitted for redetermination by a differently-constituted panel.
4. No serious question of general importance is certified.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1120-17

STYLE OF CAUSE: JONATHAN CASTRO SALOMON, ANA MILENA MORENO ROMERO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 20, 2017

JUDGMENT AND REASONS: LOCKE J.

DATED: OCTOBER 6, 2017

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