

Federal Court



Cour fédérale

Date: 20171102

Docket: IMM-842-17

Citation: 2017 FC 988

Ottawa, Ontario, November 2, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

**ADRIANA PATRICIA QUEBRADA BATERO
MICHAEL STEVE QUEBRADA BATERO
SARAY MELISSA BELLO QUEBRADA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Adriana Patricia Quebrada Batero, the Principal Applicant who is now 40 years old, and her son and daughter who are, respectively, 23 and 13 years old, arrived in Canada at the Fort Erie border crossing on December 14, 2016. They claimed refugee protection the same day on the basis that the Principal Applicant had been subjected to extortion demands in Bogotá, Colombia, by a group identifying itself as the Black Eagles. Their claim was rejected by the

Refugee Protection Division [RPD] of the Immigration and Refugee Board on February 10, 2017. They have now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27, for judicial review of the RPD's decision.

I. The RPD's Decision

[2] The Applicants' claim was heard by the RPD on February 10, 2017, and denied in a decision rendered orally on the same day. Although the RPD found the Applicants' allegations to be credible, it found that locations within Colombia other than Bogotá, such as Medellín or Cali, would be a viable internal flight alternative [IFA] for them. Specifically, the RPD found that the Applicants could safely relocate from Bogotá to Medellín or Cali and it was reasonable for them to do so. The RPD based this finding on its review of documentation pertaining to the Black Eagles, notably two Response to Information Requests, an InSight Crime report, an *Agencia Prensa Rural* document, and an article from the Southport organization. In the RPD's view, the Black Eagles were not a singular organization with a central command structure but, instead, consisted of a number of independent localized groups that adopted the generic name "Black Eagles" out of convenience for the purpose of intimidation.

[3] The RPD determined that, even if the Black Eagles had a presence in Medellín or Cali, the "fragmented nature of the Black Eagles and the localized nature of their activities" made it "unlikely that they have the ability to track the claimants throughout the country to places such as Medellín or Cali, given their structure." There was, in the RPD's view, "insufficient evidence... to demonstrate that the people targeting the claimants were not simply a local group, or that the Black Eagles likely have the kind of network and resources of, for example,

paramilitary groups in Colombia, or the more organized and structured criminal organizations, so as to locate the claimants elsewhere.” The RPD further noted that, while there was some evidence that Black Eagles targeted certain people for persecution, such as activists, journalists, Afro-Colombians, indigenous peoples, landowners and farmers, certain business operators and drivers, government officials, trade unionists, and women and children with specific profiles, the Applicants did not fit any of these profiles. In response to arguments that the Principal Applicant’s adult son would be vulnerable to forced recruitment by gangs and paramilitaries throughout Colombia, the RPD found there was “insufficient evidence ... educed to demonstrate that forced recruitment of adults in urban areas is so systematic that its occurrence is likely to happen more often than not in Medellín or Cali.”

[4] The RPD acknowledged the Applicants’ testimony about the difficulties they would face in relocating to another city; it found, however, that such difficulties did not meet the threshold established in cases such as *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1172, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*], and *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 2118, [2001] 2 FCR 164 (CA). The RPD noted that the Applicants’ preferences and convenience were not generally relevant considerations, and the hardship associated with dislocation and relocation is not sufficient to make an IFA unreasonable. The RPD further acknowledged that while the level of crime in Medellín and Cali was high, Bogotá also suffers from serious crime.

[5] For the purposes of analysis of the second prong of the IFA test, the RPD considered the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* and whether the

Principal Applicant's status as a single mother affected her ability to relocate. The RPD found that being a single mother did not undermine the reasonableness of the Principal Applicant relocating. The RPD continued by stating:

Medellín and Cali are very large cities with developed infrastructure, essential services and amenities. The adult claimants are both young at 39 and 22, and there is no evidence to indicate that they are unhealthy or would be unable to sustain themselves. The principal claimant has worked as an administrative assistant or business consultant for most of the last decade. Throughout this time she also had a side business. Her son has post-secondary education and last year worked in IT (information technology) until he left the country. I find insufficient evidence to suggest that these skills are not transferrable to Cali or Medellín.

[6] The RPD completed its analysis of the reasonableness of the proposed IFAs by noting that "there are government programs available for people relocating to Medellín or Cali for ...assistance with housing, health services, and education." The RPD concluded by stating that the Applicants could "safely relocate to other cities in Colombia and it is reasonable for them to do so."

II. Issues

[7] The Applicant characterizes the issues as being whether the RPD failed to consider contrary evidence about (1) the nature of the Black Eagles and their ability to locate the Applicants and (2) the viability of the IFAs. In my view, however, this application for judicial review raises one primary issue: was the RPD's determination that the Applicants have a viable IFA in Medellín or in Cali reasonable?

III. Analysis

A. *Standard of Review*

[8] The RPD's determination on the availability of an IFA is reviewable on the standard of reasonableness (see: *Rodriguez Diaz v Canada (Citizenship and Immigration)*, 2008 FC 1243 at para 24, [2009] 3 FCR 395). As the Court noted in *Lebedeva v Canada (Citizenship and Immigration)*, 2011 FC 1165 at para 32, [2011] FCJ No 1439, IFA determinations "warrant deference because they involve not only the evaluation of the applicant's circumstances, as related by their testimony, but also an expert understanding of the country conditions involved."

[9] Under the reasonableness standard, the Court is tasked with reviewing a decision for "the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

[10] Additionally, "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; and it is also not "the function of the reviewing court to

reweigh the evidence”: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339. The RPD’s decision must be considered as an organic whole and the Court should not embark upon “a line-by-line treasure hunt for error” (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd.*, 2013 SCC 34 at para 54, [2013] 2 SCR 458).

B. *Was the RPD’s determination that the Applicants have a viable IFA in Medellín or in Cali reasonable?*

[11] The Applicants claim the RPD failed to consider evidence that contradicted its finding that the Black Eagles would be unable to track the Applicants to the proposed IFAs. They contend that the Black Eagles are a paramilitary network, with ties to the state and military, and are part of a larger network of criminal organizations known as “Clan Usaga” which has a hierarchical structure, national reach, and ability to track individuals throughout Colombia. According to the Applicants, there is no evidence that the Black Eagles in Bogotá are separate from the groups tied to Clan Usaga. The Applicants further claim that the RPD failed to consider evidence about the inadequacy of government programs for internally displaced persons in finding that Cali and Medellín were viable IFAs.

[12] The Respondent argues that the Applicants’ submissions “obscure” the RPD’s actual finding, which was that the Black Eagles in Bogotá did not have the ability to track them to the proposed IFAs. The Respondent notes that the RPD found that the Bogotá Black Eagles were not likely to be connected with Black Eagles groups in other areas. The Respondent disputes the Applicants’ claim that the RPD relied exclusively on a single document, noting that the RPD

referenced a wide range of country condition documents in its reasons. The Respondent acknowledges that while the documentary evidence indicates that Colombia's programs designed to assist internally displaced persons are generally seen as inadequate, the existence of government programs did not form the entire basis for the RPD's findings about the viability of the IFAs. According to the Respondent, the RPD's determination as to the viability of the proposed IFAs was also based on the ability of the Applicants to find work in large Colombian cities like Cali or Medellín.

[13] I agree with the Respondent's submission at the hearing of this matter that the Applicants are asking the Court to microscopically reweigh the evidence. The RPD does not need to mention every piece of evidence in its reasons and, moreover, it is assumed that the RPD weighed and considered all of the evidence before it, unless the contrary is shown (see: *Akram v Canada (Minister of Citizenship and Immigration)*, 2004 FC 629 at para 15, 130 ACWS (3d) 1004; *D'Souza v Canada (Minister of Employment and Immigration)*, [1983] 1 FC 343 at para 8, 16 ACWS (2d) 324 (CA); and *Florea v. Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1, [1993] ACF No 598 (CA)).

[14] The RPD does, however, need to properly identify and reasonably apply the two-pronged test for an IFA emanating from the Federal Court of Appeal's decision in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA), 140 NR 138. When determining the viability of a proposed IFA, the RPD must first be satisfied on a balance of probabilities that a refugee claimant faces no serious possibility of being persecuted in the proposed IFA and, second, it must be objectively reasonable for the claimant to seek refuge in

the proposed IFA. It is the refugee claimant who bears the burden to show that an IFA is not viable (see *Thirunavukkarasu* at paras 5-6).

[15] In this case, the documentary evidence before the RPD was such that it was reasonable for the RPD to find it unlikely that the Black Eagles in Bogotá have the ability to track the Applicants throughout the country to places such as Medellín or Cali. It was not reasonable, however, for the RPD to find that Cali or Medellín offered a viable IFA for the Applicants because the RPD did not consider the Applicants' potential for harm as internally displaced persons in Colombia. Although the RPD did note the existence of government programs available for people relocating to Medellín or Cali to assist with housing, health services, and education, it either ignored or unreasonably failed to consider or assess the Applicants' potential harm in the proposed IFAs as internally displaced persons. The objective documentary evidence before the RPD in this case showed that it would not be objectively reasonable for the Applicants to seek refuge in the proposed IFAs. This evidence shows that:

...victims of both intra-urban displacement and those from other parts of the country, live in territories controlled by armed groups. Even though sometimes these groups are not the same as those that caused the victims' initial displacement, eventually these groups become a serious threat to the displaced. Although these armed groups have no power at the national level, these are large criminal gangs, which are very powerful....

...displaced persons experienced significant delays in receiving responses to their displacement claims, initially as a result of delays in the establishment of validation criteria for claims and then as a result of a large backlog of claims built up over several months at the beginning of the year. International organizations and NGOs remained concerned about underregistration of IDPs and the slow institutional response to displacement. CODHES [Consultancy for Human Rights and Displacement] cited the government's denial of many registrations, lack of access to the registration system in some areas, and fear of retaliation from illegal armed groups as obstacles to full registration....

...there are approximately 10,000 victims of inter-city displacement in Medellín ... individuals registered as [translation] “displaced” receive approximately US\$150 per month for six months, which is “not enough” to sustain themselves (ibid.). The Director indicated that, for example in Medellín, the employment situation is very bad and displaced individuals arriving in Medellín find jobs selling [translation] “things on the street” (ibid.). *El Universal* notes that there is a lack of job opportunities in Cartagena...

[i]n most of the cases, displaced persons or individuals relocating to Cali, Cartagena or Medellín or another city move-in with friends or families. If they don't have any relatives or friends in Cali, Cartagena or Medellín, they usually move to poor areas of a city where they have to deal with ‘informal housing market,’ meaning that there are no formal rental agreements that prevent tenants from being thrown out of the house at any time. Moreover, hygiene and safety are usually bad in the poor areas.

Similarly, the Director stated that in Medellín, displaced persons move to the outskirts of a city (Corporación Región 25 Nov. 2013). According to the Director, municipal housing programs in Medellín do not have a specific number of houses allotted for displaced persons (ibid.).

[16] In my view, it was incumbent upon the RPD to assess the viability of the Applicants resettling to Cali or Medellín as internally displaced persons. The evidence about internally displaced persons in Colombia was directly relevant to whether it was objectively reasonable for the Applicants to seek refuge in Cali or Medellín. While it was open to the RPD to reject or assign this evidence little or no weight, it failed to explain why or how the Applicants would not face similar difficulties as internally displaced persons in Cali or Medellín. The Applicants' testimony before the RPD indicated that they had no family or other resources to rely upon in Cali or Medellín. It was unreasonable for the RPD to focus on whether the Principal Applicant's skills and those of her adult son were transferable to the proposed IFAs.

[17] In closing, I note that this case is similar to *Arias Ultima v Canada (Citizenship and Immigration)*, 2013 FC 81, 224 ACWS (3d) 754 [*Arias Ultima*], where the Court found the determination of an IFA in Bogotá to be unreasonable because the RPD had ignored documentary evidence which demonstrated that internally displaced persons in Colombia lead a very fragile and vulnerable existence. The Court found in *Arias Ultima* (at para 35) that the RPD:

...erred by ignoring this evidence in its analysis of whether the applicants have a viable IFA. This evidence was directly relevant to the question of whether it was objectively reasonable to expect the applicants to seek safety in the part of the country considered to be an IFA and pointed to a different conclusion on the second prong of the test for an IFA than the conclusion made by the Board. Accordingly, the Board erred by not mentioning or analyzing this evidence...

IV. Conclusion

[18] The Applicants' application for judicial review is allowed. Although the RPD reasonably found that it was unlikely that the Black Eagles in Bogotá had the ability to track the Applicants throughout the country to places such as Medellín or Cali, it unreasonably assessed the evidence as to whether it was objectively reasonable for the Applicants to seek refuge in Cali or Medellín.

[19] Neither party raised a serious question of general importance; so, no such question is certified.

JUDGMENT in IMM-842-17

THIS COURT'S JUDGMENT is that: the application for judicial review is granted; the decision of the Refugee Protection Division of the Immigration and Refugee Board rendered on February 10, 2017, is set aside; the matter is returned for redetermination by a different immigration officer in accordance with the reasons for this judgment; and no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-842-17

STYLE OF CAUSE: ADRIANA PATRICIA QUEBRADA BATERO,
MICHAEL STEVE QUEBRADA BATERO, SARAY
MELISSA BELLO QUEBRADA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: SEPTEMBER 12, 2017

JUDGMENT AND REASONS: BOSWELL J.

DATED: NOVEMBER 2, 2017

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