

Federal Court



Cour fédérale

Date: 20171220

Docket: IMM-1295-17

Citation: 2017 FC 1177

Ottawa, Ontario, December 20, 2017

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**LIBARDO GALLEGO ALVAREZ
NORY ROSEIDEN GAMBOA PEREZ
SAMUEL DAVID GALLEGO GAMBOA
ISAAC ALEJANDRO GALLEGO GAMBOA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review challenges a decision of the Refugee Appeal Division [RAD] whereby the Applicants were denied relief from a negative decision of the Refugee Protection Division [RPD].

[2] The principal applicant, Libardo Gallego Alvarez, is a dual citizen of Venezuela and Colombia. His spouse and minor children are citizens of Venezuela. The family came to Canada on April 17, 2016 and applied for refugee protection on the basis of an alleged fear of persecution in Venezuela and Colombia. The asserted risk concerned an employment dispute between Mr. Alvarez and his Venezuelan employer and his related complaint to the Ministry of Labour. According to Mr. Alvarez, this complaint led to a number of threats from unknown parties who told him to drop the matter.

[3] The RPD did not believe Mr. Alvarez's story about receiving threats, and it rejected his assertion that his effectively abandoned employment complaint would have plausibly caused anyone to pursue him into Colombia where the family could have safely relocated. In particular, the RPD found that evidence of loose ties between Venezuelan authorities, the Revolutionary Armed Forces of Colombia [FARC], and the National Liberation Army [ELN] in the border areas was not related to Mr. Alvarez's asserted risk. The RPD dealt with this aspect of the claim as follows:

[38] The claimants presented as post hearing evidence, along with their written submissions, two articles, dated March 18, 2015 and April 28, 2010, which refer to the Venezuelan authorities having ties with drug traffickers and the FARC. The panel finds these two articles are insufficient to suggest a forward looking possibility of persecution or risk of harm in Colombia. Moreover, the panel finds that these two articles are insufficient to establish that the FARC and the ELN would work in conjunction with Daniel Castellanos and the Bolivarian Circle to pursue the male claimant in Colombia.

[39] Having found that the claimants did not establish the motivation of the agents of persecution to pursue the male claimant and his family in Venezuela, and having found the two articles submitted by the claimants post hearing to be insufficient to establish a risk in Colombia or to establish that the agents of persecution would pursue the male claimant into Colombia, the

panel finds that the claimants have not established the motivation of the agents of persecution to pursue the male claimant and his family in Colombia. Furthermore, the claimants have failed to adduce any evidence to suggest a risk in Colombia. [Footnotes omitted.]

[4] The RAD came to the same conclusion. It too found that Mr. Alvarez's stated fear of persecution in Colombia was no more than speculation and that his wife similarly had no basis to be concerned for her safety. These findings are reflected in the following passages from the decision:

[38] The Appellants have speculated that Chavistas or Venezuelan government officials would obtain assistance from FARC or ELN in order to track down and harm the Appellants in Colombia. However, aside from showing evidence of some cross border cooperation in drug and gun smuggling between the terrorist groups and some corrupt business people and officials in Venezuela, there has been no substantial evidence to support the Appellants' speculation in this matter. Further, there is no evidence that the agents of harm have any further interest in any of the Appellants, as there has been no contact nor attempts to contact the Appellants by those agents of harm in over six months.

...

[52] Having these government connected Chavistas pursuing this Appellant more than a year after the Appellant made a complaint to the Labour Ministry is highly unlikely. Harassing the Appellant's wife is even more unlikely. The female Appellant has not alleged any direct threats against her, personally in Venezuela. Her only alleged risk is that of a family member of the Appellant and as I have found that the Appellant faces less than a mere chance of persecution, I find that the female Appellant also does not face a serious risk of persecution.

[5] The Applicants have raised several issues in support of their claim to relief. They assert firstly that the RAD made veiled credibility findings and "treated the case as if it was a case

where credibility had not at all impacted any of the other findings”: see para 18 of the Applicants’ Memorandum of Argument.

[6] Although the RAD clearly had some reservations about Mr. Alvarez’s risk narrative, these were not dispositive of the appeal. The determinative issue for the RAD was its finding that, whatever the situation in Venezuela, there was no plausible risk to the family in Colombia. This was a reasonable conclusion to draw in the face of Mr. Alvarez’s unsubstantiated assertion that his employment problem would follow him into Colombia.

[7] Mr. Alvarez complains that the RAD breached its duty of procedural fairness by relying on *ex post facto* evidence of a peace accord between FARC and the Colombian government. This evidence and the “new” issue it raised should, he argues, have been put to the Applicants for a response.

[8] While it is true that the evidence of a peace accord post-dated the appeal, it did not create an entirely new or different issue for the Applicants. The fact that a peace accord was being pursued and that the FARC had a diminished capacity in Colombia was also referred to by the RAD and open to comment by the parties. The later fact that a deal had been signed added little significance to the Applicants’ supposed risk and did not reflect a fundamental change in the general country conditions: see *Zhan v Canada*, 2015 FC 1031 at paras 54 to 60, 258 ACWS (3d) 160. This point was also essentially irrelevant to the RAD’s determinative finding that the alleged agents of persecution in Venezuela would have had no motivation to pursue Mr. Alvarez

into Colombia over a stale employment complaint, whatever the capacities of the FARC or the ELN may have been.

[9] This is a very different situation than the one discussed by Justice Keith Boswell in *Ehondos v Canada*, 2016 FC 1253, 48 Imm LR (4th) 112. In that case, the RAD departed from the credibility findings of the RPD and made its own negative assessment without the benefit of any submissions from the appellant. This was found to be unfair because the appellant's credibility had never been raised as an issue on the appeal. Justice Boswell described the RAD's approach as a "frolic".

[10] Here, the issue of a peace accord with one of the two supposed agents of persecution was of no significance to the RAD's ultimate conclusion that Mr. Alvarez had failed to establish any underlying risk in Colombia.

[11] I also find no merit to the argument that the RAD failed to review the evidence in its entirety and thereby wrongly limited the scope of its review. The RAD decision turned on a very reasonable interpretation of the evidence to the effect that the Applicants had a safe haven in Colombia. Indeed, on this record, the suggestion that the Venezuelan Chavistas would go to the trouble of pursuing this family into Colombia by enlisting the FARC or ELN makes no sense whatsoever.

[12] Quibbles about how the RAD dealt with certain pieces of evidence at the periphery of the case are insufficient to displace its central finding that there was no plausible risk in Colombia.

Decisions like this one must be viewed as an organic whole to determine if they stand up to the standards for clarity and intelligibility declared by *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. Judicial review is after all not a “line-by-line treasure hunt for errors”: see *Communication, Energy and Paperworkers Union of Canada v Irwing Pulp and Paper, Ltd*, 2013 SCC 34, [2013] 2 SCR 458.

[13] I, therefore, reject the arguments raised about the RAD’s treatment of the evidence concerning state protection, the capacity of the ELN, the need for Mr. Alvarez’s spouse to briefly return to Venezuela, and the supposed translation errors in the letter from Dr. Colmenares. None of these issues are material to the outcome of the case before the RAD or to its finding that there was no proven risk in Colombia.

[14] For the foregoing reasons, this application is dismissed.

[15] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1295-17

STYLE OF CAUSE: LIBARDO GALLEGO ALVAREZ
NORY ROSEIDEN GAMBOA PEREZ
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ISAAC ALEJANDRO GALLEGO GAMBOA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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