

Federal Court



Cour fédérale

Date: 20180919

Docket: IMM-5255-17

Citation: 2018 FC 931

Toronto, Ontario, September 19, 2018

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

BEATRIZ INANGCOB COLMO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant claims refugee protection against return to the Philippines as an Indigenous human rights advocate, pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act (IRPA)*.

[2] By decision dated February 7, 2017, the Refugee Protection Division (RPD) rejected the Applicant's claim on the basis that she had not rebutted the presumption of state protection

because she did not seek state protection. The Applicant appealed this decision to the Refugee Appeal Division (RAD).

[3] By a decision dated November 17, 2017, the RAD found that it was unreasonable for the RPD to require the Applicant to approach the state for protection when she alleged that the state is the agent of persecution. However, the RAD proceeded to uphold the decision of the RPD pursuant to s. 111(1)(a) of the *IRPA* for reasons other than those of the RPD.

[4] I find that the determinative issue in the present Application is the RAD's treatment of the country conditions evidence going towards whether the Applicant had a well-founded fear of persecution should she return to the Philippines.

[5] The RAD accepted that the Applicant was an Indigenous human rights activist in the Philippines. The RAD stated in its decision that it will consider "the impact of [the Applicant's] return to the Philippines and her risk should she return and continue to participate in activism with the Indigenous population" (Decision, para. 36). However, as mentioned below, I find that the RAD failed to do so.

[6] In her submissions to the RAD, the Applicant's counsel highlighted documents in the National Documentation Package (NDP) and submitted a large volume of country conditions evidence. These documents indicated that Indigenous human rights activists were the victims of extra-judicial killings and violence by state and paramilitary forces in the Philippines and

documented a lack of accountability for these actions. Examples of relevant passages from the country conditions documents highlighted by the Applicant in her submissions to the RAD include:

Data compiled by indigenous peoples' advocacy groups indicate that assailants often linked to the military or paramilitary groups killed at least 13 tribal leaders and tribal community members in the first eight months of 2015 [...]

Human Rights Watch Report, NDP Item 2.3

[T]he UN CESCR expressed concern at the continuing harassment, enforced disappearances and killings of human rights defenders and the low level of investigations into and prosecutions and convictions for these crimes.

Amnesty International Annual Report 2016/2017
(NDP Item 2. 3)

This lack of accountability has had an effect of giving government agents de facto license to torture, extrajudicially kill, and, forcibly disappear, victims. This pattern continued this year—the perpetrators targeted not only human rights and political activists, but also ordinary people, including those not involved in any political activities. This phenomenon shows how the lack of accountability and the failure to punish perpetrators affects the entire society.

Asia Report 2014, NDP Item 2.6

[7] I find that the RAD failed to address this and other critically relevant country conditions evidence regarding the risks faced by similarly situated persons in the Philippines (see: *Bozík v Canada*, 2017 FC 920), namely Indigenous human rights advocates. As a result, I find that the decision under review is unreasonable.

JUDGMENT in IMM-5255-17

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5255-18

STYLE OF CAUSE: BEATRIZ INANGCOB COLMO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 17, 2018

JUDGMENT AND REASONS: CAMPBELL J.

DATED: SEPTEMBER 19, 2018

APPEARANCES:

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Attorney General of Canada FOR THE RESPONDENT