Federal Court  Cour fédérale

Date: 20181206

Docket: IMM-1931-18

Citation: 2018 FC 1225

Toronto, Ontario, December 6, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

CAROLINA JIMENEZ
HANNAH VALENTINA NAVAS JIMENEZ
(A MINOR BY HER LITIGATION GUARDIAN CAROLINA JIMENEZ)
JOHAN ANDRETTI CANCHICA JIMENEZ
(A MINOR BY HIS LITIGATION GUARDIAN CAROLINA JIMENEZ)

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] This is an application under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The application was brought by a mother [the principal Applicant] and her two minor children [collectively, the Applicants]. They seek judicial review of the March 2, 2018

decision [Decision] of the Immigration and Refugee Board's Refugee Protection Division [Board], which found they were neither Convention refugees nor persons in need of protection because of the availability of an internal flight alternative [IFA].

I. Background

[2] The Applicants lived in Cali, Colombia with the principal Applicant's common law husband [Mr. X], who abused the principal Applicant physically, sexually and psychologically. The Applicants left Colombia in July 2016, ultimately claiming refugee protection in Canada, citing risk in Colombia at the hands of Mr. X.

[3] The Board identified two IFAs at the hearing: Bogota and Medellin. The principal Applicant testified that Mr. X had family in Bogota. Further, she gave the example of a friend who hired a detective who successfully found her mother using only basic information. This, the principal Applicant said, put her in danger of being found anywhere in the country, as Mr. X's financial resources, connections, and the availability of detectives and "sicarios" (hitmen) in Colombia made her fear for her safety.

[4] The Board applied the two-part IFA test set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA), namely that the IFA must provide (1) freedom from persecution; and (2) reasonable refuge in all the circumstances.

[5] The Board found the principal Applicant to be generally credible in her testimony. However, it determined Medellin would be a viable IFA, as there was no serious possibility of

persecution there, and, in the circumstances, it would not be unreasonable for the Applicants to relocate to Medellin.

[6] The Board found that the principal Applicant's belief that Mr. X would be able to use hitmen and detectives to find them was insufficient to establish that he would employ these methods or that they would be likely to succeed. Further, the Board found that Mr. X neither has family in Medellin who could assist him in locating the Applicants, nor any other apparent connection to the city. There was no serious possibility of persecution in Medellin. The first part of the test was therefore satisfied.

[7] The Board noted that the Applicants would be able to reach Medellin with no physical danger or undue hardship, and that there was insufficient evidence to indicate that the principal Applicant would be unable to provide the necessities for herself and her children, and to find work and shelter, thus satisfying the second part of the IFA test. The Board concluded that the Applicants had a viable IFA within Medellin, and were therefore neither Convention refugees nor persons in need of protection.

II. Issues and Standard of Review

[8] The Applicants raise two issues:

A. Did the Board's failure to make a finding about the viability of Bogota as an IFA breach the Applicants' right to procedural fairness?

B. Did the Board err with respect to its IFA analysis by accepting the principal Applicant as credible but disagreeing with her conclusions?

[9] The first issue, which relates to procedural fairness, is reviewable under a standard of correctness (*Sar v Canada (Citizenship and Immigration)*, 2018 FC 1147 at para 18). For the second issue, IFA determinations that apply the correct test are reviewable under a standard of reasonableness (*Quebrada Batero v Canada (Citizenship and Immigration)*, 2017 FC 988 at para 8).

A. *Did the Board's failure to make a finding about the viability of Bogota as an IFA breach the Applicants' right to procedural fairness?*

[10] The Applicants argue that the Board's failure to provide reasons for the non-viability of Bogota as an IFA location breaches their right to procedural fairness, relying on *Baker v Minister of Citizenship and Immigration*, [1992] 2 SCR 817. In its Decision, the Board stated that "[Mr. X] has no family in Medellin who could assist him in locating the claimants, and no other apparent connection to the city." The Applicants contend that there are no material differences between the two cities as IFAs, other than the presence of Mr. X's family.

[11] I agree with the Respondent that the Board was only required to explain why it determined Medellin was a viable IFA, which it did. The Board was not required to discuss issues that were not determinative of the claim, such as other possible IFAs.

[12] Further, the principal Applicant cannot assert that she does not understand why Bogota was found to be a non-viable IFA, while also arguing that the only difference between Bogota and Medellin is the presence of family in the former. She discussed the reach of Mr. X to Bogota through family members, who live in Bogota, but not Medellin. This is presumably why

the Board did not further pursue Bogota as a potential IFA, deciding simply to focus on the IFA where no family members lived.

[13] Finally, the Applicants provide no authority stating that the Board is obligated to make findings about all potential IFA locations that are raised at the Board hearing or that the Board was required to make a finding about the viability of Bogota as a second IFA. Whether or not Bogota was raised as a possible IFA at the Board hearing was ultimately immaterial to the conclusion reached. The Applicants fail to establish how the lack of reasons for the Bogota analysis is central to the entire decision, as they have alleged. The determination that Medellin was a viable IFA is dispositive of the case, and its reasonability will be discussed next.

B. *Did the Board err with respect to its IFA analysis by accepting the principal Applicant as credible but disagreeing with her conclusions?*

[14] The principal Applicant argues that the Board cannot reject her testimony after having found her to be a generally credible witness. She testified before the Board that Mr. X would be able to hire a hitman or a detective to track her down in Medellin because her friend used the service of a detective to track down her mother. The principal Applicant relies on *Zaytoun v Canada (Citizenship and Immigration)*, 2014 FC 939 [*Zaytoun*] for the proposition that, having accepted her credibility, the Board cannot pick and choose among her testimony: either the Board accepts her credibility or it does not.

[15] I am unpersuaded by this argument, which takes an overly simplistic view of the notions of credibility and its broader meaning within the law of evidence. Simply put, the Board was not

required to accept every assertion made by the principal Applicant simply because it found her to be generally credible. The Board reasonably found that the Applicant did not provide sufficient evidence as to the circumstances around the friend's use of a detective to find her mother, or how similar the circumstances of that case were to the Applicants' case. The Board also found the testimony with regard to Mr. X's connections to be insufficient to establish a threat in Medellin.

[16] When an IFA is raised by the Board, the onus is on the claimant to show that she would face persecution there (*Kumar v Canada (Citizenship and Immigration)*, 2012 FC 30 at para 36), based on "actual and concrete evidence" of conditions that would jeopardize her life and safety in the proposed IFA (*Yafu v Canada (Citizenship and Immigration*, 2014 FC 293 at para 7). Here, the Board found that the Applicants' evidence did not meet this onus.

[17] I note that the Court has upheld IFA findings because an applicant's evidence about being located in a large urban centre was "vague and speculative" (e.g. *Akinfolajimi v Canada (Citizenship and Immigration)*, 2018 FC 722 at para 26). Similarly, here the Applicants did not provide sufficient objective evidence to establish that Mr. X could locate the family in Medellin. I find that based on all the evidence, this finding was open to the Board to make.

[18] Furthermore, *Zaytoun* is distinguishable as there, Justice Mactavish held that the Board made internally inconsistent credibility findings:

> The Board cannot have it both ways: Hezbollah either tried to recruit Mr. Zaytoun or it did not. Mr. Zaytoun testified under oath that Hezbollah had indeed tried to recruit him on three separate occasions. If the Board did not accept Mr. Zaytoun's testimony on this point, it was required to say so clearly, and to provide a proper credibility analysis justifying its findings. In the absence of any

> analysis regarding Mr. Zaytoun's credibility, his story must be taken as true. The Board cannot purport to accept Mr. Zaytoun's testimony that he was recruited by Hezbollah, and then base its internal flight alternative finding in part on the fact that Mr. Zaytoun lacked the profile of someone Hezbollah would seek to recruit.

[19] Here, on the other hand, the Board did not find the principal Applicant's testimony to lack credibility, and thus make a *Zaytoun*-like finding of internal inconsistency. Unlike in *Zaytoun*, the Board did not simultaneously accept and reject her testimony. Rather, the Board simply found that the Applicant's subjective testimony alone did not constitute sufficient evidence of the conclusions she suggested. In other words, the probative value of the evidence, namely the assertions regarding her ex-husband's reach in Medellin, was not sufficient. This was no veiled credibility finding. Instead, it was the Board weighing her subjective assertions regarding Medellin as an IFA, in light of all other objective evidence. As this Court has repeatedly observed, and most recently restated in *Kulemin v Canada (Citizenship and Immigration)*, 2018 FC 955 by Justice Kane:

> [41] It is not inconsistent for a decision-maker to find evidence or testimony credible, yet to find it insufficient. The assessment of credibility is separate from the assessment of the weight to be given to the evidence (*Ferguson v Canada (Minister of Citizenship and Immigration*), 2008 FC 1067 at para 26).

[20] Here, when the Board found the principal Applicant to be generally credible, this did not require it to accept every conclusion she put forward; the tribunal can, despite a general credibility determination, reject certain parts of an applicant's testimony (see *Ortiz v Canada (Citizenship and Immigration)*, 2014 FC 82 at paras 9, 14, and 18-19, and *Furman v Canada (Minister of Citizenship & Immigration)*, 1997 CanLII 5635 (FC) at paras 2-3). It was still

incumbent on the Board to assess the credibility, reliability and the relevance of the evidence in establishing key facts. Otherwise, the Board would have to take at face value every statement by credible or generally credible claimants that they are Convention refugees or persons in need of protection, and they would all be granted status. This is why claims require both a subjective and an objective basis to succeed: while generally credible witnesses may also be generally reliable and their evidence relevant in establishing facts, not every statement they make is true. They may very well have a strong personal belief, but a preponderance of objective evidence may run counter to their sincerely-held, subjective belief.

[21] Indeed, it is for this very reason that the central role of the Board, as the trier of fact in a refugee claim, is to decide the probative value of all the relevant evidence, to subsequently weigh that evidence in the context of all of the other evidence applying the appropriate burden of proof, and to apply that evidence to the legal test. Some statements made, and some evidence proffered, will be more credible, reliable and relevant than others.

[22] Here, after considering the evidence, both from the principal Applicant, and the objective sources including country documentation, the Board reasonably found that the tendered evidence, some of which was credible, reliable and relevant, did not have sufficient probative value to establish, on a balance of probabilities, that there was a reasonable chance or serious possibility of persecution in the IFA of Medellin. I find that this was justifiable and transparent, and thus a reasonable outcome.

III. Conclusion

[23] The Board's failure to make a finding regarding the viability of Bogota as an IFA was not a breach of the Applicants' right to procedural fairness. Its findings on Medellin as an IFA were reasonable. As the Decision rested entirely on the Medellin analysis, and provided sufficient reasons to understand its underlying rationale that was transparent and justifiable, the application for judicial review is dismissed.

JUDGMENT in IMM-1931-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No questions for certification were argued, and none arose.

3. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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