Federal Court Cour fédérale

Date: 20190131

Docket: IMM-3815-18

Citation: 2019 FC 134

Ottawa, Ontario, January 31, 2019

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ARINSON AGUIRRE RENTERIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a companion decision to the one rendered in *Renteria v The Minister of Citizenship and Immigration*, Docket IMM-3816-18, where the Court allowed the application for judicial review based on the insufficiency of the Immigration Officer's [the Officer] reasons. Mr. Aguirre is the younger brother of the Applicant in that proceeding.

[2] Although the issues raised on this application do not completely overlap with those that were raised in IMM-3816-18, I have similar concerns about the adequacy of the reasons given in refusing Mr. Aguirre's claim to Humanitarian and Compassionate [H & C] relief.

[3] As in the related case, I am particularly concerned about the Officer's perfunctory analysis of the evidence bearing on the conditions facing black people in Colombia. That evidence indicated that Afro-Colombians face pervasive discrimination and socio-economic disadvantages not experienced by many others in Colombia. Nonetheless, the Officer's treatment of that considerable body of apparently credible evidence was limited to the following:

> I have read and carefully considered the submissions on the applicant being of Afro-Colombian descent and acknowledge current country conditions for Afro-Colombians are less than favourable. I give favourable consideration to this factor in this application. I make note of the fact that the applicant did not raise his race or ethnicity as his refugee hearing nor has he provided sufficient objective evidence that his sister who resides in Colombia is suffering hardships as a result of being Afro-Colombian.

The Minister argues that this is a sufficient analysis because the relevant evidence was considered and given favourable weight. I do not agree.

[4] When a person is to be removed to a place where conditions are markedly inferior to Canadian standards and where that differential is not considered sufficient to justify the granting of H & C relief, there is an obligation to meaningfully engage with the evidence. That is so because a failed applicant for H & C relief is entitled to know why the evidence in support of the claim was considered to be insufficient. If it were otherwise the most egregious circumstances could be effectively dismissed under the guise of a phrase like "less than favourable". This is the

kind of boilerplate statement that was of concern in *Ocampo v Canada*, 2015 FC 1290 at para 9, 261 ACWS (3d) 702.

[5] I also question the Officer's concern that ethnicity was not raised as a basis for Mr. Aguirre's refugee claim. That refugee claim was based on a FARC risk asserted by Mr. Aguirre's sister. It is not at all surprising that the hardship associated with Mr. Aguirre's ethnicity was not raised because forms of even persistent discrimination rarely rise to the level of persecution.

[6] I have two other matters of concern, the first dealing with the Officer's treatment of the RPD's credibility findings and the second dealing with Mr. Aguirre's adaptability.

[7] It is not at all clear to me why Mr. Aguirre's credibility was affected by the RPD's adverse treatment of his sister's evidence of risk. These should not have been linked.

[8] I also question the Officer's treatment of Mr. Aguirre's Canadian establishment as effectively a reason to send him back to Colombia. This is the type of Catch-22 thinking that was of concern to Justice Donald Rennie in *Lauture v Canada* 2015 FC 336 at para 26, [2015] FCJ No 296. Credit for Canadian establishment should be given and not used as an excuse to deny relief: see *Sebbe v Canada* 2012 FC 813 at para 21, [2012] FCJ No 842.

[9] For the foregoing reasons, this application is allowed. The matter is to be redetermined on the merits by a different decision-maker. Given the passage of time, Mr. Aguirre should have the opportunity to supplement the evidence in support of his application.

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

JUDGMENT in IMM-3815-18

THIS COURT'S JUDGMENT is that this application is allowed with the matter to be redetermined on the merits by a different decision maker.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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