Federal Court  Cour fédérale

Date: 20211025

Docket: IMM-5813-20

Citation: 2021 FC 1136

Ottawa, Ontario, October 25, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

MARIBEL DEL ROSARIO OSORIO
VISBAL GABRIEL ANDRES ACUNA OSORIO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants, Maribel Del Rosario Osorio Visbal (the "Principal Applicant") and her minor son, Gabriel Andres Acuna Osorio (together as the "Applicants") seek judicial review of a decision by the Refugee Protection Division ("RPD"), refusing their claim for refugee protection, finding a viable Internal Flight Alternative ("IFA") in Medellín, Columbia.

[2] As a preliminary issue, I am granting an extension of time for the Applicants to file their application as the conditions are met and the Respondent consents (*Canada (AG) v Henneley*, (1999) 244 NR 399 (FCA)).

II. Background

[3] The Applicants are citizens of Colombia, and allege that they have a well-founded fear of persecution because of their political opinion, specifically, their imputed opposition to the National Liberation Army or Ejército de Liberación Nacional ("ELN").

[4] The RPD Member found that the Principal Applicant was generally credible, but that her inferences regarding the danger she and her son would be in "went beyond what the evidence would support" and that she was embellishing her case in that respect.

[5] The Applicants claim that the ELN had demanded the farm land owned by the Principal Applicant's ex-husband and his siblings, who refused to let them use or have it. In February 2018, the Applicants were approached by armed men. The Principal Applicant say the men took hold of her son, and said they wanted to recruit him into the ELN. Ultimately, they took money and the men stated that what they really wanted was the farm. In May 2018, after the Applicants moved to Bogotá, the Principal Applicant's son was walking through a campground when a man approached him and asked him for an address and whether he had marijuana in his backpack. When her son said he had no marijuana he threatened him with a knife. The assailants told the son "even if you are in, you will not escape from us tell your parents." (CTR pg 89) They left Bogata but returned in June 2018. In Bogota the son recognized the man who had threatened him

and sought an address and marijuana so the family returned to Barranquilla in July, 2018. They returned as well to comply with a summons from the Attorney General's Office.

[6] The Principal Applicant's ex-husband made a denunciation at the Attorney General Office, which amplified her previous denunciation. He had also been receiving "pamphlets" from the ELN with threats, and wherein the ex-husband and the Principal Applicant were declared "military targets." Her ex-husband was involved in a shooting attempt by an unrecognized man on a motorcycle of which he was not shot. She made a denunciation on August 21, 2018 to the Attorney General about this incident.

[7] Throughout her time in Colombia, the Principal Applicant was treated for a mitral regurgitation and mental health challenges.

[8] After receiving advice from an official at the Office of the Attorney General, the Applicants flew to Buffalo, New York in August 2018, but did not make asylum claims, as they had no relatives in the USA. They then crossed into Canada and made an asylum claim, given that they had family in Canada.

[9] Since being in Canada, the Principal Applicant's sister was struck by two men on a motorcycle, who then mentioned the Principal Applicant by name. She believes that they were from the ELN.

III. Issue

[10] The issue is whether there the finding from the RPD that Medellín would be a viable IFA is reasonable.

IV. Standard of Review

[11] The standard of review is one of reasonableness (*Canada v Vavilov (Minister of Citizenship and Immigration*), 2019 SCC 65).

V. Analysis

[12] The Principal Applicant submits that in finding that there was a viable IFA, the RPD erred by incorporating credibility findings into its IFA analysis, and that the RPD ignored and misconstrued the evidence under both prongs of the IFA test. She says that the RPD accepted all the details regarding their movements and having been targets throughout Colombia, including the threats in Bogotá and near her ex-husband's family owned farm. She says, however, that the RPD's conclusion that the ELN would not have the means or motive to track them in other cities is unreasonable. In support of her submissions, she cites *Aigbe v Canada (Minister of Citizenship and Immigration)*, 2020 FC 895 [*Aigbe*].

[13] In *Aigbe*, the Court ruled that having assumed that the applicants were credible, the Refugee Appeal Division ("RAD")'s first prong analysis of the IFA test was based on an inference that the agent of persecution would be unlikely to find the applicants as long as they

were not living with family. She asserts that the instant case is similar. She states the decision is unreasonable, given that the RPD failed to explain how the evidence supported the conclusion that they would not be tracked down by the ELN, after they had managed to do so in Bogotá. The Principal Applicant submits, citing *Ng'aya v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1136 [*Ng'aya*], that when an IFA location would eventually become known it is rendered, unsuitable.

[14] I am not of the view that this is what *Ng'aya* stands for. In my view, it stands for the proposition that where an applicant's whereabouts would eventually become known in the event they are unable or unwilling to isolate themselves totally from all of the other members of their family and past family acquaintances. This type of isolation is an impossible burden to place upon someone given the applicant in that case is personal circumstances (she was a young woman looking after a baby in a challenging and unfamiliar urban setting). That is, in some cases, the need for an applicant to stay completely isolated from everyone they know in an IFA would render it unreasonable. I do not find that this is such a case.

[15] The Principal Applicant also says that because the ELN knew they fled Colombia, it demonstrates that they had sufficient information about them, and that the RPD ignored this (and other) evidence. Further, she says that given the RPD accepted that the ELN can track individuals down, their rejection of the possibility that they would track down the Applicants is unsupported by the evidence. The Principal Applicant points to evidence in the record which supports that military targets are targeted by the ELN. She cites Justice Manson in *AB v Canada (Minister of Citizenship and Immigration)*, 2020 FC 915, for the principle that it is unreasonable

for a decision-maker to justify a lack of motivation or means when the evidence shows consistent repeated visits. The Principal Applicant suggests that the RPD Member had a duty to address the evidence which contradicted its conclusions (*Yahia v Canada (Minister of Citizenship and Immigration)*, 2019 FC 84 at para 45), and that a failure to do so renders the decision unreasonable.

[16] On the second prong, she argues that the RPD characterized her health issues only as "stress-related," and that she had been diagnosed with Post-traumatic Stress Disorder ("PTSD") and Severe Generalized Anxiety Disorder, in addition to physical health problems. The Principal Applicant's position is that this renders the finding unreasonable, citing case law which states that "psychological evidence is central to the question of whether the IFA is reasonable and cannot be disregarded" (*Cartagena v Canada (Minister of Citizenship and Immigration)*, 2008 FC 289 at para 11). She also argues that her healthcare is dependent on employment, and that if she were to return to Colombia, her health would get worse.

[17] In *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 1256, [1992] 1 FC 706, the well-established two-pronged test for an IFA is set out, requiring that:

> First, the Board must be satisfied on the evidence before it that the circumstances in the part of the country to which the claimant could have fled are sufficiently secure to ensure that the appellant would be able "to enjoy the basic and fundamental human rights".
>
> Second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[18] In their decision, the RPD stated that because Medellín is a large city and the Applicants are not primary targets, along with the fact that there is no evidence that the ELN has the means or motivation to find them. Given this, the RPD found that it was unlikely they would be found there. It is true that the onus is on the Applicants to show that the proposed IFA would be unacceptable (*Argote v Canada (Minister of Citizenship and Immigration)*, 2009 FC 128 at para 12; *Figueroa v Canada (Minister of Citizenship and Immigration)*, 2016 FC 521). I find that the RPD was reasonable in their determination that, given Medellín is a large city, the Applicants are not primary targets, and the fact that she was not married to the target. The RPD Member says: "I have no idea how the minor claimant was located by the ELN in Bogotá, and neither do the claimants." As a result, though the reasons do not extensively explain why Medellín would be different than Bogata other than it is a larger city, there is no evidence adduced that this was anything more than a random sighting by the son, and there was no evidence that he was being searched for by the individual he saw.

[19] The RPD's further supported their finding, when they considered the motive of the ELN to find the Applicants, that "I do not accept this response because I find that the claimants have not demonstrated that the ELN has the motive or the means to have instituted an ongoing, country-wide search for the claimants" (*RPD Decision*, para 36). As well, the RPD found that the ELN was looking for her ex-husband because he did not transfer land to them. It was him they were after. Further, the RPD stated that the Applicants had only heard second-hand that they were also military targets because of the farmland refusal, and there is no evidence of what the ELN wanted the land for (*RPD Decision*, para 37). This, taken in tandem with the country condition information and the ELN's highly decentralized organizational structure, indicates that

the ELN's "…ability to track people is scarce" (*RPD Decision*, para 38). The RPD used this objective evidence, in light of the Applicants evidence – including the threats, as well as the uncertainty as to how the son was located in Bogota – and found reasonably that Medellín was an IFA. These factors, taken together, satisfy me that the criteria for reasonableness as set out in *Vavilov* are met on this prong of the 2-pronged test.

[20] Regarding the second prong of the test, the RPD explained why they found that it would not be unreasonable for the Applicants to relocate in Medellín. Based on the evidence of the Principal Applicant's experience, the RPD concluded that she could earn a living and support herself. The RPD accepted the health issues of the Principal Applicant, but were unable to see how they would hinder her resettlement. In my opinion, these reasons are sufficient. As required by *Vavilov* at paragraph 85, they are based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker. The reasonableness standard requires that a reviewing court defer to such a decision.

[21] Neither party submitted a certified question and none arose from the application.

JUDGMENT IN IMM-5813-20

THIS COURT'S JUDGMENT is that:

1. The extension of time on consent of the Respondent is granted for the filing of the Application;
2. The application is dismissed;
3. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5813-20
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