Federal Court  Cour fédérale

Date: 20211201

Docket: IMM-1150-19

Citation: 2021 FC 1333

Ottawa, Ontario, December 1, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

OMAR LEONARDO ARANGO TORRES
YENNY LORENA CHAPARRO MAYORQUIN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Omar Leonardo Arango Torres and Yenny Lorena Chaparro Mayorquin, are husband and wife. They are both citizens of Colombia who, upon entering Canada, claimed refugee protection. They allege that they are being persecuted by a specified paramilitary group.

[2] In a decision issued verbally on February 4, 2019, the Refugee Protection Division [RPD] rejected their claims. The RPD determined that the Applicants had failed to overcome the presumption of adequate state protection and that they had a viable internal flight alternative [IFA] in their own country.

[3] The Applicants seek judicial review of the RPD's decision. They argue that its conclusions regarding the existence of adequate state protection in Colombia and the existence of a viable IFA are unreasonable.

[4] Both parties agree that the appropriate standard of review to assess the issues raised by the Applicants is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]).

[5] When determining whether a decision is reasonable, the Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The "burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

[6] I agree with the Applicants that the RPD's decision must be set aside on the basis that it does not satisfy the criteria of "justification, transparency and intelligibility" set out by the Supreme Court of Canada in *Vavilov*.

[7] On the issue of state protection, the RPD generally found that the Applicants had not given the state authorities sufficient time to properly investigate the matters reported, or an opportunity to protect them. The evidence and testimony demonstrated, however, that the Applicants had made several denunciations and attempts to access state protection between September 23, 2017 and January 19, 2018 and that, aside for one specific occasion where the police escorted the male Applicant to the bus station, there was no evidence that state protection would be forthcoming in a reasonable delay. The RPD does not appear to have considered the ongoing nature of the complaints. When the male Applicant left Columbia in November 2017, the female Applicant became the target of the paramilitary group. Additionally, the RPD does not appear to have considered in its assessment the nature of the threat she received a week before leaving Columbia. While the RPD refers to "a further incident on January 19, 2018", it does not elaborate any further. On that day, the relative with whom the female Applicant was living found a funeral wreath with her name on it, to which a note was attached stating that the Applicants had become military targets due to their lack of compliance.

[8] Moreover, there is a complete lack of assessment of the objective documentation in the RPD's decision. The RPD refers to the fact that the female Applicant sought protection from the Unidad Nacional de Protección [UNP]. The UNP is an organization responsible for providing protection to individuals who, given their positions or activities, may be subjected to

extraordinary or extreme risks. The RPD states that it is “not sure” whether the female Applicant “properly applied to this programme”. The RPD does not identify why the request for protection from the UNP may have been improper, nor the source of the information supporting such allegation. Furthermore, it does not assess whether the female Applicant would qualify for protection and whether it would be available in a timely manner. If it was likely, based on the objective evidence, that she would not qualify for protection by the UNP, or that protection would not be forthcoming in a reasonable delay, then the fact that she never properly applied or followed up with the UNP cannot reasonably be held against her.

[9] On the issue of the IFA, the RPD found that the Applicants could safely return to a specified location in Columbia. The RPD conceded that the paramilitary group had a prior interest in the Applicants, but found that they did not have an ongoing interest, nor the motivation to find them. The RPD based its conclusion on the following elements: (1) both Applicants had family in Colombia and they had no contact with the paramilitary group; (2) the male Applicant’s family continued to live in the Applicants’ house; and (3) the paramilitary group feared by the Applicants had no presence in the proposed IFA.

[10] I recognize that the fact the paramilitary group never targeted or approached the Applicants’ family members regarding their whereabouts is indicative of a lack of interest or motivation. I find, however, that the RPD’s assessment is flawed because of its failure to engage with the male Applicant’s particular risk profile and the evidence that the Applicants had become military targets.

[11] It may well be that the RPD's findings on state protection and the existence of an IFA are justifiable. However, when the decision is read as a whole and contextually, I find that it is not sufficiently transparent and justified to meet the threshold of reasonableness set out in *Vavilov*.

[12] Accordingly, the application for judicial review is allowed and the matter is referred back for redetermination by a different panel. No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-1150-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The style of cause is amended to replace the "Minister of Immigration and Citizenship" with the "Minister of Citizenship and Immigration" as the proper Respondent;
3. The decision is set aside and the matter is remitted back to a different panel for redetermination; and
4. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1150-19
STYLE OF CAUSE:	OMAR LEONARDO ARANGO TORRES ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	DECEMBER 1, 2021

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