

**Date: 20080317**

**Docket: IMM-2658-07**

**Citation: 2008 FC 354**

**Ottawa, Ontario, March 17, 2008**

**PRESENT: The Honourable Orville Frenette**

**BETWEEN:**

**FRESIA BEATRIZ LONDONO SOTO  
MARIA ALEYDA LONDONO SOTO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of the Refugee Protection Division (RPD) dated June 11, 2007 in which the Panel Member denied refugee status to the Applicants; Fresia Beatriz Londono Soto (Fresia) and her sister, Maria Aleyda Londono Soto (Maria).

[2] The Applicants are citizens of Colombia who claim they fear persecution at the hands of the Revolutionary Armed Forces of Colombia, or the “FARC”. The FARC is one of Colombia’s oldest and most powerful guerrilla terrorist groups, heavily involved in the trade of illegal narcotics and known for using kidnapping and extortion to force citizens to pay *vacuna* (taxes or extortion monies). Documentation on country conditions in Colombia clearly shows that the FARC targets those it perceives to be against its communist ideology, in particular land owners, professionals and government workers. The United States Department of State includes the FARC on its list of foreign terrorist organizations, as does the European Union.

[3] For many years, the Applicants’ family held a farm in Manzanares. The written statement attached to Fresia’s Personal Information Form (PIF) (hereinafter referred to as the “statement”) explains that Maria was the administrator of the farm. The evidence at the hearing was that Maria initially worked on the farm and later, when she got a job at the University of Los Andes, continued to travel to the farm on weekends to assist her father with the maintenance of the farm. Fresia testified that for many years, the FARC had demanded (and the family had paid) *vacuna* for the farm in the amount of 200 – 300 thousand pesos every few months. Fresia testified that, at some point in 2003, the family stopped making these payments because they felt “this situation of being forced to give up their financial resources could continue no longer”. Fresia’s statement explained that the family no longer had enough money to keep paying the *vacuna*. In retaliation for not paying, the FARC stole cattle and equipment from the farm, and harassed the father and Maria with phone calls, demanding payment.

[4] Fresia testified that because of these harassing demands for payments, and due to the increased presence of the FARC on and around the farm, her family “partially left the farm” as of November 2005, and then completely refrained from going there at some point in 2006. At a later point in the hearing, when questioned as to when Maria ceased her visits to the farm, Fresia testified that Maria stopped visiting in March 2006, but that her “activities there” were decreasing as of the previous November. According to Fresia’s statement, the Applicants’ father left the farm for good on May 30<sup>th</sup>, 2006. It is the Applicants’ current belief that FARC members eventually “took over” the farm, using it as a place to stay or to eat.

[5] Fresia testified that she was personally harassed by FARC members due to her position as coordinator of a government program focused on the eradication of illegal crops, such as cocoa and poppy flower. According to Fresia’s statement, in mid-2005 she was responsible for coordinating families to volunteer for this program. The FARC began to pressure these communities to not participate in the program and they threatened those that worked on the program. Fresia testified that on January 15, 2006, members of the FARC stopped a bus she was traveling on and took her and other members of the program to a rural area where the FARC physically and verbally harassed them and stole Fresia’s computer. (The “January 15<sup>th</sup> incident”) A few days later, on January 19<sup>th</sup>, Fresia and her colleague received a threatening phone call while in the town of Pasto from a man who identified himself as a member of the FARC. Fresia testified that the man said if they did not stop

promoting the program, they would be attacked. Fresia and her colleague reported the phone call to authorities in Bogota.

[6] According to her oral testimony, Fresia ceased her work with this program at the end of January 2006; however the harassing phone calls did not stop and the FARC continued to threaten her and make threats against her family members. Fresia testified that, on June 15 2006, she was again stopped by FARC members and told that the FARC knew about her involvement with the program. They demanded information regarding other persons involved with the program and gave her until July 20<sup>th</sup> to give them the information they were seeking. (The “June 15<sup>th</sup> incident”)

[7] Fresia testified that this final incident prompted her and her sister, Maria, to flee Colombia. On July 18, 2006, they left the country and arrived in the United States. Approximately one week later, on July 25, 2006, they entered Canada and made a claim for refugee status based on their political opinion and/or membership in a particular social group.

### I. Decision

[8] Due to inconsistencies between documentation on country conditions and the Applicants’ evidence, the Member determined that portions of the Applicants’ story were implausible and thus, not credible. The Member also found that the Applicants’ delay in departing Colombia demonstrated a lack of subjective fear. The Member concluded that the

Applicants were not Convention refugees based on their political opinion or membership in a political party. The Member also found that the Applicants were not “persons in need of protection” in accordance with section 97(1)(a) and (b) of the IRPA.

## II. Issues

[9] A. Were the Member’s adverse findings on credibility/plausibility unreasonable?

B. Was the Member’s finding that the Applicants do not hold a subjective fear based on a delay in departing Colombia, patently unreasonable?

## III. Standard of Review

[10] Assessments of credibility go to the core of the RPD’s jurisdiction and are to be reviewed on a standard of unreasonableness, *Xu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1701; *Griffiths v. Canada (Solicitor General)*, 2006 FC 127 at para. 16. This standard applies equally to findings with respect to subjective fear, *Abawaji v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1065 at para 10. See also *Dunsmuir v. New Brunswick*, 2008 SCC 9.

#### IV. Analysis

##### A. *Credibility / Plausibility Findings*

[11] Determinations of credibility and assessment of evidence by the Immigration Board will be found unreasonable only if they are based on an erroneous finding of fact made in a manner without regard to the material before it, *Akinlolu v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 296 (QL) at para. 14; *Kanyai v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 850 at para. 9. There is no change to the level of scrutiny a court should apply when the findings of credibility were based on implausibilities in the evidence, *Aguebor v. Canada (Minister of Employment & Immigration)* (1993), 160 N.R. 315 (C.A.).

[12] The Member in the present case made adverse findings against the Applicants' credibility based on what he felt were inconsistencies between the Applicants' evidence and the documentation before him on country conditions in Colombia. These inconsistencies led the Member to doubt the plausibility of the Applicants' story. Specifically, the Member pointed to three areas of the evidence where he felt the documentary evidence before the tribunal demonstrated the events could not have happened in the manner asserted by the Applicants: i) the fact that no members of the Applicants' family were targeted by the FARC; ii) the presence of a man on the farm who was paid by the Applicants' father after the farm was occupied by the FARC; and iii) the likelihood of the FARC continuing to target Fresia once they had obtained her computer and after she had left her position as

coordinator of the illegal crop eradication program. An examination of the record reveals the unreasonableness of the Member's reliance on these inconsistencies.

[13] Inconsistent or implausible evidence can be an appropriate basis upon which to draw adverse findings of credibility, *Aguebor v. (Canada) Minister of Employment and Immigration*, 160 N.R. 315. However, in making such findings, a tribunal must have regard for the totality of the evidence before it and cannot make an adverse credibility finding while ignoring evidence by the claimant explaining apparent inconsistencies, *Owusu-Ansah v. Canada (Minister of Employment & Immigration)* (1989) 8 Imm. L.R. (2d) 106 (C.A.). Here, it is clear that the Member ignored or did not make reference to relevant evidence that supported the Applicants' story and explained these inconsistencies, making his findings on credibility, unreasonable.

*i) No members of the Applicants' family were targeted by the FARC*

[14] Country documentation on Colombia clearly indicates that if the FARC does not get what it wants from a person, the relatives or family of those in whom the FARC has interest can also be at risk. The Panel Member accepted this, and pointed to documentation that attributes high numbers of kidnapping incidences to the FARC and places certain groups, such as social workers, politicians, and professionals at higher risk for such attacks. The Member found that the Applicants' sister, and Fresia's husband and son (although, they fit the profile of those who are at risk) were not targeted, and relied on this finding to draw an adverse inference as to the Applicants' credibility.

[15] I find that the Member's finding on this point does not take into consideration the following evidence from page 434 of the Tribunal Record:

Q: Okay. Now your husband and your son are in Colombia, what's their situation currently?

A: There situation is one of fear; given what's taken place. At this time my husband is working over there and also my son.

Q: Are they having any problems?

A: Yes, they've had some difficulties.

Q: Such as?

A: Not only financial difficulties but also difficulty caused by fear because of what's been taking place. My father has continued receiving threatening telephone calls because of his not paying or complying with their demands for payment.

Q: And how about your sister Leticia, what's her situation?

A: Her situation is also a delicate one. She works – she's also working for the Colombian Social Welfare Institute; she's a social worker. The area, the region in which she's working is also a region that's classified as public order.

Q: What does that mean?

A: Well, that's she's also at risk

Q: And has she had any problems with FARC or anybody else?

A: She's had problems not only with the FARC but also with the para-military....

Q: And just briefly what sort of problems has she had with them and why?

A: Well she's been detained in a brutal area because of the work she's involved in.

[16] As evidenced from the above passage, Fresia gave clear evidence at the hearing that her sister has been detained by the FARC and that her husband and son live in fear. In my view, the Member's finding not only fails to acknowledge the above evidence, but also fails to recognize that the documentary evidence he cites *lends* support to the Applicants' story. Documentation on Colombia details the FARC's patterns of using roadblocks to stop those they are targeting, stealing laptops and other communications devices and extending their



threats to include the family members of those they are attacking. The evidence of Fresia's attacks corresponds with all of these details found in the country documentation.

[17] Although Fresia did not give specific evidence that her husband and son have been attacked by members of the FARC, taking all the above evidence into consideration, this was not a reasonable basis upon which to impute the truthfulness of her entire story. A similar error was overturned by the Court in *Leung v. Canada (Minister of Employment & Immigration)* (1994), 81 F.T.R. 303. There, the Court found the Board had erred in deciding it was implausible that simple demonstrators would be arrested before the actual organizers of the demonstrations, because in doing so, the Board had ignored relevant evidence which supported the applicants' narratives.

[18] At paragraphs 14-16, the Court in *Leung* set out some guidance for plausibility determinations:

Both divisions of this Court have consistently held that the Board's decisions must be based on the totality of the evidence contained in the Record...the Board is under a very clear duty to justify its credibility findings with specific and clear reference to the evidence.

This duty becomes particularly important in cases such as this one where the Board has based its non-credibility finding on perceived "implausibilities" in the claimants' stories rather than on internal inconsistencies and contradictions in their narratives or their demeanour while testifying. Findings of implausibility are inherently subjective assessments which are largely dependant on the individual Board member's perceptions of what constitutes rational behaviour. The appropriateness of a particular finding can therefore only be assessed if the Board's decision clearly identifies all of the facts which form the basis for their conclusions.

Given this clear obligation on the Board to base its decision on the totality of the evidence, combined with the duty to justify its credibility findings, it must be assumed that the Board's reasons contain a reasonably complete account of the facts which form the basis of their decision. The Board will therefore err when it fails to refer to relevant evidence which could potentially refute their conclusions of implausibility.

[Emphasis added]

[19] In my view, such an error occurred here when the Member both ignored how the documentation supported the Applicants' claim and failed to refer to the evidence of the sister's detainment which could have refuted his conclusions on implausibility. It also seems highly unfair to adversely assess the Applicants' credibility based on actions *not* taken by the FARC against their family members. Simply because threats made against Fresia's husband and son were not carried out, (and perhaps just not carried out as of yet) is not reason to disbelieve such threats were made in the first place, particularly in light of all the other supporting evidence.

*ii) Man on the farm after the farm was occupied by the FARC*

[20] The Member drew an adverse finding towards the Applicants' credibility based on evidence relating to their family farm. The Member's reasons indicate that it was his understanding that there is still someone on the farm, looking after the farm and that person is paid by the Applicants' father. In his view, this part of the Applicants' story contradicted credible documentary evidence which states that the FARC has a pattern of forcibly displacing residents from their homes in order to clear key drug and weapons transit routes. The Member felt it was "implausible that the claimants, even if they still have deeds, would

still keep someone on the farm that has been taken over by the FARC, given the above-mentioned operational FARC strategy.”

[21] In my view, this finding by the Member was based on a mischaracterization of the evidence that was before him. The Applicants were asked “Who is occupying the farm today” and they responded, “The Guerrillas”. Later, the Member pressed this point further asking, “[The FARC] is occupying it and nobody has removed them from the farm have they?” Maria states:

They’re not completely stationed there. What they do is that they move around the region. What they do is that they enter the farm whenever they want to rest; they want to take coffee; they want to eat. There’s someone there at the farm; he supposedly lived there to take care of the farm but he’s just there

In response to this the Member questioned:

Now based on our documents on country conditions, in Colombia we understand that when the FARC takes over the farm they make sure that even the people working on the farm leave the farm. So how is it that you still have someone living on the farm and is still paid by your father?

Maria responded to the question, stating “That person was there only up to May 2006.

Currently we know nothing about this person”.

[22] The situation with the family farm was discussed numerous times at the hearing and with respect to several different issues: the payment of *vacuna*; the FARC’s presence on the farm and the timeframes during which the family left the farm. Although this evidence was somewhat confusing, taken in its totality, I don’t believe it to be contradictory with known

facts regarding the FARC's activities. The evidence was clear that the FARC's "presence" on the Applicants' farm began with stealing cattle and/or equipment, and increased to occupying the farm from time to time. As the FARC's presence increased, the family partially left the farm in November 2005 and then completely refrained from going there at some point in 2006. The Applicants were not directly asked at the hearing when their father left the farm, but Fresia's statement says he left in May 2006. Therefore, I do not find it unreasonable that there could also be a worker on the farm up until that time as well.

*iii) Fresia's continuing harassment after the FARC obtained her computer and after she left her employment*

[23] Fresia testified that the FARC took her computer during the January 15th incident, and that the computer had information related to the program she was coordinating. Her statement says that the FARC "took my laptop, and some documents with personal information and also information about the programmes." Fresia also testified that she stopped working with the program on January 30, 2006, but that despite this, the threatening phone calls continued and she was subsequently harassed in person on June 15<sup>th</sup>.

[24] The Member found it was not reasonable that the FARC would continue to pursue Fresia, when she was no longer involved in the program, instead of pursuing those that are running and managing the presidential program. The Member stated in his reasons: "I find, based on [Fresia's] testimony and PIF narrative, the FARC has all the information they need from the laptop. I find the claimant's allegations not credible."

[25] My review of the tribunal record reveals that the Member's finding with respect to the FARC having "all the information they need from the laptop" is in direct contrast to Fresia's evidence at page 439 of the Tribunal record that the computer did not have all the information relating to the program. Furthermore, the Member's finding demonstrates that he accepted that Fresia's laptop was stolen when she was attacked by the FARC, yet denies that a second attack is plausible.

[26] In my view, the fact that Fresia stopped working for the program and fact that the FARC had possession of her computer does not remove her as a target for the FARC, nor does it foreclose the possibility of there being additional information the FARC might seek to obtain from her. Determinations on the plausibility of who will be attacked and when must be made with caution, as it is very difficult for Canadian courts to predict who terrorist groups will target and for what level of involvement. As was stated in *Ponce-Yon v. Canada (Minister of Employment & Immigration)* (1994), 73 F.T.R. 317 at para. 9:

The common thread running through the jurisprudence is that inferences based on the degree of a claimant's political involvement are rarely reasonable, particularly in situations where it is acknowledged that the claimant has indeed been persecuted (Wong, Butucariu and Gonzalez) or where the agent of persecution is known to target all members of a particular group, regardless of the extent of their political involvement (Giron and Hilo).

[27] Documentation on Colombia indicates that the FARC has a presence in virtually all of the nation's 32 departments and employs a sophisticated communications and investigation system for tracking people. Fresia's role as an environmental/agricultural activist makes her a likely target for the FARC, due to the FARC's financial ties to the illegal drug trade; and once a citizen of Colombia is a target for the FARC, it is very difficult

(if not impossible) to ever fully escape this mark. The March 2005 UNHRC Report on International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees notes that once a person has been identified as a potential victim, the possibility of ever obtaining protection in the future is limited. (Official Tribunal Record page 151) Taking this into account, it is unreasonable to draw negative conclusions on the plausibility of the FARC continuing to target Fresia – particularly because, even after she had terminated her employment, there was still the matter of the outstanding *vacuna* the FARC was demanding.

[28] Overall, I find that the Member’s findings with respect to his perceived implausibilities in the evidence do not appear to take into consideration all of the evidence before him, and even appear, at times, to directly contradict evidence that was before him. My review of the Tribunal record reveals that the Applicants’ claims are supported by the country documentation and no inconsistencies exist (of such a magnitude) that would warrant completely negating the Applicants’ credibility.

*B. Lack of subjective fear due to delay in departure*

[29] The Member also erred in his finding that the Applicants failed to demonstrate subjective fear because they did not depart Colombia until July 2006, even though the FARC had been demanding payment for the taxes on the farm since long before then and had directly confronted Fresia as early as January 2006. At the Hearing the Member asked Fresia: “Given all that had been happening to you since January and perhaps before, why hadn’t you left earlier?” She responded: “Because we were expecting that the situation

would improve. However, considering what occurred on June 15<sup>th</sup>, we had come to the decision to abandon the country; that it would be best.”

[30] The Member’s reasons state that he found this response contradictory to documentary evidence on Colombia country conditions that describes an increase in terrorist activities as of 2002. After setting out various statistics regarding the FARC’s revenues from kidnapping and the drug trade, the Member stated:

I find that the situation was not improving, but getting worse, as stated above. Given the above-mentioned FARC activities, I find the claimant’s response not reasonable, given the importance of extortion to the FARC, as stated, and the revenue derived from the illicit growth, whose programme the principal claimant alleges was involved with, and, yet neither the principal claimant nor her family were harmed or kidnapped.

[31] For their part, the Applicants submit that there is no issue of “delay”, but that instead; they were victims of multiple incidents of harassment that culminated with the June 14, 2006 incident that ultimately forced them to flee their country. As culminating incidents necessarily take time to culminate, the issue of delay cannot work to prevent a successful claim for protection. For this argument they rely on the decision of Justice Elizabeth Heneghan in *Ibrahimov v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1185 where she stated at para. 19:

...when a claim is based on a number of discriminatory or harassing incidents which culminate in an event which forces a person to leave his country, then the issue of delay cannot be used as a significant factor to doubt that person’s subjective fear of persecution. Cumulative acts which may amount to persecution will take time to occur. If a person’s claim is actually based on several incidents which occur over time, the cumulative effects of which may amount to

persecution, then looking to the beginning of such discriminatory or harassing treatment and comparing that to the date on which a person leaves the country to justify rejection of the claim on the basis of delay, undermines the very idea of cumulative persecution.

[32] I am persuaded that this reasoning applies to the Applicants in the present case. From the evidence it appears that, although the Applicants were subject to numerous harassing phone calls, the situation truly worsened in the last six months prior to their departure; and the final “culminating” incident occurred on June 15, 2006 – only weeks prior to the date that the Applicants fled Colombia. I question the appropriateness of the Member’s finding that the Applicants’ response that “they were expecting the situation would improve” was unreasonable. Surely, one cannot completely equate objective conditions describing a country’s overall worsening situation, with one person’s decision to remain in their home a few months longer based on a hope that their personal situation would improve.

[33] Further, the law is clear that a person’s delay in making a claim, while relevant, will not usually be a decisive factor in itself, *Huerta v. Canada (Minister of Employment & Immigration)* (1993), 157 N.R. 225 (C.A.) at page 227. In the present case, the Member stated:

I find, on a balance of probabilities, that if the claimants had been targeted because of what they allege, they would have left earlier; therefore, I find the claimant’s delay indicative of the lack of subjective fear.

Although the Member’s language is careful to say the delay only *indicated* a lack of subjective fear, I find that this determination was essentially the basis for his finding on



subjective fear. Further, his determination on subjective fear was reinforced by his adverse findings on credibility which, for the reasons I have set out above, were unreasonable.

[34] Due to my finding that the Member's determinations with respect to the Applicants' credibility were unreasonable, a new panel will have the opportunity to determine whether the acts of harassment suffered by the Applicants constitute persecution. It is clear that persecution can arise from a series of acts of harassment, if the acts are serious enough, *Ovakimoglu v. Canada (Minister of Employment & Immigration)* (1983), 52 N.R. 67 at p. 69 (C.A.). From the evidence in the present case, it would seem that this level of seriousness has been met. The Applicant, Fresia, was detained, threatened and physically assaulted and both she and her sister received numerous threatening phone calls.

[35] For the reasons above, I find that the Member made unreasonable findings of credibility based on his failure to consider the totality of the evidence. I would allow the application, and return the case for a hearing before a differently constituted Panel.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this matter be returned for reassessment by a differently constituted Panel of the Refugee Protection Division.

“Orville Frenette”

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Deputy Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-2658-07

**STYLE OF CAUSE:** FRESIA BEATRIZ LONDONO SOTO ET AL  
and  
MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** MARCH 12, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** FRENETTE, DEPUTY JUDGE.

**DATED:** March 17, 2008

**APPEARANCES:**

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