

Date: 20091006

Docket: IMM-1384-09

Citation: 2009 FC 1007

Ottawa, Ontario, October 6, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ANGELICA RAMIREZ BERNAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) dated February 12, 2009, that the applicant is not a “Convention refugee” or a “person in need of protection”.

[2] The RPD found that the applicant was not credible.

[3] This Court agrees entirely with the respondent’s position.

II. Facts

[4] The applicant, Angelica Ramirez Bernal, is a citizen of Colombia. She is alleging a fear of being killed by the Revolutionary Armed Forces of Colombia (FARC).

[5] More specifically, Ms. Ramirez Bernal, who is a nurse, is alleging that the FARC unsuccessfully tried to recruit her in July 2006.

[6] After having received some threatening calls, in September 2006 she purportedly decided to leave her job in a Bogota hospital to seek refuge in Facatativa.

[7] However, Ms. Ramirez Bernal allegedly returned to work in another medical clinic in Bogota in October 2006.

[8] On February 24, 2007, while visiting her sister in Facatativa, she apparently witnessed the murder of a couple by a FARC member whom she knew because she had treated him during the summer of 2006.

[9] On May 17, 2007, Ms. Ramirez Bernal left Colombia. She arrived in Canada on June 6, 2007, and claimed refugee protection the same day.

III. Issue

[10] Is it reasonable for the RPD to find that the applicant was not credible on the basis of the totality of the evidence?

IV. Analysis

[11] It is recognized that the RPD is an expert in assessing the credibility of applicants:

[4] There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. . . .

(Aguebor v. Canada (Minister of Employment and Immigration), [1993] F.C.J. No. 732 (QL), 160 N.R. 315 (F.C.A.))

[12] The RPD noted several contradictions and omissions in Ms. Ramirez Bernal's account which led it to find that she was not credible:

- a. She testified having received a threatening call on March 5, 2007, but she failed to mention this in her Personal Information Form (PIF);
- b. At the hearing, she stated that this call was the only one she received that day and that she had thrown her telephone in the garbage immediately afterwards; however, she indicated in her PIF that her sister had also called her. She noted in her PIF that she did not answer her telephone that day;

- c. Finally, she produced a police certificate dated December 5, 2008, sent to her sister in Facatativa, but she indicated at the hearing that her sister had moved at the beginning of 2008 to Fusagasuga.

[13] Ms. Ramirez Bernal's explanations in response to the RPD's observations were unconvincing. She stated, among other things, that several details could be missing from her PIF given the fear she experienced.

[14] The RPD rejected these explanations. It found that the discrepancies concerned crucial elements of her account and that Ms. Ramirez Bernal's supposed fear could not explain everything.

[15] Ms. Ramirez Bernal filled out her PIF with the help of counsel, close to two months after her departure from Colombia.

[16] Furthermore, immediately after having supposedly fled Colombia, Ms. Ramirez Bernal admitted having spent one month in Miami with the avowed purpose of visiting the United States.

[17] After her visit to the United States, Ms. Ramirez Bernal's explanation that she was so upset that she would have been unable to adequately fill out her PIF on July 11, 2007, is fairly weak. The RPD's findings were therefore perfectly reasonable.

[18] Ms. Ramirez Bernal later modified her PIF; therefore, she could have made the necessary changes to it with respect to her sister's address or the calls she claims to have received on March 5, 2007.

[19] The RPD was entitled to rely on the contradictions (*Rathinasingam; Toora*) or the omission of important facts in Ms. Ramirez Bernal's PIF (*Koval'ok*) to assess her credibility (*Rathinasingam v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 988, 298 F.T.R. 236 at paragraph 54; *Toora v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 828, 300 F.T.R. 7 at paragraph 38; *Koval'ok v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 145, 164 A.C.W.S. (3d) 676 at paragraphs 24 and 26).

[20] As well, Ms. Ramirez Bernal returned to work in Bogota despite the fact that she claimed having left the city the month before for fear of the FARC. She stated that she returned there because of the lack of work and the social problems in Facatativa, the city she had fled to.

[21] The RPD noted that Ms. Ramirez Bernal had already worked in Facatativa in the past. Based on this observation, it found that nothing prevented Ms. Ramirez Bernal from working there again.

[22] Her return to Bogota, only a month after having fled, was therefore not reasonable given her alleged fear of the FARC there.

[23] The RPD was entitled to rely on Ms. Ramirez Bernal's conduct to make findings regarding the genuineness of her fear (*Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 648, 149 A.C.W.S. (3d) 307 at paragraph 11).

[24] The RPD's decisions based on an applicant's lack of credibility are reviewable on the standard of reasonableness, with a high degree of deference (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698, 170 A.C.W.S. (3d) 161 at paragraph 11).

[25] Ms. Ramirez Bernal attempted, in her memorandum, to "explain away" certain passages of her testimony before the RPD. Ms. Ramirez Bernal cannot merely justify, after the fact, the discrepancies in her testimony so as to overturn the RPD's findings (particularly the explanations regarding her sister's residences and the calls received on March 5, 2007) (Applicant's Record at page 18, paragraphs 16 and 18; also: *Samseen v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 542, 148 A.C.W.S. (3d) 780 at paragraph 24; *Hosseini v. Canada (Minister of Citizenship and Immigration)* 2002 FCT 402, 116 A.C.W.S. (3d) 95 at paragraph 26).

[26] For example, she explained to the RPD why she had decided to return to work in Bogota in October 2006. She explained that she had returned to Bogota because of, among other things, the lack of work in Facatativa.

[27] This reason was not accepted by the RPD because she had already worked in Facatativa in the past. The fact that Ms. Ramirez Bernal had taken precautions to return to Bogota still does not

explain the reason she allegedly decided to return there in the first place. Ms. Ramirez Bernal stated that she had fled Bogota because she feared for her life there.

[28] As for the RPD's supposedly contradictory findings, the RPD, on the one hand, found that Ms. Ramirez Bernal's fear was unfounded and, on the other hand, that her conduct undermined her fear. These two findings are entirely consistent. In fact, both findings point to a lack of fear of persecution.

[29] In her memorandum, at paragraph 12, Ms. Ramirez Bernal asked the following question: [TRANSLATION] "If the panel believes that the fear no longer exists, why would returning to live in the city of Bogota be considered inconsistent conduct?" Despite the RPD's finding, Ms. Ramirez Bernal herself stated that she fears returning to live in Bogota, and her return to this same city undermines the seriousness of the fear she claims to have.

[30] Finally, Ms. Ramirez Bernal seems to say that her sister would not have been recognized by the FARC assassin in Facatativa. However, Ms. Ramirez Bernal stated at the hearing that her sister had received a call from the alleged assassin.

V. Conclusion

[31] In short, Ms. Ramirez Bernal omitted important elements in her PIF, forgetting to mention that she had received a threatening call on March 5, 2007. Furthermore, it was indicated in her PIF that she did not answer her calls on that day. In addition, she indicated that she had returned to

Bogota only one month after having fled the city, presumably for fear of the FARC. The RPD therefore found that Ms. Ramirez Bernal was not credible and, given her explanations, this finding was entirely reasonable and does not warrant the intervention of this Court.

[32] Given the foregoing, Ms. Ramirez Bernal does not have any ground to justify the Court's granting of the application for judicial review she seeks to adduce.

JUDGMENT

THE COURT ORDERS that

1. the application for judicial review be dismissed;
2. no serious question of general importance be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1384-09

STYLE OF CAUSE: ANGELICA RAMIREZ BERNAL
v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 23, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: October 6, 2009

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