

Federal Court



Cour fédérale

Date: 20100511

Docket: IMM-5659-09

Citation: 2010 FC 514

Ottawa, Ontario, May 11, 2010

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

GENITH IBARGUEN MURILLO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is a citizen of Columbia, of Afro-Colombian ethnicity. She claims that she began working as an active member of Columbia's Liberal Party in 2003. After spending four years helping to provide better health care and education to impoverished black communities in her native city of Buenaventura, she began to work with displaced women in the city of Jamundi. During her stay in that city, she held meetings of the Liberal Party approximately twice each month.

[2] Shortly after arriving in Jamundi, she claims that she was involved in establishing a development plan for displaced women with children. This required her to travel to the rural areas around Jamundi. Among other things, she and her colleagues provided food and clothing, helped to promote literacy and hygienic practices, and sensitized women about guerrilla movements, the guerrillas' involvement in drugs and violence, and their recruitment of children.

[3] In May 2008, the Applicant returned to Jamundi after having spent three weeks visiting her mother, who had been very sick. Upon her arrival there, on May 21, 2008, she claims that she found two communiqués at her home that had been sent by the Revolutionary Armed Forces of Columbia (FARC). The first one, dated April 30, 2008, stated:

Mrs. Genith Ibarquen Murillo,

We inform you that we know you are carrying out political activities in the rural area of Jamundi, telling the peasants that you are against our principles and against our ideals. Resign from your work! Otherwise, you'll find out what we do with our enemies. Any report to the authorities will result in our revolutionary reaction!

Commander,

LUIS CARLOS

[4] The second pamphlet, dated May 20, 2008, stated:

You f[...]ing bitch. Do you think we're fooling? As you didn't pay attention to our previous communiqué, a revolutionary tribunal has set you on trial and accused you of hiding behind your position as representative of the Liberal Party; through Resolution 005 you're declared a Military Objective and you're condemned to death, as well as your family.

Commander,

LUIS CAROLS

[5] The Applicant claims that she immediately arranged to be taken to the police station in the trunk of a friend's car. After making a report, she stayed with her cousin until June 8, 2008. During that time, she claims that the telephone would frequently ring but no one would ever answer when she picked it up. Finally, on June 8, 2008, the phone rang and a man stated: "That son-of-a-bitch Genith is there."

[6] After receiving this telephone call, the Applicant claims that she immediately moved to a friend's house where she spent the night and then made another report to the police the following day.

[7] The Applicant then left Colombia on June 11, 2008. She travelled through Mexico, where she met with a smuggler who took her into the USA on June 21, 2008. She went to Miami where she stayed with a friend until she could contact her sister to send her citizenship card to her. She used this card to obtain a new Colombian passport on August 5, 2008. She then departed for Canada on August 27, 2008 and arrived two days later, when she claimed refugee protection.

The Decision under Review

[8] In a decision dated October 27, 2009, the Refugee Protection Division (RPD) of the Immigration and Refugee Board rejected the Applicant's claim to refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA).

[9] The focus of the entire decision was upon whether the Applicant has a viable internal flight alternative (IFA) in Bogota.

[10] What is particularly striking about the decision is that, after the introductory material that is set out on the first page, the remaining ten pages of the decision is virtually identical to another decision issued by the RPD on October 30, 2009, in respect of another matter that was heard by the RPD on the same day that it heard this matter. The only material difference is in paragraph 19, where it is noted that since the Applicant's problems did not begin until after May 2007, a report issued prior to that date would be given less weight than another report that was discussed in the decision.

Issues

[11] The Applicant alleges that the RPD erred by:

- i. Misinterpreting and failing to address important evidence;
- ii. Failing to apply the two part test applicable to the assessment of an IFA and to provide adequate reasons in respect of the second part of that test;
- iii. Improperly assessing the issue of the recent changes in country conditions in Colombia; and
- iv. Failing to assess whether there are "compelling reasons," arising out of past persecution, for the Applicant to refuse to avail herself of the protection of her country, as contemplated by subsection 108(4) of the IRPA.

I. Analysis

A. *Did the RPD err by misinterpreting or failing to address important evidence?*

[12] This issue is reviewable on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paras. 51 – 56).

[13] Among other things, the Applicant alleges that the RPD erred by failing to materially address the specific risk that she would face, whether in Bogota or elsewhere in Colombia, as a result of being declared a Military Objective and being condemned to death by FARC.

[14] I agree. It was unreasonable for the RPD to have failed to materially address that specific, personalized risk faced by the Applicant.

[15] As mentioned at paragraph 10 above, the Board's decision was virtually identical to the decision it issued in respect of another matter that it heard on the same day that it heard this matter. I also heard the applications for judicial review of both decisions on the same day. I am satisfied that the evidence adduced by this Applicant, particularly the two aforementioned letters sent to her by FARC, is so qualitatively different from the evidence adduced by the applicants in the other matter, that it was unreasonable for the RPD to have failed to discuss that evidence and the implications that it may have for the risk the Applicant may face in Bogota.

[16] The two aforementioned FARC letters were arguably the most important evidence adduced by the Applicant, particularly given that some of the recent documentary evidence adduced by the Applicant states that FARC continues to successfully target grassroots activists and humanitarian workers, either directly or by sub-contracting its violence to criminal gangs, including gangs in Bogota. In this specific context, the failure of the RPD to give reasons that addressed this evidence was unreasonable. (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, [1998] F.C.J. No. 1425; *Surajnarain v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1165, [2008] F.C.J. No. 1451, at paras. 6 and 7; and *Uluk v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 122, [2009] F.C.J. No. 149, at paras. 16 and 32.)

[17] Given my conclusion on this issue, it is unnecessary for me to address the other issues raised by the Applicant.

II. Conclusion

[18] The application for judicial review will be allowed. The decision dismissing the Applicant's claim to be recognized as a Convention refugee and a person in need of protection is set aside. This matter is remitted to a differently constituted panel of the Board.

[19] There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is granted. The decision dismissing the Applicant's claim to be recognized as a Convention refugee and a person in need of protection is set aside. The matter is remitted to a differently constituted panel of the Board to determine, according to law and in light of the foregoing reasons, whether the Applicant is a Convention refugee within the meaning of s. 96 of the IRPA and/or is a person in need of protection within the meaning of s. 97 of the IRPA.

"Paul S. Crampton"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5659-09

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AND IMMIGRATION

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DATE OF HEARING: May 4, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Crampton J.

DATED: May 11, 2010

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