

Federal Court



Cour fédérale

Date: 20101130

Docket: IMM-299-10

Citation: 2010 FC 1201

Ottawa, Ontario, November 30, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**BLANCA LUCIA OROZCO VELASQUEZ AND
LUIS MIGUEL DUQUE OROZCO (A.K.A.
LUIS MIGUEL DUQUE, BY HIS LITIGATION
GUARDIAN BLANCA LUCIA OROZCO
VELASQUEZ)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Bianca Lucia Orozco Velasquez was politically active on behalf of the Conservative Party in Colombia in the 1990s. As a consequence, the Revolutionary Armed Forces of Colombia

(FARC) harassed and threatened her and her children. They fled to the United States in 1999. In 2008, Ms. Orozco and her son, Luis Miguel, sought refugee protection in Canada.

[2] A panel of the Immigration and Refugee Board dismissed Ms. Orozco's claim because it found that she could live safely in Bogota. Ms. Orozco contends that the Board erred in law by failing to consider the specific nature of the risk she and her son face in Colombia and, in addition, arrived at unreasonable conclusions about Colombia's ability to protect them.

[3] I agree with Ms. Orozco that the Board erred by failing to consider to determine the nature of the risk she might face in Colombia. I will, therefore, grant this application for judicial review. It is unnecessary to consider her alternative submissions regarding the reasonableness of the Board's conclusions.

II. Factual Background

[4] Ms. Orozco was an active member of the Conservative Party in Colombia. She was also involved in charities that distributed food to needy citizens in her home town of Belalcazar. She was openly critical of FARC. In 1998, FARC members stopped a supply truck in which she was travelling. She and the driver were tied up and threatened. FARC told them to stop distributing food.

[5] After that incident, FARC members continued to threaten Ms. Orozco and her children. She reported the threats to the police.

[6] In January 1999, one of her son's friends was abducted. A FARC member called her home to tell her that her son had been the intended abductee. The caller also made a death threat. Ms. Orozco packed and took her children to her parents' home in Pereira, where she continued to receive threats. After the boy who had been abducted was killed, Ms. Orozco began making arrangements to leave the country. She travelled to the United States in May 1999.

[7] Even after she left the country, Ms. Orozco's parents continued to receive threatening calls. Her sister and brother-in-law were killed, as was her cousin. Based on these events, Ms. Orozco claims to fear reprisals from FARC if she were to return to Colombia.

III. The Board's Decision

[8] The Board made no findings of fact regarding the claims. It appears to have accepted Ms. Orozco's version of events in its entirety.

[9] The Board identified the main issue as "internal flight alternative" (IFA); that is, whether Ms. Orozco could live safely in Bogota. The Board then reviewed the documentary evidence pertaining to state protection in Bogota. In summary, the Board concluded as follows:

- Colombia is a democratic country with civilian control over the military and police.
- Crimes, including human rights crimes and crimes committed by members of security forces, are prosecuted and the conviction rate is 60%.
- The number of killings committed by security forces is going down.

- FARC's political support, command structure and membership are dwindling.
- Colombia has expanded the presence of security forces in remote areas.
- FARC is concentrating on rural areas instead of cities and focussing on military targets, not civilians.
- FARC's activity in urban areas mainly involves terrorism.
- FARC deserters move to Bogota to evade reprisals from FARC.
- FARC is now relying more on drug trafficking than kidnapping and extortion.

[10] The Board concluded from this evidence that Colombia is making serious efforts to provide protection to its citizens against FARC. In addition, Colombian security forces will protect civilians from crime and human rights abuses.

[11] The Board then examined documentary evidence tendered by Ms. Orozco. It noted that:

- FARC mounted a rocket attack on a town in Cauco.
- Casualties among police and security forces have increased 51%.
- Those most affected by FARC include farmers, minorities, elected officials, journalists, and human rights activists.
- FARC is contracting other groups to commit terrorist acts in some areas, such as Bogota, but does not appear to out-source attacks on former targets.

[12] The Board concluded that this evidence showed FARC was concentrating on areas outside large urban centres, and that Colombian security forces were making efforts in those areas. Overall, FARC's strength is waning; its activities are mainly confined to small-scale guerrilla and terrorist

acts. In addition, the Board found that Ms. Orozco does not fit the profile of the groups most targeted.

[13] The Board discounted, therefore, Ms. Orozco's fear of living in Bogota and, given her 14 years of education, concluded that it would be reasonable for her to reside there.

IV. Did the Board Err in Failing to Consider the Specific Risk at Issue?

[14] As noted, the Board made no findings about Ms. Orozco's experiences in Colombia. It appears to have accepted all of her evidence relating to her fear of FARC. The Board's decision is confined to an analysis of country condition documents from which it concluded that she could live safely in Bogota.

[15] The concept of an IFA is an inherent part of the Convention refugee definition because a claimant must be a refugee from a country, not from a particular region of a country (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at para 6). Once an IFA has been proposed by the Board, it must consider the viability of the IFA according to the disjunctive two part test set out in *Rasaratnam*. The claimant bears the onus and must demonstrate that the IFA does not exist or is unreasonable in the circumstances. That is, the claimant must persuade the Board on a balance of probabilities either that there is a serious possibility that he or she will be persecuted in the location proposed by the Board as an IFA, or that it would be unreasonable to seek refugee in the proposed IFA given his or her particular circumstances.

[16] There may, however, be an overlap between the Board's consideration of an IFA and its analysis of state protection. The first branch of the IFA test is met where there is no serious possibility of persecution in the particular location. That finding may flow either from a low risk of persecution there or the presence of state resources to protect the claimant, or a combination of both. But, in either case, the analysis can only be carried out properly after the particular risk facing the claimant has been identified.

[17] Indeed, the Board's failure to consider the specific risks feared by a claimant in an IFA analysis will constitute an error of law (*Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1010). It is an error, therefore, for the Board to make a blanket finding that an IFA is available to a refugee claimant, without reference to the type of persecution feared by the claimant or that person's particular circumstances. Again, the first question the Board must answer when a proposed IFA is in issue is whether, on a balance of probabilities, there is a serious possibility that the claimant will be persecuted in the location proposed by the Board. Generally speaking, that question cannot be answered if the nature of the person's fear has not been specifically identified.

[18] Similarly, in the context of a state protection analysis, it is an error of law for the Board to conclude that state protection is available if it fails to make any findings about the applicant's personal circumstances (*Moreno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 993). In *Moreno*, the Board found that the applicant, a native of Bogota, would not be targeted by FARC in that city, contrary to his testimony. That conclusion necessarily implied that the Board did not accept the applicant's account of events, yet it made no explicit adverse credibility findings.

Therein lays one of the dangers in assessing state protection or IFA without analyzing the applicant's particular allegations -- adverse credibility findings may creep into the analysis without explanation.

[19] Here, having raised IFA as the determinative issue, the Board was required to determine whether, on a balance of probabilities, there was a serious possibility that Ms. Orozco would be persecuted in Bogota. The Board was further required to consider whether relocation to Bogota was unreasonable given Ms. Orozco's particular circumstances.

[20] I find that the Board's failure to identify the particular risk Ms. Orozco claimed to fear resulted in a faulty IFA analysis. The Board found, for example, that Ms. Orozco did not fall within the groups most targeted by FARC. However, she claimed to be an active member of the Conservative Party and a humanitarian worker who spoke out against FARC. It is not clear why the Board felt she was unlikely to be targeted, even if she was not a farmer, or an elected official, a journalist, or a member of some other group specifically mentioned in the documentary evidence. In addition, Ms. Orozco stated that she had gone to police, but the threats against her continued and family members were subsequently killed. That evidence was obviously relevant to the issue of whether the state could protect her, and ultimately, whether there was a serious possibility that she would be persecuted in Bogota. Yet, the Board did not mention it.

[21] It may have been the case, as in *Moreno*, above, that the Board did not believe all of Ms. Orozco's allegations. If so, it had an obligation to make explicit credibility findings. The analysis of a proposed IFA is not a substitute for those findings.

[22] In my view, this is not one of those rare cases where the IFA analysis could stand on its own, without reference to the particular risk from which the claimant sought protection. The Board was obliged to consider both whether Ms. Orozco faced a serious risk of persecution in Bogota and whether relocating to Bogota was, in any event, reasonable for someone in Ms. Orozco's particular circumstances. Without this inquiry, the IFA analysis is merely an abstract exercise. Here, the Board's discussion did not address the risk faced by someone in Ms. Orozco's unique circumstances. That omission amounts to an error of law and I must, therefore, allow this application for judicial review on that basis.

V. Conclusion and Disposition

[23] The Board failed to analyze the specific risk faced by Ms. Orozco on her return to Columbia. As a result, its analysis of the question of whether a viable IFA could be found in Bogota was deficient. In the circumstances, I must allow this application for judicial review and order a new hearing before a different panel of the Board. No question of general importance is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is referred back for reconsideration by a different panel of the Board.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-299-10

STYLE OF CAUSE: VELASQUEZ, ET AL v. MCI

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

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