

Federal Court



Cour fédérale

Date: 20101217

Docket: IMM-1528-10

Citation: 2010 FC 1297

Toronto, Ontario, December 17, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

GABRIEL OMAR OCHOA GALEANO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a decision of a Member of the Refugee Protection Division (RPD) in which the Applicant's claim for protection is dismissed on a global negative credibility finding. The Applicant is a citizen of Colombia and bases his claim on fear of FARC in Columbia. The negative credibility finding is based on the Applicant's conduct in failing to seek

protection in Spain and the United States, being countries in which he could have made such a claim after leaving Colombia.

[2] The essential facts with respect to the Applicant's claim are quoted at paragraph 3 of the decision as follows:

The claimant found out that inventories from one of the farms owned by his employer were missing and the local manager was giving those to the FARC. He reported the matter to his employer and several employees were let go by the employer. The claimant started receiving threats in early 2001. He resigned and left Colombia in April 2001 and went to Spain. He returned to Colombia in June 2002 and started to work for the municipal government in tax collection. He received threats due to this work and went to USA in March 2004. He entered into a marriage of convenience in August 2005 in USA. After this sponsorship was denied, he came to Canada in August 2009 and claimed protection after about a week.

[3] While the RPD Member found that the Applicant failed to provide clear and convincing evidence that Colombia is unable to provide adequate state protection, I find that the key finding in the decision under review is fully described in the following paragraphs of the decision:

[12] Alternate analysis — credibility: I find that the claimant is not a credible witness and therefore his claim must fail.

[13] *Maldonado* [Footnote: *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.)] guides us that the testimony of the claimant given under oath or affirmation is presumed to be truthful unless there are reasons to doubt. Evidence, particularly evidence offered in the form of personal testimony, must be believable, consistent and sufficiently detailed to provide plausible and coherent account for the basis for the claim.

[14] Failure to claim -Spain: The claimant went to Spain after allegedly receiving threats from the FARC. A person fleeing persecution is expected to claim protection in the first safe refuge. The claimant was in Spain for nearly 14 months and did not report to the authorities that he was afraid to return to Colombia. Spain is a signatory to the convention [sic]. Moreover, Spain allows nationals from Colombia to acquire citizenship after two years of stay (five years for others). The claimant's failure to seek asylum in Spain or

take other steps to become a citizen for a few more months leads me to find that he lacked the subjective fear, therefore, a well-founded fear of persecution.

[15] Re-availment: the claimant returned voluntarily to Colombia believing that it was safe for him to return after 14 months outside of the country. This shows that he lacked subjective fear.

[16] Failure to claim-USA: The claimant was in USA for more than 5 years and yet he did not seek asylum. In explanation, he testified, “Because I did not want to be returned (to Colombia)”. His visitor visa allowed him to stay until September 22, 2004. Instead of seeking legal advice or informing the authorities of his alleged fear of return to Colombia, he entered into an illegal marriage of convenience in August 2005 and filed for sponsorship in 2006. The American authorities rejected his application and noted, “You entered into a marriage to a United States citizen for the sole purpose of evading immigration laws” (exhibit C2 at p 6). His failure to seek asylum leads me to find that he lacked a well-founded fear of persecution.

[17] The claimant was scheduled to a Master hearing’ before the immigration court on September 10, 2009 (Exhibit C 2 page 8). He decided to leave the United States prior to conclusion of his immigration hearings. Canadian jurisprudence states that leaving prior to conclusion is detrimental to the claim) [Footnote: *Bains, Gurmukh Singh v. M.C.I.* (F.C.T.D., No. IMM-3698-98), Blais, April 21, 1999)].

[18] Based on the foregoing, I find that the claimant is not credible. And his claim fails.

[4] I am satisfied that the finding made at paragraph 18 of the decision is intended by the RPD Member to be an all encompassing finding which applies to the entirety of the Applicant’s claim. In my opinion, this is a conclusion that the Member was entitled to reach (see: *Guarin Caicedo v. Canada (M.C.I.)*, 2010 FC 1092 at para. 21). I find that the decision falls within a range of possible acceptable outcomes which are defensible in respect of the facts and law (*New Brunswick (Board of Management) v. Dunsmuir*, [2008] 1 S.C.R. 190).

ORDER

THIS COURT ORDERS that:

1. The present Application is dismissed.
2. There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1528-10

STYLE OF CAUSE: GABRIEL OMAR OCHOA GALEANO v. THE
MINISTER OF IMMIGRATION AND CITIZENSHIP

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 16, 2010

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: December 17, 2010

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