Federal Court  Cour fédérale

Date: 20110218

Docket: IMM-4561-10

Citation: 2011 FC 200

Vancouver, British Columbia, February 18, 2011

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

JORGE ALBERTO MOLINA CASTANEDA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant, Jorge Alberto Molina Castaneda, seeks judicial review of the July 15, 2010 decision of a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Panel) wherein the Panel dismissed the Applicant's refugee claim, finding that he did not have a well-founded fear of persecution on a Convention ground in Colombia pursuant to Section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA), and that he was not a "person in need of protection" within the meaning of section 97 of the IRPA.

Factual Background

[2] The Applicant is a 35-year-old citizen of Colombia and bases his refugee claim on events that occurred 22 years ago. In 1988, the Applicant lived in the town of Medellin, Colombia. He was 13 years old when he was approached by two classmates who tried to recruit him in the Revolutionary Armed Forces of Colombia (the FARC). He refused the recruitment attempts and that same year, the Applicant moved to the United States to live with his grandmother in Florida and has not returned to Colombia since. He was eventually joined by the rest of his immediate family.

[3] In 1998, while the Applicant was living in the United States, his extended family in Colombia was a victim of violence relating to attempted extortion by the FARC. His uncle was killed and his nephew was shot at.

[4] The Applicant was charged and convicted by U.S. authorities for possession of marijuana in 2001, impersonating a U.S. citizen in 2003 and for procuring a false driver's license in 2004.

[5] The Applicant made an unsuccessful application for asylum in the U.S. in 2007 and came to Canada on March 31, 2009. He applied for refugee protection the following day.

The Decision under Review

[6] The Panel found that the offence(s) for which the Applicant was convicted in the U.S. would not be considered "a serious non-political crime" for the purposes of exclusion under Article 1F(*b*)

of the Appendix of the IRPA. The Panel consequently found that the Applicant was not excluded from protection under that provision of the IRPA.

[7] Regarding the Applicant's refugee claim, the Panel found that the Applicant had failed to establish that his fear of persecution is well-founded and concluded that he does not face a serious possibility of persecution by the FARC based on the recruitment attempt in 1988 and the extortion-related violence against his relatives in 1991.

[8] The Panel relied on the documentary evidence which provided a strong indication that the capacity for the FARC to operate in Colombia has been greatly reduced over the past several years, principally due to a significant change in Colombia's country conditions, to the reduction of the FARC's offensive capability, and to the country's success to neutralize its communication systems and strategies. Particularly, the Panel noted that there is no indication the FARC has the capacity to identify, track, or target a significant proportion of the large number of individuals who have resisted, opposed, or deserted them over the past years.

[9] The Panel also considered the Applicant's profile, that is to say his personal circumstances, geographical location within Colombia and length of time since he left Colombia. The Panel observed that the Applicant's interactions with agents of FARC were relatively minimal.
His resistance in 1988, over 20 years ago, comprised only of telling young classmates that he did not want to join the FARC; he never got in any argument with them, no violent threats were made against him and he never informed the authorities about them.

[10] Relating to the violence against his extended family in Colombia in 1991, the Panel found that the Applicant was not in Colombia at that time and there is no evidence, apart from the family connection, that he is in any way related to the violent incidents. Further, the Panel noted that the Applicant is from Medellin and this area is not considered to be within the FARC's area of influence according to the country documentation.

[11] The Panel considered the evidence of experts who believe that there is a risk to those returning to Colombia, but noted that these experts acknowledge the risk is dependent on whether the person is a high value target. The Panel found that the Applicant was not such a high value target. He was not subjected to intense recruitment pressure, threats of violence or desertion nor did he have any direct contact with extorters. The Panel found that there is nothing in the Applicant's personal circumstances that would establish that the FARC has an on-going interest in him.

[12] The Panel also considered the Applicant's fear of being kidnapped if people, including the FARC, believe he has money. The Panel found that the Applicant "may be vulnerable to extortion attempts due to his perceived wealth in returning from the United States or Canada" but found this to be a generalized risk. The Panel determined that those who are perceived to be wealthy do not constitute a particular social group for the purpose of a refugee claim under section 96 of the IRPA. It further determined that perceived wealth cannot be the basis for a claim of a person in need of protection pursuant to section 97(1)(*b*) of the IRPA. It found, "The fact that they share the same risk of other persons similarly situated does not make their risk a 'personalized risk' subject to protection under section 97."

Issue

[13] Did the Panel err in law by not considering cumulatively the two fears alleged by him, namely fear of the FARC and fear of generalized violence?

Analysis

[14] The Applicant does not dispute the Panel's findings that he does not face a well-founded fear of persecution from the FARC, based on the recruitment and extortion attempts, and that he only faces a risk of generalized violence. The Applicant argues that the Panel erred in law by not considering cumulatively the two fears alleged by him.

[15] The Applicant relies on the cumulative effect of incidents doctrine ("Cumulative Effects Doctrine") set out by the Federal Court of Appeal in *Munderere v. Canada (M.C.I.)*, 2008 FCA 84, to argue that the Panel was required to consider cumulatively the future risk that he may be kidnapped by the FARC as a general victim of violence together with the risk that they would impute that he was a political opponent because of his past refusal to join the FARC. The Applicant argues that it is not sufficient that the Panel found separately that his fears are unfounded.

[16] The Applicant contends that the Panel failed to consider whether the likelihood the Applicant will be kidnapped by the FARC has any bearing on the likelihood his political opposition to the FARC will arise while he is in FARC custody. It is submitted that, in circumstances where the Applicant's imputed political opposition to the feared agent of political persecution is not questioned, and where the agent of persecution is the same organization that is likely to kidnap the

Applicant for criminal purposes, there is a clear onus on the Panel to explain why the cumulative impact of these risks does not give rise to a heightened risk of political persecution. It is submitted that the Panel erred by failing to do so.

[17] For the reasons that follow I reject the Applicant's argument. In my view the "Cumulative Effects Doctrine" does not apply in the manner argued by the Applicant. The doctrine applies to a series of incidents of harassment and discrimination. Those are not the circumstances of this case. In assessing the Applicant's fear of the FARC and in assessing whether a risk of violence is a generalized risk, the Panel is required to consider all the relevant facts of the case and come to a reasonable decision. The question is simply whether the Panel's finding that the Applicant's fear of the FARC is not well-founded is reasonable on the evidence.

[18] On the facts, the Panel determined that the FARC has no ongoing interest in the Applicant. It accepted that two school friends of the Applicant joined the FARC and then asked him three or four times whether he would join when he was 13 years old. When the Applicant refused to join, the Panel reasonably found that to be the end of the matter. As a result of the above described recruitment effort, the Panel found that the Applicant had not described a personal interaction with the FARC that would appear to give rise to a suspicion of political opposition. The Panel found the circumstances of the recruitment attempt and the extortion of his relatives did not give rise to a serious possibility of persecution by the FARC and that the possibility the FARC would have an ongoing interest in him was speculative. These findings were not challenged by the Applicant and in any event were reasonably open to the Panel.

[19] Given that the Panel found the Applicant was not at risk from the FARC, the cumulative assessment he suggests could not have resulted in a different result. Since the FARC would have no suspicion that the Applicant was a political opponent, he would then only be subject to a generalized risk.

[20] The Applicant relies on *Martinez Pineda v. Canada (M.C.I.)* 2007 FC 365 in support of his argument. A review of that decision reveals that it can be distinguished on its facts. The decision concerned whether the Refugee Division reasonably determined that the applicant did not face a personal risk of harm under s. 97 of the IRPA. The applicant in *Pineda* had been threatened by a well-organized gang that was terrorizing the entire country, had repeatedly been targeted and was subjected to repeated threats and attacks. The circumstances here are far different.

Conclusion

[21] I am satisfied that the Panel considered all of the evidence before it, correctly applied the law and rendered a reasonable decision. The decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paras. 46-49 and 53.

[22] For the above reasons the application for judicial review will be dismissed.

[23] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(*d*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review of the July 15, 2010 decision of a Panel of the Refugee Protection Division of the Immigration and Refugee Board is dismissed.

2. No question of general importance is certified.

"Edmond P. Blanchard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4561-10
STYLE OF CAUSE:	JORGE ALBERTO MOLINA CASTANEDA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Vancouver, B.C.
DATE OF HEARING:	February 10, 2011
REASONS FOR ORDER AND ORDER:	BLANCHARD J.
DATED:	February 18, 2011

APPEARANCES:

Shepherd Moss	FOR THE APPLICANT
Caroline Christiaens	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shepherd Moss Barrister & Solicitor Vancouver, B.C.	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT