

Federal Court



Cour fédérale

Date: 20110630

Docket: IMM-6480-10

Citation: 2011 FC 808

Toronto, Ontario, June 30, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

JOSE DAVID URREA BOHORQUEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Jose David Urrea Bohorquez is a real estate appraiser from Bogota, Colombia, who claimed to have been targeted by members of the Revolutionary Armed Forces of Colombia (or “FARC”) after he refused to inflate the value of a property that he was appraising. Member Lim of the Refugee Protection Division of the Immigration and Refugee Board rejected his claim for refugee protection, finding that material aspects of his story were not credible.

[2] While recognizing that the Board is entitled to deference in relation to its credibility findings, for the reasons that follow I am satisfied that the Board's decision was unreasonable.

Analysis

[3] There are three areas where the Board's credibility findings are simply not reasonable.

i) The Finding that Mr. Bohorquez' Family had not been Targeted

[4] One of the reasons cited by the Board for not believing that FARC was after Mr. Bohorquez was the fact that none of his family members in Colombia had been confronted by FARC representatives looking for Mr. Bohorquez after he left the country.

[5] It is true that Mr. Bohorquez testified that his father, brother and sister had not been contacted by FARC after he left Colombia. There was, however, evidence before the Board that in May of 2010 Mr. Bohorquez' mother received a threatening telephone call from an individual apparently calling on behalf of FARC who was looking for Mr. Bohorquez. Mr. Bohorquez' mother was so frightened by the call that she too fled Colombia and sought refugee protection in Canada. This evidence appears to have been overlooked by the Board.

ii) The Member's Finding Regarding the Colombian Land Registry System

[6] Another reason cited by the Board for rejecting Mr. Bohorquez' claim was the statement attributed to him that FARC needed his help as it would have had difficulties finding out who owned the property that he was appraising. According to the Board, FARC could simply have used

the land registry system to find out who owned the land in issue if it wanted to take control of the property.

[7] First of all, there was no evidence before the Board as to the workings of the Colombian land registry system and this was not something of which the Board could take official notice.

[8] A more fundamental problem with the Board's finding is the fact that the member either did not understand, or ignored, Mr. Bohorquez' explanation that the owner of the property had filed for bankruptcy, and that control of the property in question was in the hands of a bank. As a result, knowing who the registered owner of the property was would not have assisted FARC.

iii) FARC's Ability to Find Mr. Bohorquez in Bogota

[9] The Board also found that FARC would not have either "the inclination or the ability to track down [Mr. Bohorquez] if he were to return to Bogota".

[10] To the extent that the Board's finding regarding FARC's "inclination" was based upon its belief that the group had made no efforts to contact Mr. Bohorquez' family after he left Colombia, that finding is tainted by the Board's failure to consider the threat received by Mr. Bohorquez' mother in 2010.

[11] Insofar as FARC's "ability" is concerned, it is clear that this finding is based upon a selective reading of the country condition information before the Board. For example, a February,

2010 Immigration and Refugee Board “Response to Information Request” states that FARC is “absolutely capable” of pursuing someone if the person warrants the interest of the group.

[12] The document goes on to say that “Colombia’s illegal armed groups ... have access to private bank records and credit card activities. They can track someone down based on their paper trail. They can eavesdrop on family members to determine where a target is located, or bribe acquaintances and neighbours for information”.

[13] It is true that the Board is not required to refer to every piece of evidence in the record, and will be presumed to have taken all of the evidence into consideration. However, this is a case where evidence that was not mentioned related directly to a finding by the Board and was contrary to its conclusion. In the circumstances, it was incumbent on the Board to address it: see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425, 157 F.T.R. 35 at paras. 15-17.

Conclusion

[14] Each of the errors identified in these reasons materially affects the Board’s conclusion that Mr. Bohorquez is not at risk in Colombia. When the errors are taken together, it is clear that it would not be safe to allow the Board’s decision to stand. As a consequence, the application for judicial review is allowed.

Certification

[15] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel of the Board for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6480-10

STYLE OF CAUSE: JOSE DAVID URREA BOHORQUEZ v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 29, 2011

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

DATED: June 30, 2011

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