

Federal Court



Cour fédérale

Date: 20110708

Docket: IMM-3711-10

Citation: 2011 FC 841

Ottawa, Ontario, July 8, 2011

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**FREDDY ALEXANDER GUERRERO
MORENO**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] Freddy Alexander Guerrero Moreno [the Applicant] seeks judicial review of a decision of the Refugee Protection Division of the Immigration Refugee Board [the Board], dated June 9, 2010 [the Decision]. Therein, the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection.

[2] For the following reasons, the application will be dismissed.

THE FACTS

[3] The Applicant and his family are citizens of Columbia who lived in Bogota. The Applicant left Columbia to study in Miami on January 11, 2000. Later, in April of that year, his father, his brother Cesar and two of his cousins, became involved in a campaign to elect members of Bogota's council [the Campaign]. However, the Revolutionary Armed Forces of Columbia [the FARC] demanded a stop to the Campaign and threatened and attacked the Applicant's relatives on at least three occasions while they were hanging posters and canvassing. Shots were also fired at the Applicant's brother and in June of 2000, the Applicant's parents, two brothers [Cesar and Manuel] and one sister [Gloria] [collectively the Family] joined him in the United States. Later in June, the Applicant's two cousins, who had remained in Columbia, were murdered by FARC.

[4] The Family stayed in the United States for approximately five years and after their claims for protection were denied in 2005, they came to Canada. However, the Applicant did not seek asylum in the United States and did not accompany his Family to Canada. Instead, he stayed in the United States and lived there without status for a total of ten years. He arrived in Canada on January 7, 2010 and claimed refugee status.

THE DECISION

[5] Broadly stated, the Applicant's claim for refugee protection was denied because (i) the Board noted that he had not been involved in the Campaign, (ii) ten years had passed since the Campaign, (iii) there was no evidence that other family members who had remained in Bogota had been threatened or attacked by FARC since June of 2000, and (iv) FARC was no longer active in large urban areas such as Bogota.

[6] The Board also questioned the Applicant's subjective fear because (i) he failed to apply for refugee status in the United States when his Family made its application, (ii) he did not join his Family members when they moved to Canada and made refugee claims, and (iii) he remained in the United States for ten years after his student visa expired and, in that period, he risked deportation to Columbia.

THE STANDARD OF REVIEW

[7] The standard of review applicable to the question of whether there is a well-founded fear of persecution is reasonableness, see *Jean v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1014, 2010 Carswell Nat 3827 at para 9. Similarly, the determination that the Applicant lacked subjective fear is reviewable on the reasonableness standard, see *Earl v Canada (Minister of Citizenship and Immigration)*, 2011 FC 312, 2011 Carswell Nat 674 at para 16.

THE ISSUES

[8] The issues are the following:

1. Did the Board err by not considering the Family's positive refugee decisions given that the relevant Board file numbers were included on the Applicant's Personal Information Form?
2. Did the Board err when it suggested that the Applicant's responses to its questions showed that he was unsure that FARC was the agent of persecution?
3. Did the Board err when it suggested that, because the Applicant admitted that Bogota had a high crime rate, the attacks on his brother were possibly the work of common criminals and not the FARC?
4. Did the Board err when it indicated that, by leaving Colombia, his father and brother had "effectively complied" with FARC's demand to cease their political activities?
5. Did the Board err when it criticized the Applicant for not tendering police reports as evidence in connection with the problems experienced by his father and his brother?
6. Did the Board err when it said that the Applicant did not tender any evidence of his brother's injuries?
7. In its assessment of the Internal Flight Alternative [IFA], did the Board err when it concluded that the Applicant would be safe in Bogota, in part, because his appearance had changed in the ten years since he had left the capital?

DISCUSSION

(i) The Family's Positive Refugee Claims

[9] In my view, the Board did not err in failing to treat the Family as similarly situated because the facts of their refugee claims were very different. They were directly involved in the Campaign. In contrast, the Applicant left Bogota before the Campaign began and was living in Miami while his Family members experienced their problems. Further, none of the Family members testified at the Applicant's refugee hearing and the Applicant did not file their PIFs or the transcripts of their hearings or the related decisions as part of the evidence to support his claim. In all these circumstances, I cannot conclude that the Board was required to review the decisions on the Family's refugee claims.

(ii) Was the Family Targeted by FARC and is the Applicant at Risk from FARC?

[10] In my view, the Board erred when it questioned whether FARC was the agent of persecution without explaining why it rejected the evidence from the Applicant and his aunt that indicated FARC's involvement [see the Certified Tribunal Record at pages 201 and 215[]]. However, since it is clear from paragraph 10 of the Decision, that the balance of the Board's reasons were based on the premise that FARC was the agent of persecution, this error is not material.

(iii) Criminals Rather than FARC?

[11] The evidence makes it clear that FARC was involved and as noted above, the Board ultimately reached its conclusion on the basis that FARC was the agent of persecution. Accordingly, its reference to the evidence about Bogota's high crime rate was not material.

(iv) "Effective Compliance" with FARC's Demands

[12] Again, I find this conclusion to be in error. The Family fled because of the FARC's attacks. However, their flight does not suggest that they no longer wished to be involved in the Campaign. It simply meant they were afraid. The important question is whether other family members such as the Applicant might be perceived by the FARC to be politically active. However, this question was answered when the Board noted that family members who stayed in Bogota had not been attacked by the FARC. Accordingly, in my view, this error was not material because, in spite of it, the Board addressed the appropriate question.

(v) No Police Reports?

[13] This was also an error. Since there was no evidence that the Applicant's father and brother approached the police, it was unreasonable to criticize the Applicant for his failure to produce police reports.

(vi) No Evidence of the Brother's Injuries?

[14] The Board also erred in reaching this finding because there was a statement at page 205 of the Tribunal Record from a paramedic who said that he treated the brother's head injury.

CONCLUSION

[15] The Decision is not perfect in that there are many small, immaterial errors. Nevertheless, I am satisfied that the Decision described in paragraphs 5 and 6 above is reasonable.

[16] No question was posed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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