

Federal Court



Cour fédérale

**Date: 20110708**

**Docket: IMM-6855-10**

**Citation: 2011 FC 851**

**Ottawa, Ontario, July 8, 2011**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**CLAUDIA ELENA OSORIO MEJIA  
KAREN LORENA MUNERA OSORIO  
BRANDON MUNERA OSORIO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of the decision made on September 29, 2010 by the Refugee Protection Division of the Immigration and Refugee Board wherein the applicants were found not to be Convention refugees or persons in need of protection.

## **BACKGROUND**

[2] Claudia Elena Osorio Mejia is the principal applicant and the mother of the two minor applicants. All three applicants are citizens of Colombia. In September 2001 the principal applicant returned to Colombia after having lived in the United States for over one year on a visitor's visa. Upon her return she lived in her parent's home together with her sisters, nephew and two children. She says she immediately began to receive telephone calls from a person who identified himself as a member of the Revolutionary Armed Forces of Colombia (FARC). He demanded one million pesos for protection of her family but did not give a deadline with respect to when it should be paid. The applicant suspected she was targeted for extortion because she had family members living in the USA and was therefore perceived to have access to resources. In October of that same year, the FARC forced their way into her parents' home and terrorized her parents, sisters and nephew.

[3] The applicant left Colombia on February 15, 2002 and went back to the United States. Four months later, on June 8, 2002, her children flew to meet her. After her visitor's visa ran out she entered into an arranged marriage of convenience for a fee. Her husband disappeared before her permanent residence papers could be finalized. Her conditional permanent residence status was thus cancelled by U.S. immigration at which point she came to Canada and applied for refugee protection here.

## **DECISION UNDER REVIEW**

[4] The Board did not find the material aspects of the principal applicant's story to be credible nor did it find her fear well-founded. It found the timing of the FARC call to be not credible, namely because it came so shortly after she returned to Colombia. Further, she admitted that no deadline was imposed on the payment of the extortion money. The Board also did not believe, on a balance of probabilities, and based on the Board's National Documentation Package, that should the applicant and her children return to Colombia, eight years after she left, that they would be targeted by the FARC.

[5] Furthermore, the principal applicant did not file a claim for asylum in the seven years and seven months she lived in the United States because she said she had a tourist visa that lasted five years. The Board found that if she were truly in fear of imminent deportation by the end of the fifth year, she would have looked into filing an asylum claim in order to prevent deportation. Finally, the Board drew an adverse inference from the fact that when her parents and two sisters left Colombia for the United States in November 2001, the principal applicant voluntarily stayed behind to arrange for someone to look after their properties. She left the country three months later. The Board considered that someone who truly fears persecution would flee at their first opportunity.

## **ISSUES**

[6] The determinative issue is whether the Board reasonably concluded that the principal applicant's story was not credible or based on a well-founded fear of persecution?

## **ANALYSIS**

### *Standard of Review*

[7] The Refugee Protection Division of the Immigration and Refugee Board is a specialized tribunal which is owed deference by this Court, especially insofar as their findings concern the plausibility of testimony and the credibility of an account: *Aguebor v. Canada (Minister of Employment and Immigration) (F.C.A.)* (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886. Questions of plausibility and credibility are factual in nature (*Wu v. Canada (Citizenship and Immigration)*, 2009 FC 929 at para. 17) and intervention is only warranted if the decision does not fall 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. at para. 47.

*Did the Board reasonably conclude that the principal applicant's story was not credible or based on a well-founded fear of persecution?*

[8] Whether the Board reasonably concluded that the principal applicant's story was not credible or based on a well-founded fear of persecution requires the Court to analyse the Board's findings with respect to: (a) the applicant's credibility; (b) the applicant's delay in seeking protection; (c) the likelihood that the FARC would have a continued interest in targeting her; and (d) the Board's appreciation of the documentary evidence.

(a) Credibility

[9] It is well established that when assessing the credibility of a refugee claimant, the Board is entitled to rely on criteria such as rationality and common sense: *Shahamati v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1994] F.C.J. No. 415 (QL) at para. 2; *Kabuyamulamba-Kabitanga v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 351, [2002] F.C.J. No. 462 at paras. 28-29.

[10] The applicant alleged that she received a threatening phone call from the FARC in September 2001 demanding she pay them one million pesos. The Board found it curious that the alleged call came almost immediately following her return to Colombia from the United States. Given the timing of this call, it was reasonable for the Board to doubt the credibility of this allegation. Related to this finding is the admission the applicant made at the hearing: that the FARC did not impose a deadline for the extortion monies. It was reasonable for the Board to conclude that a deadline for payment is a “crucial element of an extortion demand” as the deadline serves to effectively trigger the threat. This was a conclusion grounded in common sense and rationality.

[11] The credibility of the applicant’s story was further undermined by the lack of any objective, corroborating evidence about the alleged extortion attempt. The applicant argues that the lack of corroboration should have been relevant only to a state protection finding. I agree that documentary evidence of a complaint to a police authority is, strictly speaking, merely evidence of the statement by the claimant to the police. It does not corroborate the occurrence of the alleged events. Nonetheless, documentary evidence of a complaint is at least a contemporaneous record which

would have some value in supporting a claim that the events had occurred as claimed. Here, the Board was looking for anything that would provide such support.

[12] When a refugee claimant's credibility is already called into question it is justifiable for a Board to draw a negative inference from his or her failure to corroborate material elements of their story: *Karadeniz v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1246 at para. 32; *Muchirahondo v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 546 at para. 18; *Oritz-Juarez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 288 at para. 7. Here, the applicant submitted no objective evidence to support her assertions of the phone calls or of the home invasion.

[13] The applicant submitted a notarized letter from the wife of her uncle with whom the family lived during their alleged problems. The letter stated that the reason the applicant left for the U.S.A. was because of threats made against her in Colombia. Such letters often come from family and friends close to the persons affected by the claimed events as only they may have personal knowledge of what had occurred. However, in the circumstances of this matter and given the applicant's already impugned credibility it was not unreasonable for the Board to discount the letter.

(b) Delay

[14] This Court has held that delay in seeking refugee protection is an important factor to consider when weighing a claim for refugee status: *Heer v. Canada (Minister of Employment and Immigration)*, [1988] F.C.J. No. 330 (F.C.A.) (QL); *Gamassi v. Canada (Minister of Citizenship and Immigration)* (2000), 194 F.T.R. 178. Delay points to a lack of subjective fear of persecution or negates a well-founded fear of persecution. This is based on the rationale that someone who is

truly fearful would claim refugee status at their first available opportunity: *Espinosa v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324 at para. 16;

[15] Recently, in *Jeune v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 835 at para. 15, this Court found that the applicant's failure to claim asylum at his first opportunity further undermined his credibility. The same is true in the case at bar. The principal applicant remained in the United States for seven years. For five of those years she had a tourist visa. After the visa expired she still took no steps to seek protection in the United States. It was reasonable for the Board to expect that "if she were truly in fear" of being deported, she would have looked into the matter of filing an asylum claim as soon as possible. There is no reasonable explanation on file as to why she did not do this, other than her attempt to resort to a marriage of convenience.

[16] The applicant submits that the Board erred in reciting the chronology of events which took place during her sojourns in the U.S. I agree that the Board mistakenly referred to the expiry of her visitor's visa and her attempts to rely on a marriage of convenience as happening earlier rather than in 2005 and 2006. The Board got the chronology straight at the beginning of the decision but then conflated the history in a later paragraph. This error was not material to its decision.

[17] The applicant delayed in fleeing Colombia. She testified at the hearing that she stayed behind when her parents and sister fled because she had to arrange to have their properties looked after and to find a place in Medellin where her children would be safe as they did not have travel documents. The Board relied on the applicant's statement about the properties to draw a negative inference about her subjective fear. While this part of the decision could have been better written to acknowledge her additional concern about the children, the decision as a whole was not erroneous

as the applicant had given that evidence. It was open to the Board to draw from her evidence that her principal reason for delaying was to manage the three apartments.

(c) The FARC's Lack of Continued Interest in the Applicant

[18] Although not dispositive of this application, it is worth pointing out that the applicant has been away from Colombia for 8 years and no evidence was submitted as to how she may still be of interest to the FARC if she were to return. When asked about this in the hearing, the applicant said she could be tracked down by her father's name and documents. It was not clear what she was referring to respecting documents. However, no documents were submitted and it was admitted by the applicant that her last name was a very common name in Columbia.

(d) An Appreciation of the Documentary Evidence

[19] The applicants contend that the Board erred in examining all of the documentary evidence and intentionally drew certain references from the material that was unfavourable to the applicant's claim. There is no basis for this assertion as it is clear from the decision that the Board considered the evidence as a whole.

[20] Ultimately, this application fails because of the applicant's lack of subjective fear evidenced by her delay in claiming protection, her lack of credibility and her failure to produce corroborating evidence to support her story. It falls within the range of acceptable outcomes defensible in respect of the facts and the law.



[21] The application is dismissed. No questions were proposed for certification and none will be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed. No questions are certified.

“Richard G. Mosley”  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6855-10

**STYLE OF CAUSE:** CLAUDIA ELENA OSORIO MEJIA  
KAREN LORENA MUNERA OSORIO  
BRANDON MUNERA OSORIO

and

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 8, 2011

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

**DATED:** July 8, 2011

**APPEARANCES:**

Terry S. Guerriero	FOR THE APPLICANTS
Veronica Cham	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

TERRY S. GUERRIERO Barrister & Solicitor London, Ontario	FOR THE APPLICANTS
MYLES J. KIRVAN Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT