

Federal Court



Cour fédérale

Date: 20111214

Docket: IMM-3789-11

Citation: 2011 FC 1477

Toronto, Ontario, December 14, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

VICTOR ALFONSO NINO CARVAJAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a decision of the RPD determining that the Applicant is not a Convention refugee and is not a person in need of protection. The Applicant is a Colombian citizen who traveled to Canada seeking protection because he was targeted by and fears the Revolutionary Armed Forces of Colombia (FARC).

[2] The Applicant submits that the RPD failed to consider important evidence that was before it with regard to his prospective risk should he return to Colombia. The following is what was argued to be missing:

The Applicant's testimony at the hearing was that his two sons Fabian and Leonardo's whereabouts in Colombia are unknown and that they are still targeted by the FARC and paramilitaries. However, there is no mention of this important evidence in the Panel's decision.

Furthermore, the Applicant submitted into evidence a copy of his son Fabian's 2005 denunciation to the police in which Fabian states that he, Leonardo and Yankeles, who were all in Colombia at the time, are all forced into hiding because they were constantly threatened, followed targeted by FARC and paramilitaries due to Miguel's case and in Yankeles' case for the reasons that are related to his own position and work as well.

(Applicant's Memorandum, paras. 15 - 16)

Evidence supporting this argument was placed before the RPD (see: Certified Tribunal Record, pp. 656 and 663), and the following argument was before the RPD for consideration:

... And I would say that based on Miguel Nino's work and what the FARC wanted from him and the fact that after his departure, the FARC went after members of his family. It does go to show that he is in fact, or was in fact, a high value target and likely that this particular claimant would be at risk no matter where he is in the country as the FARC would, at some point, catch up to him and likely target him.

(Certified Tribunal Record, p. 670)

I agree with the Applicant that the RPD failed to address the evidence and argument advanced. As a result, I find the decision is made in reviewable error.

ORDER

THIS COURT ORDERS that the Order presently under review is set aside and this matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3789-11

STYLE OF CAUSE: VICTOR ALFONSO NINO CARVAJAL
V. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 13, 2011

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

DATED: December 14, 2011

APPEARANCES:

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