Federal Court Cour fédérale

Date: 20120113

Docket: IMM-7216-10

Citation: 2012 FC 49

Ottawa, Ontario, January 13, 2012

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

HUGO HENRY PABON MORALES,
NANCY ALVAREZ PARRA,
AMALIA PABON ALVAREZ,
SOFIA PABON ALVAREZ,
SELENE PABON ALVAREZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

PROCEEDING

[1] Hugo Henry Pabon Morales, Nancy Alvarez Parra, Amalia Pabon Arvarez, Sofia Pabon Alvarez and Selene Pabon Alvarez [the Applicants], seek judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of a

Pre-Removal Risk Assessment [PRRA] Officer dated October 26, 2010 wherein the Applicants' PRRA was refused [the PRRA Decision].

[2] For the following reasons, the application for judicial review will be allowed.

BACKGROUND

[3] The Applicants are a Colombian family who fear the Revolutionary Armed Forces of Colombia [FARC]. The Applicants are two parents, Hugo [the Principal Applicant] and Nancy, and their three minor children. The three minor Applicants were born in the United States and are therefore American citizens as well as Colombians.

[4] The Principal Applicant is 35 years old and is a former detective with Colombia's Administrative Department of Security [the DAS]. In 2003, he investigated a bombing at the Nogal Club and determined that FARC was responsible.

[5] During his investigation of the bombing, he was unexpectedly transferred to another office in the Department. Some time thereafter, he learned that the prosecutor on the case had left Colombia suddenly and under suspicious circumstances. The Principal Applicant began to fear that FARC had been behind his transfer and the prosecutor's flight, so he began to keep a low profile.

[6] In July 2003, his family received two phone calls. In the first call, the caller hung up after asking for the Principal Applicant. In the second, the caller claimed to be a member of FARC and

warned the Principal Applicant that FARC had declared him to be a military target and that he must stop "poking his nose into their business". The Principal Applicant suspects that FARC obtained his unlisted phone number from the DAS.

[7] On August 5, 2003, the adult Applicants fled Colombia for the United States and five years later, on April 7, 2008, they came to Canada and claimed refugee protection.

[8] On October 22, 2009, the Immigration and Refugee Board [the Board] refused the Applicants' claim [the Refugee Decision] and leave to apply for judicial review of that Decision was subsequently denied.

[9] On June 22, 2010, the Applicants filed their PRRA application under sections 96 and 97 of the Act [the PRRA Application] and on January 24, 2011, a judge of the Federal Court granted the Applicants' motion for a stay of removal.

THE REFUGEE DECISION

[10] The Principal Applicant and his family were found not be to convention refugees or persons in need of protection because, in part, the Board found it implausible that the Principal Applicant would be at risk given that his family members, who had remained in Colombia, had not been contacted by the FARC in the eight years since he left Colombia.

[11] The Board also concluded that the Applicants had an Internal Flight Alternative [IFA] in Bogota.

THE PRRA DECISION

[12] The Applicants submitted two new documents with their PRRA Application. Both were prepared after the decision was released of the Refugee Decision and included information that would not have been available to the Board. The two documents will be referred to collectively as the New Evidence.

[13] The first document in the New Evidence is a report dated May 27, 2010 titled UNHCR Eligibility Guidelines for Assessing International Protection Needs of Asylum Seekers from Colombia [the UNHCR Report].

[14] The UNHCR Report speaks about the possibility of an IFA for individuals fleeing persecution by illegal armed groups and says that it "considers an internal flight or relocation alternative is generally not available in Colombia…" and recommends that further consideration be given to, among other things, "the reach and ability of the network of the illegal armed groups to trace and target individuals including [in] large cities such as Bogota, Medellin and Cali;"

[15] A footnote to this quotation reads as follows:

> Reportedly, the guerrillas and paramilitary groups often employ highly sophisticated databases and computer networks and are able to trace people even years after their initial search, see Immigration and Refugee Board of Canada, *Colombia: Availability of state*

> *protection to those who fear harassment threats or violence by armed groups since the election of President Alvaro Uribe Vélez*

[16] The UNHCR Report lists "Present and Former Members and Supporters of one of the Parties to the Conflict" as the first category under the heading "Main Groups at Risk". Under this heading, it specifically mentions that Colombian policemen and security forces that interfere with the illegal activities of various illegal armed groups or investigate their criminal acts are, along with their families, at risk of deadly attacks and kidnappings. The supporting footnotes for this conclusion include material dated in February 2008, and March and September 2009.

[17] The second document in the New Evidence is a letter dated June 29, 2010, from a Refugee Coordinator with the Toronto Office of Amnesty International [the AI Letter].

[18] The AI Letter addresses the possibility of an IFA in Colombia in the following terms and endorses the UNHCR Report. It says:

> **Capacity to pursue victims and Flight Alternatives**
>
> A recent information note from the immigration and Refugee Board [of Canada] discusses the likelihood and ability of the FARC, ELN or AUC to pursue victims in Colombia.[14] The majority of sources consulted in this note are of the opinion that these groups have a capacity to pursue victims throughout Colombia.
>
> Amnesty International shares the view that the FARC, ELN and successor groups to the AUC have the capacity to pursue victims throughout many regions of the country and may do so where the individual is of particular interest to warrant such effort. This is also true for those who have fled the country and return after a period of time.
>
> Amnesty International is also of the view that while there have been some military advances against paramilitary and guerrilla groups in

> Colombia, these advances do not translate into state protection for those who have been targeted by the FARC, ELN or former AUC.
>
> Similarly, UNHCR's 2010 eligibility guidelines notes the following when assessing internal flight alternatives for individuals fleeing persecution at the hands of non-state agents such as illegal armed groups:
>
>> "…the reach and ability of the network of the illegal armed groups to trace and target individuals, both in rural areas and in urban centres, including large cities such as Bogota, Medellin and Cali"

[19] Footnote 14 in the above quotation refers to a Canadian Immigration and Refugee Board document dated February 23, 2010.

THE PRRA DECISION

[20] Against this background, the impugned portion of the PRRA Decision reads as follows:

> The applicants' remaining submissions include country documentation regarding the human rights situation in Colombia. These documents include current, objective reports such as the 2010 *Human Rights Watch* report, the 2010 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Colombia* and the 2010 *Amnesty International* report. Subsection 161(2) of the IRPA Regulations requires that, "a person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) of the Act and indicate how that evidence relates to them". The applicants' submissions describe the general country conditions in Colombia, and they have not linked this evidence to their personalized, forward-looking risks. It is a well-recognized principle that it is not enough simply to refer to country conditions in general without linking such conditions to the personalized situation of an applicant (*Dreta,* 2005*; Nazaire*, 2006). The assessment of the applicants' potential risk of being persecuted or at risk of harm if they were sent back to their country must be individualized. The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean there is a risk to a given

> individual (*Ahmad,* 2004; *Gonulcan*, 2004; *Rahim*, 2005). I am aware that the applicants may fear for their safety in Colombia; however the evidence before me does not support that they face a personalized risk or harm if they were to return.
>
> While not determinative, the evidence submitted by the applicants does not lead me to a different conclusion than that of the RPD. Therefore, the determinative issue in this assessment is whether there has been a material change in country conditions in Colombia since the decision of the RPD in October 2009 to the extent that the applicants would now be Convention refugees or persons in need of protection.

THE ISSUE

[21] The Applicants say that, although the PRRA Officer mentioned the New Evidence, he failed to appreciate that it was linked to the Principal Applicant's circumstances as a former police officer who had been targeted by FARC following an investigation of its illegal activities.

DISCUSSION

[22] In *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, 289 DLR (4th) 675, the Federal Court of Appeal held that a PRRA application is to be allowed if, at the time it is made, the applicant meets either the definition of a "Convention refugee" under section 96 of the Act or the definition of a "person in need of protection" under section 97 of the Act.

[23] The New Evidence included information about risks faced by similarly situated individuals such as former police officers who investigated the criminal conduct of illegal groups. Accordingly, in my view, the PRRA Officer was obliged to consider it in that light. This, the Officer failed to do.

CERTIFIED QUESTION

[24] No question was posed for certification under section 74 of the Act.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review will be allowed and the Applicants' PRAA application is to be reconsidered by a different officer. The Applicants may file fresh material on the reconsideration.

"Sandra J. Simpson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7216-10
STYLE OF CAUSE:	HUGO HENRY PABON MORALES et al v MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 28, 2011
REASONS FOR JUDGMENT:	SIMPSON J.
DATED:	January 13, 2012

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Suranjaran Bhattacharyya	FOR THE RESPONDENT

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