

Federal Court



Cour fédérale

**Date: 20120113**

**Docket: IMM-7309-10**

**Citation: 2012 FC 46**

**Ottawa, Ontario, January 13, 2012**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**ERIKA VIVIANA ARIAS SANCHEZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Erika Viviana Arias Sanchez [the Applicant], seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated November 22, 2010, wherein the Board determined that the Applicant is not a Convention refugee or person in need of protection [the Decision].

[2] The Applicant is a 30 year old citizen of Colombia who fears the Revolutionary Armed Forces of Colombia [FARC] because of her sister's activities as an investigative journalist.

[3] The facts are complex but, for present purposes, it need only be said that the Applicant's allegation that she was abducted and threatened by the FARC on October 20, 2009 was central to her claim [the Abduction].

[4] The Board did not believe that the Abduction had occurred because it was not referred to in the letters written by the Applicant's parents [the Letters].

[5] In this regard, the Board said at paragraphs 13 and 14 of the Decision:

Documentary evidence, that is affidavits from the claimant's parents, does not indicate that she was abducted and threatened by the FARC on October 20, 2009 as alleged. The onus is on the claimant to establish her claim. She was able to provide criminal reports to corroborate other incidents that took place. She was instructed in question 31 in her PIF to provide documentary evidence to support her claim. Since her parents' affidavits do not indicate anything about the incident of October 20, 2009, and since she did not provide any documentary evidence to substantiate the incident of October 20, 2009, the panel is not persuaded to believe she was abducted and threatened by the FARC on October 20, 2009.

As a result, the panel disbelieves that the incident of October 20, 2009, ever took place and hence the panel does not believe that she was threatened by the FARC forcing her to leave Colombia as alleged. The panel finds that the claimant has fabricated this incident to justify her final departure from Colombia.

[6] However, the Letters were dated September 25, 2009 and therefore could not have referred to the Abduction which happened approximately one month later.

[7] In view of this material error of fact, I am unable to conclude that the Board's negative credibility finding was reasonable.

**CERTIFIED QUESTION**

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

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**, for the reasons given above, the application for judicial review is allowed and the Applicant's claims are to be reconsidered by a different member of the Board. Fresh evidence may be filed on the reconsideration.

“Sandra J. Simpson”

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Judge

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

**DOCKET:** IMM-7309-10

**STYLE OF CAUSE:** ERIKA VIVIANA ARIAS SANCHEZ v MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 28, 2011

**REASONS FOR JUDGMENT:** SIMPSON J.

**DATED:** January 13, 2012

**APPEARANCES:**

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