Federal Court Cour fédérale

Date: 20120217

Docket: IMM-4716-11

Citation: 2012 FC 223

BETWEEN:

IZABEL ESCOBAR CHAJON
LUIS EDUARDO RAMIREZ PEREZ
WALNER ABEL DIAZ ESCOBAR
WILMAR AVIMAEL DIAZ ESCOBAR
GABRIELLA YOLANDA RAMIREZ ESCOBAR
NOEMI FELICITA RAMIREZ ESCOBAR
ISIDRO RAMIREZ PEREZ

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR ORDER

HARRINGTON J.

[1] In 1995, Ms. Chajon left Guatemala for the United States. She filed a refugee claim which was dismissed. Nevertheless, she remained illegally in the United States and there met and married another Guatemalan, Luis Eduardo Ramirez Perez. Shortly thereafter, they were joined

there by her sons Walner and Wilmar born of a common-law relationship in Guatemala. Two daughters were born to them in the United States, Gabriella and Noemi. The family, together with Luis' brother, Isidro Ramirez Perez, came to Canada in 2008 and sought refugee protection on a number of grounds.

[2] This is the judicial review of the decision of the member of the Refugee Protection Division, of the Immigration and Refugee Board of Canada, who held they were neither Convention refugees nor in need of Canada's protection.

[3] Although the claims are interwoven, for the purposes of analysis it is necessary to segregate them. As noted by the member, Gabrielle and Noemi are citizens of the United States and made no refugee claim against that country. This judicial review, as regards them, must be dismissed on that ground alone.

[4] The entire family asserts a fear of Ms. Chajon's ex common-law spouse. However, for the reasons given by the member, this judicial review also fails on that ground.

[5] The entire family also fears that if they return to Guatemala, they will become part of the urban poor or, alternatively, be targeted as they will be perceived as being wealthy having spent a number of years in the United States and in Canada.

[6] Fear of poverty does not give rise to a claim under either section 96 nor section 97 of the *Immigration and Refugee Protection Act* nor does fear of being targeted by criminal gangs

because of wealth. A leading case is the decision of Madam Justice Tremblay-Lamer in *Prophète v Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, 70 Imm LR (3d) 128, affirmed by the Court of Appeal at 2009 FCA 31, 78 Imm LR (3d) 163.

[7] The prime concern is with respect to Walner and Wilmar who are now 23 and 19 years of age. The fear is that they would be targeted for recruitment by the Maras, a notorious gang with influence throughout Guatemala. The member considered this a generalized risk. She accepted that young men are a subgroup of the population that is more targeted by the Maras than others. However, these youth make up nearly half of the country's population. She referred to the decisions of this Court which held that although young men constitute a subgroup of the population that may have a heightened risk, it does not make their risk personal.

[8] The main issue raised by the applicants on his judicial review is that no separate analysis was done under sections 96 and 97 of IRPA, and that no consideration was given to the fact that the persecution against Walner and Wilmar was gender-based.

[9] Section 96 of IRPA defines a United Nations Convention refugee as a person who has "a well-founded fear of persecution for reasons of race, religion, nationality, member in a particular social group or political opinion".

[10] It seems to me that Walner and Wilmer were considered as part of a particular social group, young males.

[11] A persecution on the grounds of age is not covered by the Convention.

[12] Section 97 of IRPA offers protection to persons whose fear does not fall within section 96, but who would be subjected personally to a danger, believed on substantial grounds to exist, of torture, or to a risk to their lives or a risk of cruel and unusual treatment or punishment. However, among other things, “the risk [must] be faced by the person in every part of that country and is not faced generally by other individuals in or from that country”.

[13] The fact that not everyone is subjected to the same risk does not make the risk personal. As Mr. Justice Crampton, as he then was, held in *Baires Sanchez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 993, [2011] FCJ No 1358 (QL), at paragraphs 30 and 31:

> [30] … That is to say, the Board rejected the Applicants’ claims under section 97 on the ground that the risk faced by Mr. Baires Sanchez is one that is “faced generally by <u>all</u> individuals in El Salvador” (emphasis added). The Board articulated this precise test a number of times in its decision.
>
> [31] That said, as I have noted above, the Board also recognized that the risk faced by Mr. Baires Sanchez may be “greater … because he fits the profile of those who are targeted for recruitment by the MS.” As recognized by the jurisprudence mentioned at paragraph 25 above, it was not inconsistent for the Board to find that the risk faced by Mr. Baires Sanchez may be greater than the risk faced by individuals who are not young males, while also finding that such risk is faced generally by others his country, as contemplated by paragraph 97(1)(b)(ii) of the IRPA. Indeed, for the reasons discussed at paragraph 26 above, it would have been reasonably open to the Board to dismiss Mr. Baires Sanchez’s application under section 97 of the IRPA on the basis that the risk he faces is a risk faced by a subset of the population consisting of young males who are potential targets of recruitment by the Maras Salvatrucha (*Smith v Alliance Pipeline Ltd*, 2011 SCC 7, at paras 38-39).

See also *Jimenez Palomo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1163, [2011] FCJ No 1430 (QL) and *Ponce Uribe v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1164, [2011] FCJ No 1431 (QL).

[14] In this particular case, neither Walner nor Wilmar have been in Guatemala for many years. It is highly speculative that they would be targeted. Whether under section 96 or 97 of IRPA, there still must be a personalized risk. Furthermore, there need not be a separate analysis under both sections if there is no separate evidence which would establish grounds of persecution (*Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635, 254 FTR 244; *Biro v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1428, 143 ACWS (3d) 333; and *Herrera v Canada (Minister of Citizenship and Immigration)*, 2007 FC 979, 161 ACWS (3d) 469).

[15] Given the jurisprudence of this Court, in the context of gang violence and recruitment in Central America, I do not agree with the applicants' submissions that the RPD member failed to consider gender as a particular social group under section 96. However, they shall have one week herefrom to pose a serious question of general importance. If so, the respondent shall have one week thereafter to reply.

"Sean Harrington"
Judge

Ottawa, Ontario
February 17, 2012

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4716-11
STYLE OF CAUSE:	ESCOBAR CHAJON ET AL v MCI
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	FEBRUARY 8, 2012
REASONS FOR ORDER:	HARRINGTON J.
DATED:	FEBRUARY 17, 2012

APPEARANCES:

Lisa Couillard D. Jean Munn	FOR THE APPLICANTS
Rick Garvin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Caron & Partners LLP Barristers & Solicitors Calgary, Alberta	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT