

Federal Court



Cour fédérale

Date: 20120223

Docket: IMM-4107-11

Citation: 2012 FC 256

Toronto, Ontario, February 23, 2012

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**MARTA CECILIA PINEDA QUIROZ
ANDRES FELIPE MEDINA PINEDA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants, a mother and her son, are citizens of Columbia. They seek judicial review of a decision of a Member of the Refugee Protection Division of the Immigration and Refugee Board of Canada dated May 18, 2011 wherein their claim for refugee protection in Canada was rejected. For the reasons that follow I find that the application is allowed and the matter will be sent back for redetermination by a different member.

[2] The principal issue is that of an internal flight alternative. The Principal Applicant worked as a professor in a university in Medellin, Columbia. She and her child were threatened because it was alleged that she was being too hard on her students, failing nearly 30 percent of her class. She continued to receive threats by notes and subsequently by two persons putting a gun to her head. Further as a professor the Principal Applicant has been a director of a project that had conducted research into several districts of the country known to be in the control of paramilitary groups. Her staff received several anonymous calls requesting information gathered in the course of this research. She refused to allow the information to be divulged, the calls continued. She and her son fled Columbia, came to Canada and claimed refugee protection.

[3] The Principal Applicant claims that she cannot go elsewhere in Columbia, such as Bogota, as she would continue to be targeted. Given her age and the fact that, save for a brief period working in a family furniture store in her youth, she has always worked as an academic and realistically could only secure work in that area.

[4] The Board Member found that the Applicants would have a reasonable internal flight alternative in Bogota. The Applicants assert that the Member failed to give due consideration to the preponderance of evidence in the record which indicated that persons such as the Applicants, particularly academics, would not be safe in Bogota.

[5] The Court must review this decision on the bases of reasonableness (*Diaz v Canada (Minister of Citizenship and Immigration)* 2010 FC 797 at para 27).

[6] In this case I am concerned that the Member did not have all the relevant material before him in formulating his decision. Further, he appears to refer in his decision to material not found in the Certified Tribunal Record. For instance the Member's Reasons, paragraph 26 refer to a 2008 United States country report. That report is not in the record. A 2009 report is in the record but only parts of that report, many pages are missing. The missing pages contain several references supportive of the Applicants' case.

[7] There are several documents not referred to in the Reasons as all. While I acknowledge that a Member does not need to refer to every document in the record, given the state of the record here I am quite concerned that the Member may not have had any regard to the many documents supportive of the Applicants' case.

[8] Under the circumstances the decision must be set aside and sent back for redetermination by a different member. The parties should be given an opportunity to ensure that complete copies of all relevant documents are in the record.

[9] Counsel are agreed that there is no question to be certified.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed;
2. The matter is to be redetermined by a different member with the parties given the opportunity to ensure that the record contains complete copies of all relevant documents;
3. No question is certified;
4. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4107-11

STYLE OF CAUSE: MARTA CECILIA PINEDA QUIROZ,
ANDRES FELIPE MEDINA PINEDA v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 23, 2012

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

DATED: February 23, 2012

APPEARANCES:

Pamila Bhardwaj FOR THE APPLICANTS

Ildiko Erdie FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Pamila Bhardwaj FOR THE APPLICANTS
Toronto, Ontario

Myles J. Kirvan, FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario