

Federal Court



Cour fédérale

Date: 20130531

Docket: IMM-8026-12

Citation: 2013 FC 589

Ottawa, Ontario, May 31, 2013

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

**CRISTIAN BENICIO MONTERO VELEZ,
LAURA ANDREA HOYOS CIFUENTES
AND SOFIA MONTERO HOYOS
(BY HER LITIGATION GUARDIAN
CRISTIAN BENICIO MONTERO VELEZ)**

Applicants

and

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Protection Division [RPD], dated July 13, 2012 denying the Applicants refugee protection.

I. Facts

[2] The Applicants are a family of three (3). The Principal Applicant, his spouse and their minor daughter are seeking protection in Canada. A Canadian child was born since their arrival to Canada.

[3] On November 22, 2010, three (3) individuals identifying themselves as members of the Revolutionary Armed Forces of Colombia [FARC] attended the farm owned by the wife's parents. They ransacked the farmhouse and informed the farm administrator that the owners of the farm must pay them 30 million pesos or they would kill the wife and the minor Applicant. The farm administrator informed the wife's mother about the incident. The wife's mother informed the Principal Applicant and his wife about the extortion demand and threat. The Principal Applicant reported the incident to the police the following day. The farm administrator also informed the police about the incident on or about the day following it.

[4] The Applicants fled Colombia for the United States on December 8, 2010. They entered Canada on January 27, 2011 and claimed refugee protection the same day.

II. Decision under review

[5] The RPD first determined that Colombia benefits from the presumption of state protection as it is in effective control of its territory and that as a result, the Applicants bear the onus of rebutting this presumption. The RPD concluded that they did not provide clear evidence to show that state protection is inadequate.

[6] First, the Principal Applicant had no idea whether the police investigated the complaint and did not follow up with the police. There is no evidence suggesting that his wife's mother or the farm administrator have been threatened since the initial incident even though his wife is in regular contact with her. The Applicants experienced no problem before leaving Colombia. When asked if he believed the police would assist him if he encountered further problems in Colombia, the Principal Applicant said he did not know. When asked whether the police would arrest the assailants if they had sufficient evidence, he said again that he did not know.

[7] The evidence before the RPD indicated that the police had indeed taken action. There was a letter from the Secretary of Government to the Third Inspector of the police referring the matter for urgent action. There was also a letter from the Secretary of Government to the Principal Applicant stating that his matter had been forwarded to the police to start an investigation. The letters are both dated November 23, 2010. The Principal Applicant also received a letter regarding recommendations for self-protection, which shows that the police takes measures while they conduct an investigation. The RPD therefore determined that the police responded appropriately to the complaint and it was difficult for the police to investigate it in such a short period of time before they fled Colombia, especially considering the small amount of information that was provided to the police. The Applicants did not wait for the police to conduct an investigation and fled the country two weeks after making the police report and therefore did not provide the authorities with the opportunity to fully investigate the complaint.

[8] Moreover, the documentary evidence shows that there are resources, both governmental and non governmental to protect individuals who are at risk. The police arrest and prosecute the

perpetrators of crimes although there have been problems of corruption and impunity within the security forces, which the Colombian authorities are seeking to eradicate. Finally, the documentary evidence shows that a number of concrete actions were taken by the Colombian forces to eradicate the FARC and that a witness protection program was also put in place.

[9] The RPD determined that the Applicants had an internal flight alternative [IFA] in Cali as there is not more than a mere possibility that they would be targeted by the FARC in that city. The Principal Applicant's wife's mother lives there and there is no evidence that she was threatened since the November 2010 incident. In addition to this, it should be noted that they have been outside of Colombia for more than a year and a half and there is no evidence to the effect that the FARC have been looking for them.

[10] The RPD reviewed the documentary evidence and determined that the FARC are not active in main cities and therefore, they would not be at risk in Cali and that the Applicants do not fit the profile of the persons targeted by the FARC.

III. Applicants' submissions

[11] The Applicants submit that the RPD erred in its assessment of state protection as it is not a license for the RPD to ignore negative country conditions. The evidence draws a distinction between the government's efforts and the lack of results. Attention must be paid to countries whose democratic natures can be said to be developing.

[12] The Applicants also argue that the RPD erred in concluding that the letter of the police consists of recommendations on how to stay safe as it explicitly states that the authorities cannot provide protection. This is particularly clear in combination with the letters referring to the Principal Applicant's family, which also make reference to the need for private bodyguards.

[13] The RPD failed to consider the Principal Applicant's personal circumstances which include the fact that he is a member of a family that has been targeted by the FARC since 2005 and whose uncle was known to be working with the authorities and that he was a person of some notoriety in Colombia.

[14] The Applicants suggest that the RPD's decision fails to consider that a claimant ought to have sought state protection only in situations in which state protection might reasonably have been forthcoming and such protection should also be adequate. By determining that the Applicants did not give sufficient time to the authorities to deal with the November 2010 complaint, the RPD ignored the fact that the Applicants' family has been making complaints to the authorities without any result and therefore left the country.

[15] As for the RPD's determination regarding the availability of an IFA in Cali, the Applicants submit that it is unreasonable as this finding ignores the fact that a member of their family survived an attempted kidnapping in Cali and that the Principal Applicant is publicly known in Colombia because of his career.

IV. Respondent's submissions

[16] The Respondent submits that a strong presumption of state protection applies to Colombia as the government is in effective control of its territory.

[17] The Respondent argues that the Applicants' efforts to approach the authorities were successful as the police took appropriate actions and they fled the country before following up on their complaint. As for the letter dated November 30, 2010, it contained recommendations on how to stay safe and the RPD's conclusion that this letter was intended to augment, not replace police protection was reasonable. It is to be noted that the police did initiate an investigation.

[18] The Respondent further submits that the Applicants were not able to demonstrate through their own experiences that they cannot get protection in Colombia as neither the farm administrator nor the wife Applicant's mother have experienced any problem since November 2010.

[19] In order to rebut the presumption of state protection the Applicants had to show that there is clear and convincing documentary evidence that protection would not be forthcoming.

Documentary evidence shows that the police investigate and arrest perpetrators of crime, even if the crimes are committed by the FARC although the RPD acknowledged that there is evidence of police and judicial impunity despite the fact that the Colombian authorities have been addressing this problem and those efforts have been yielding results. Furthermore, although the FARC still operate, they do so in rural areas and only target people with particular profiles, which the Applicants do not have.

[20] The Respondent submits that the RPD did not fail to consider the Applicants' personal circumstances. The Applicants and their family's experience indicate that they are not at risk although some family members have fled Colombia as a result of problems with the FARC.

[21] The Respondent argues that the RPD reasonably determined that the Applicants have an IFA in Cali. The wife's mother and the farm administrator have not been approached or harmed since the November 2010 incident. There is also documentary evidence showing that persons such as the Applicants would not be targeted by the FARC in Cali as they do not strike in cities. Although the Applicants point to a statement in the wife Applicant's affidavit that in 2008 a group of men tried to kidnap her aunt but were unsuccessful and to Cristian's status as a former professional player, it remains that there is no evidence that there have been threats or violence since November 2010.

V. Issues

1. Was it reasonable for the RPD to determine that the Applicants failed to rebut the presumption of state protection?

2. Was it reasonable for the RPD to conclude that the Applicants had an IFA in Cali?

VI. Standard of review

[22] The RPD's state protection and IFA determinations are both reviewable under the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190).

VII. Analysis

A. Was it reasonable for the RPD to determine that the Applicants failed to rebut the presumption of state protection?

[23] The RPD's decision with respect to state protection is reasonable and no intervention of this Court is warranted.

[24] Refugee claimants must overcome the presumption that their country of citizenship is able to offer them protection (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 20 Imm LR (2d) 85). Generally speaking, refugee claimants must first seek protection from their home country, unless they provide clear and convincing evidence that state protection would not reasonably have been forthcoming.

[25] The Applicants first submit that the letter dated November 23, 2010 addressed to the Principal Applicant demonstrates that state protection is not available to them. A careful reading of the letter shows that its purpose is to ensure that the Applicants remain safe while the police investigation is being carried out. Indeed, the letter is to the effect that the Principal Applicant's complaint was referred to the police body that is tasked with dealing with the type of complaint submitted by him. Such interpretation is evidenced by the letter from the Department of Government, Citizens Coexistence and Social Development to the Third Inspector of Police, which was sent the same day the complaint was made. It does not constitute evidence to the effect that the police authorities are not capable of handling this type of complaint. To the contrary, it advises the Principal Applicant to take the necessary measures to protect him and his family because their services cannot provide protection as another body is in charge of handling the type of complaint he submitted. Therefore, the RPD's analysis of the letter is reasonable.

[26] A number of facts of the Applicants' case do not support their claim with regard to state protection. First, they filed a complaint to the police but willingly decided on their own to leave Colombia because they did not feel protected. Second, for more than two (2) years, the administrator of the farm and the mother have not been threatened in any way. The wife Applicant's mother keeps a low profile in Cali but is often in contact with her daughter. Third, there is no further evidence filed by the Applicants to provide an update of the police inquiry process resulting from the complaints filed either by the farm administrator or the principal Applicant. Fourth, one may wonder why a complaint was filed after all as the Applicants left right after submitting their complaint. By doing so, the Applicants did not give an opportunity to the authorities to fully investigate the matter.

[27] The Applicants cannot have it both ways: They filed a complaint to the police to start an investigation but by their own decision of leaving Colombia abruptly, they in effect destabilized the said investigation. Such behaviour will prevent the police investigation from successfully achieving its purposes.

[28] Therefore, even the experiences of the Applicants do not support the allegation that they could not get protection or a satisfying result following their filing of the complaint to the police.

[29] Moreover, a review of the documentation on state protection in Columbia contained in the Certified Tribunal Record shows that this democratic country has established a civilized police system and that police forces investigate, arrest and prosecute perpetrators of crime. According to

the documentary evidence, had the Applicants stayed and waited for the investigation results, they could have relied on a number of agencies to access help.

[30] The review of the reasons on state protection shows that the RPD has done a reasonable assessment of the objective evidence regarding country conditions. It is true that nothing is perfect in Colombia but that generally, the services offered are adequate. There is room for improvement but in large part, the protection offered is adequate.

[31] There was an error in the RPD's decision included in its Internal Flight Alternative [IFA] analysis but may have some relevancy to the issue of state protection. The RPD indicates that the FARC have been driven out of cities like Cali since the early 2000's although the documentation shows that as recently as the first two months of 2012, 28 attacks occurred around the city of Cali. In addition to this, in its state protection analysis, the RPD's conclusion with regard to the situation in Cali is restricted to the Colombian army and police's seizure of explosive devices and no mention is made of the 2012 attacks in Cali. However, when reading the decision as a whole, this error is not such that the entirety of the analysis on state protection should be considered unreasonable.

B. Was it reasonable for the RPD to conclude that the Applicants had an IFA in Cali?

[32] Considering that this Court concluded that the RPD's finding with regard to state protection was reasonable, it is not necessary to consider the IFA analysis, as it was an alternative determination in the RPD's decision (*Campos Shimokawa v Canada (Minister of Citizenship and Immigration)*, 2006 FC 445 at para 16, 147 ACWS (3d) 863; *Sran v Canada (Minister of Citizenship and Immigration)*, 2007 FC 145 at para 11, 2007 CarswellNat 313).

[33] The parties were invited to submit a question for certification but none were proposed.

JUDGMENT

THIS COURT'S JUDGMENT IS THAT this application for judicial review is dismissed.

No question will be certified.

“Simon Noël”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-8026-12

STYLE OF CAUSE: CRISTIAN BENICIO MONTERO VELEZ ET AL
v THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 21, 2013

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

DATED: May 31, 2013

APPEARANCES:

Sarah L. Boyd FOR THE APPLICANTS

Daniel Engel FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sarah L. Boyd FOR THE APPLICANTS
Lawyer
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada