

DECIDED
24 February 2020

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- [1] I allow this appeal. XXXX XXXX XXXX, his spouse XXXX XXXX XXXX XXXX, their adult children XXXX XXXX XXXX XXXX, XXXX XXXX XXXX as well as Mr. XXXX granddaughter, XXXX XXXX XXXX XXXX, for whom he is the designated representative, are citizens of Colombia.
- [2] Inspiration to follow a Christian life in 2007 led Mr. XXXX to coach youth XXXX, taking the opportunity to counsel them against joining criminal organizations. In a period of two and a half years beginning XXXX XXXX, 2014, he was the target of an attempted kidnapping, extortion and assassination. Making use of the American visas obtained in 2015 for a projected trip to Disneyland, the family decided to come to Canada.
- [3] The Refugee Protection Division (RPD) found the respondents to be Convention refugees, having a well-founded fear of persecution in Colombia by reason of political opinion and religion.
- [4] The Minister of Immigration, Refugees and Citizenship and Minister of Public Safety (Minister) appealed the decision, pleading the RPD erred in that it concluded to:
 - the agents of persecution as being gang members although at no time, either in the basis of claim form or during the hearing, was an agent of persecution identified;
 - religion and political opinion as nexus to convention grounds even though there was no evidence to that effect;

- a profile of Mr. XXXX as a community leader in the absence of evidence of his involvement in political discourse or activism;
 - the State's inability or unwillingness to protect the respondents while misapprehending the evidence relating to its response to the complaints formulated;
 - the absence of a viable Internal Flight Alternative (IFA).
- [5] The respondents' responses to the memorandum of appeal are that:
- inferring individuals carrying out criminal activities against Mr. XXXX are gang members is not an implausibility;
 - Mr. XXXX constant mention of his faith and ideals as a guide for his discussions with youths against gang involvement touches upon ideology, both religious and political;
 - objective evidence of deficiencies in State protection on which the RPD relied overcame the presumption of its suitability;
 - the internal flight alternative finding by the RPD is well reasoned and supported by the evidence at hand.
- [6] The determinative issue is credibility. DECISION
- [7] The appeal is allowed. I substitute my own decision that the Appellants are not Convention refugees nor persons in need of protection.

ANALYSIS

- [8] My role is to look at all the evidence and decide if the RPD made the correct decision.¹
- [9] Originally from XXXX, Mr. XXXX was inspired to follow a Christian life in 2007. This led him to coaching youth XXXX and taking the opportunity to counsel them against joining criminal organizations. His involvement in neighborhood council meetings often led to his being chosen to teach youth. This put him in regular contact with 60 youths to whom he repeated the same message.
- [10] The swift intervention of his son, daughter and neighbors thwarted his attempted kidnapping on XXXX XXXX, 2014, prompting an immediate family move to XXXX. At the end of XXXX 2015, he returned to XXXX alone. Five months later, a caller attempted to extort him. Filing a complaint at the Prosecutor's office on XXXX XXXX, 2016, he was the subject of a newspaper article identifying him, outlining his problems and prompting his return to XXXX once again.
- [11] On XXXX XXXX, 2017, two men aboard a motorcycle chased after him, firing at him. At that point, he and his family decided to come to Canada, making use of the American visas they had obtained in 2015 for a projected trip to Disneyland. Failure to identify agents of persecution as gang members

- [12] The Memorandum of appeal argues the RPD erred in assuming individuals having targeted Mr. XXXX were gang members as there was never any identification of them as such.
- [13] The respondents submit that in light of organized crime which plagues the city of XXXX, there isn't any other plausible inference.
- [14] Organized criminality in Colombia is well documented. Inferring that criminal actions are carried out in a concerted effort in such a context is rational though inconclusive. However, failing to identify criminals as belonging to a gang has an incidence on determining the serious possibility of persecution or, on a balance of probability, the likelihood of risk to life or of cruel and unusual treatment or punishment or torture Mr. XXXX and his family would face in returning to Colombia.
- [15] Isolated criminal action, as opposed to concerted efforts, does not constitute a serious possibility of persecution throughout the country. Evidence submitted does not indicate any concerted effort. The attempted kidnapping, though carried out by at least two individuals, was a singular event for which there did not appear to have any subsequent repercussions. The second incident took place in XXXX two and a half years later and involved one caller. During the initial period spent in XXXX, no other incidents were encountered. These facts do not allow to conclude to a serious possibility of persecution by a gang or, on a balance of probability, risk to life or of cruel and unusual treatment or punishment by a gang. Faith and political opinion as a nexus to convention grounds
- [16] The appellant's memorandum states the RPD erred in finding Mr. XXXX religious and political beliefs as constituting nexus to Convention grounds since no evidence was submitted establishing he had been targeted because of such. The respondents argue Mr. XXXX faith fuels his efforts to speak to the youth against gangs and inequalities while his political convictions reinforce these beliefs for societal betterment. The combination of these two ideals has allegedly attracted the ire of gangs who consider Mr. XXXX message subversive to their cause.
- [17] A letter from the XXXX XXXX XXXX (P-2.5) submitted as evidence before the RPD calls Mr. XXXX a political activist. A second letter from XXXX XXXX Neighborhood Community Action Committee speaks of his ideology towards children.
- [18] The premise his troubles are caused by his implication with youth and discussions discouraging them from gang association is not supported by facts. Mr. XXXX work is that of a coach, a part of which is instilling ideals and helping form youths' life skills. On a balance of probabilities, no evidence was shown to establish that his coaching thwarted gang recruitment plans or even their awareness of what Mr. XXXX was doing. In that context, piety in a predominantly Catholic country does not allow to conclude that acts carried out against Mr. XXXX had anything to do with his faith or his actions in the course of coaching.

- [19] For political opinion to be a nexus to Convention grounds, the persecutor must perceive and consider Mr. XXXX actions as being political or attributing political activities to him². Initially the object of an attempted kidnapping, he testified his perceived wealth as a homeowner was the reason for the extortion attempt. On a balance of probabilities, these two events have little to do with perceived political opinion. The reasons for the shooting incident are unknown and no evidence allows to conclude its cause as being tied to a perceived political opinion or of political activities attributed to him.
- [20] The long interval between criminal actions against Mr. XXXX along with their varied nature contrasts remarkably with his frequent interaction with numerous youths. On a balance of probabilities, it is not indicative of a concerted criminal effort to silence an active critic of the gangs' operations. Availability of State protection
- [21] The appellant's memorandum states the RPD erred in concluding the State is unable or unwilling to protect Mr. XXXX in that:
- police responded to his calls for assistance after his attempted kidnapping and asked him to file a complaint at the prosecutor's office;
 - he was able to file two separate complaints after receiving a threatening phone call for extortion;
 - the Assistant Prosecutor requested police protection by making an application for Measures for Protection to the Commander of Police of XXXX;
 - the police responded and accompanied him to his aunt's house after the attempted assassination.
- [22] Although State protection existed, Mr. XXXX did not avail himself of it, opting to flee to XXXX before filing a complaint for the attempted kidnapping, and to the United States after the assassination attempt. Different interactions with authorities show willingness to intervene on their part. Willingness to call upon police on each occasion indicates Mr. XXXX consideration of the State's apparatus as worthwhile.
- [23] The respondents' position is that country condition documentation demonstrates it was objectively unreasonable for them to seek the protection of the State and that it would defeat the purpose to have to risk their life to seek ineffective state protection.
- [24] Furthermore, they state the failure to file a complaint following the attempted kidnapping was justified by fear. Notwithstanding the aforementioned, Mr. XXXX would nevertheless file a complaint for the extortion attempt as well as obtain measures for protection two years later. He would also leave the security provided and return to XXXX after giving a newspaper interview.

- [25] In the context, Mr. XXXX having interacted with police authorities by asking for and receiving protection while showing reticence to engage authorities at other times is not indicative of either an unwillingness or inability of the State to provide him with protection.
- [26] Mr. XXXX has not shown a serious possibility of being persecuted by a gang because of his religion or political opinions. Analyzing the conclusions pertaining to the viability of an internal flight alternative is not required in light of the conclusion. Mr. XXXX has not shown a serious possibility of persecution nor, on a balance of probability, a risk to his life or of cruel and unusual treatment or punishment or torture if he is to return to Colombia.

CONCLUSION

- [27] The appeal is allowed. I substitute my own decision that the Appellants are neither Convention refugees nor persons in need of protection. (signed) Richard Sheitoyan Me Richard Sheitoyan February 24, 2020 Date RS/dd 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 2 Inzunza v. Canada (Minister of Employment and Immigration) (1979), 103 D.L.R. (3d) 105 (F.C.A.), at 109.

RAD File / Dossier de la SAR : MB8-15655 MB8-15656 / MB8-15657 / MB8-15658 MB8-15659
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