



Refugee Protection Division

Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : MB7-06234

MB7-06255 MB7-06256

Client ID No. / N° ID client : XXXX XXXXXXXXXX XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX
XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX

Date(s) of hearing

Date(s) de l'audience

August 20, 2018

Place of hearing

Lieu de l'audience

Montréal, Quebec

Date of decision
and reasons

Date de la décision
et des motifs

October 26, 2018

Panel

Tribunal

Marie-Claude Yaacov

Counsel for the claimant(s)

Conseil(s) du (de la/des)
demandeur(e)(s) d'asile

Carolina Roa Sanchez

Designated representative

Représentant(e) désigné(e)

XXXX XXXX XXXX XXXX

Counsel for the Minister

Conseil du (de la) ministre

N/A

REASONS FOR DECISION

[1] XXXX XXXX XXXX XXXX XXXXher minor son, XXXX XXXX XXXX XXXX XXXX and her adult son, XXXX XXXX XXXX XXXX, are claiming refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA).

[2] The principal claimant was appointed as the designated representative of the minor claimant, XXXX XXXX XXXX XXXX.

DETERMINATION

[3] The panel considered the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*¹ in its analysis. The panel also received detailed written submissions from the claimants' counsel.

[4] The principal claimant is a Convention refugee.

[5] The adult claimant is a Convention refugee.

[6] As for the minor claimant, XXXX XXXX, Argentina is a country of reference. No evidence was brought against Argentina, and with respect to that country, the minor claimant did not establish that he would face a serious possibility of persecution or, on a balance of probabilities, that he would be subjected to a danger of torture, a risk to his life or a risk of cruel and unusual treatment or punishment. For these reasons, the panel determines that he is not a Convention "refugee" or a "person in need of protection" within the meaning of section 97 of the IRPA.

ALLEGATIONS

[7] The female claimant met XXXX XXXX XXXX XXXX in April 2014. They decided to move in together. After six months, he became controlling and started using physical, sexual, psychological and economic violence against the female claimant. During an argument in the

¹ Immigration and Refugee Board of Canada, effective November 13, 1996.

middle of the street on March 29, 2015, the female claimant's spouse struck her with a stick and stabbed her with a knife. She spent a few days at her mother's home thinking things over, but he threatened to harm her mother and her children if she did not return home, so she went back. The daily physical, psychological and sexual abuse continued. She feared for her own safety and that of her children, and she eventually moved to another neighbourhood of Bogota. He continued calling her and threatening her. She changed her telephone number and sold her car. She then moved to Acacia Meta, but he found her a few months later. She then left for Cali, where friends were willing to help her. She spent a month there, but he called and told her that he would find her. She then decided to leave Colombia, and on XXXX XXXX XXXX XXXX, she left for the United States with her minor children. She met with a lawyer in the United States about the possibility of claiming asylum for her and her children, but he advised against it because of the new immigration policies.

[8] The female claimant came to Canada with her children on XXXX XXXX XXXX XXXX XXXX The claimants filed their refugee protection claims on June 12, 2017.

ANALYSIS

Identity

[9] The claimants established their identity on a balance of probabilities through their passports.² All three claimants have a Colombian passport. However, the place of birth listed in XXXX XXXX passport is Buenos Aires, Argentina. According to Document 2.1 of the National Documentation Package on Argentina,³ "citizenship is derived both by birth within the country's territory and from one's parents." The panel is satisfied, on a balance of probabilities, that the male claimant XXXX XXXX is a citizen of Argentina as well as a citizen of Colombia.

² Exhibit 2: Information kit from the Border Services Agency (CBSA) and/or Immigration, Refugees and Citizenship Canada (IRCC), formerly Citizenship and Immigration Canada, *Copies certifiées des passeports* [certified copies of the passports].

³ Exhibit 3: National Documentation Package, Colombia, April 30, 2018, Tab 2.1: *Colombia. Country Reports on Human Rights Practices for 2017*, United States, Department of State, April 20, 2018.

Credibility

[10] When a claimant solemnly swears to tell the truth, her testimony is considered truthful unless there are valid reasons to doubt it.

[11] The principal claimant's testimony generally contained no notable exaggerations and was entirely consistent with the written account attached to her Basis of Claim Form (BOC Form). She also disclosed some reliable and relevant documents that corroborate several of her allegations. These documents include the identity card of XXXX XXXX XXXX XXXX,⁴ whom the female claimant named as her agent of persecution; the copy of a complaint to a family commissioner;⁵ and a report against XXXX XXXX XXXX XXXX dated October 8, 2014, accusing him of physical, psychological, economic and sexual violence.⁶ Moreover, after the hearing ended, the female claimant provided a copy of the medical report issued on April 1, 2015. This document confirms that the female claimant went to the emergency room of the Santa Clara hospital that day after being stabbed by her spouse in the left arm and thigh as well as complaining that she had been struck with a stick.

[12] Considering all of the evidence, the panel is satisfied that the female claimant has established, on a balance of probabilities, the events on which her refugee protection claim and those of her two sons are based.

[13] The panel also finds that the female claimant provided an acceptable explanation for her failure to claim asylum in the United States. She explained that a lawyer had told her that she had little chance of being granted asylum and that she followed the advice of her church in the United States, which was to come to Canada. The panel notes that the female claimant spent less than a year in the United States and is satisfied with her explanations. The panel finds that the female claimant's subjective fear is not rebutted merely because she did not claim asylum in the United States.

⁴ Exhibit 4, Tab C-2.

⁵ Exhibit 4, Tab C-3.

⁶ Exhibit 4, Tab C-3.

[14] Consequently, the panel concludes that the female claimant's testimony was trustworthy on a balance of probabilities.

[15] XXXX XXXX is XXXX years old and also testified briefly, mostly about his fears of returning to Colombia. The panel is satisfied that he testified to the best of his ability, given that he was a child when the events on which his refugee protection claim is based took place.

Nexus to the Convention

[16] The panel is satisfied that the grounds on which the claimants' refugee protection claims are based have a nexus to the Convention: the female claimant as a member of the particular social group of women victims of conjugal violence, and the female claimant's sons as members of her family.

[17] Furthermore, the panel is satisfied that the harm to which the female claimant and her children would be subjected is serious harm that constitutes persecution.

Well-foundedness of the fear

[18] The claimants' counsel, in her written submissions, argues that the evidence establishes that the female claimant's spouse's jealousy was [translation] "injurious" and that he used violence on a daily basis to control the female claimant and her loved ones. Given the severity of the harm to which the female claimant was subjected for several years, she would still fear for her physical, sexual, moral and emotional safety should she have to return to her country of citizenship. The panel agrees. Furthermore, the objective evidence indicates that violence against women has become "normalized" to the point that it is invisible to the authorities and society in general.⁷

[19] Considering all of the evidence, especially the efforts of the agent of persecution to find the female claimant when she was in Colombia, the panel is of the opinion that she has established a prospective and well-founded fear of persecution should she return to Colombia.

⁷ Exhibit 3, National Documentation Package, Colombia, April 30, 2018, Tab 5.12. *Domestic violence, including legislation; state protection and support services available to victims in Bogotá, Santiago de Cali, and Medellín*, Immigration and Refugee Board of Canada, April 21, 2017.

[20] The panel also finds that the female claimant's children, who were previously threatened by the agent of persecution, would face a serious possibility of persecution because they are the children of the principal claimant.

State protection

[21] The female claimant tried to obtain state protection before she left Colombia, but the responses she received were insufficient to ensure her protection. Moreover, according to the objective evidence, 47,248 cases of domestic violence were reported in 2015, and 76.4 percent of women victims of violence never sought help from the authorities. In 47.27 percent of reported cases, the male partner was the perpetrator, and in 29.33 percent of cases it was the ex-partner.⁸ According to women's groups, the response from law enforcement is generally ineffective. As for access to justice for women victims of domestic violence, it is apparently "one of the major bottlenecks" which results in high levels of impunity.

[22] The panel is satisfied, in light of all the evidence, that the female claimant has established, on a balance of probabilities, that she could not obtain adequate state protection should she return to Colombia today.

Internal flight alternative (IFA)

[23] The panel is satisfied that the female claimant's testimony was truthful, on a balance of probabilities. According to her testimony, she tried to leave her spouse and start her life over, but her spouse tracked her down and managed to find her and/or obtain her telephone number. He also acquired information about her, her family and her professional activities. The female claimant argues that this information would enable him to track her down again should she return.

[24] The panel is satisfied that that is the case and, in light of all the evidence, finds that the claimants have established that there is a serious possibility that they would be persecuted if they had to return to Colombia today.

⁸ Ibid.

CONCLUSION

[25] For all these reasons, the panel determines that claimants **XXXX XXXX XXXX XXXX** and her son **XXXX XXXX XXXX XXXX** are Convention refugees.

[26] As for the minor claimant, **XXXX XXXX XXXX XXXX**, he is a citizen of Argentina. No evidence was brought against this country, and the panel concludes that the minor claimant did not establish a serious possibility of persecution should he return to Argentina. Therefore, he is neither a Convention “refugee” nor a “person in need of protection.”

[27] Consequently, the panel rejects his claim.

Marie-Claude Yaacov

Marie-Claude Yaacov

October 26, 2018

date

IRB translation

Original language: French