

Federal Court



Cour fédérale

**Date: 20180627**

**Docket: IMM-5471-17**

**Citation: 2018 FC 665**

**Toronto, Ontario, June 27, 2018**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**MONICA CRISTINA GARCES SANCHEZ  
JULIANA CORREA GARCES  
JULIAN CORREA GARCES AND  
JUAN PABLO CORREA GARCES**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision of the Refugee Protection Division (“RPD”) of the Immigration and Refugee Board of Canada which found that the Applicants were not Convention refugees or persons in need of protection, pursuant to s 96 and s 97(1), respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] For the reasons that follow I have determined that this application must be granted as the RPD's decision was unreasonable.

### **Background**

[3] The Principal Applicant, Monica Cristina Garces Sanchez, and her three minor children are citizens of Colombia. The Applicants resided in Bogota, Colombia, and claimed that the Minor Applicant, Juliana, was approached by members of Los Urabeños, an armed criminal organization with extensive reach in Colombia. They demanded that Juliana sell illegal narcotics on their behalf. The Principal Applicant sent her daughter to relatives and immediately reported the matter to the Fiscalía (prosecutor's office) who took a report and issued a protection order for Juliana. That night the Principal Applicant saw two men outside her home who looked similar to those described by her daughter. The next day she went to the neighbourhood police station, however, the police told her that they had not received the protection order and, in any event, they could not protect her daughter because of their limited resources. Upon her return home, the men were waiting. They were armed and forced the Principal Applicant into her home which they searched for her daughter. The men assaulted the Principal Applicant and told her that they were members of Los Urabeños, they were responsible for a recent nearby murder, and she had become an informer by speaking with the police. They stated they liked the apartment and that the Principal Applicant had four hours to leave it or they would kill her and, if she did not want anything to happen to her other children, she would have to leave. The Principal Applicant picked up her sons from school and went to her relative's where her daughter was staying. The family did not disclose why they were staying with their relatives and tried to stay inside as

much as possible before fleeing to Canada. Since leaving Columbia they have not been subject to further threats.

### **Decision Under Review**

[4] The RPD found that the Applicants were credible and that, should they return to their home in Bogota, they may be targeted in the future by Los Urabeños. However, it rejected their claims on the basis of its determination that an Internal Flight Alternative (“IFA”) was available to the family in the city of Cali, Colombia.

[5] The RPD stated that there was extensive documentary evidence about the challenges Colombia faces from armed non-state actors, which groups are known to recruit and involve minors in their illegal operations, as the Applicants had alleged in their case. Further, that Los Urabeños have a national reach and a presence in 279 municipalities in 27 departments, including a department in Cali, the proposed IFA. It was very clear that the agent of persecution would have the means to trace or target these specific claimants in the proposed IFA. However, the RPD found that because the Principal Applicant had complied with the demand to leave her apartment, without telling anyone about what had happened, Los Urabeños would have no motivation to pursue the Applicants to the proposed IFA and, therefore, there was less than a mere possibility of risk to the family in the future.

[6] The RPD also rejected the Applicants’ submission that should they return to Colombia they would be at risk as Internally Displaced Persons (“IDP”). The RPD acknowledged that IDP’s settle in the poorest areas found that the greatest risk identified in the documentary

evidence submitted by the Applicants was that IDP's can be easily tracked by their agents of persecution. However, as there was no motivation for the Los Urabeños to track the Applicants, the RPD concluded that this risk did not apply to them. And, while sexual violence was acknowledged to be a premeditated, systemic and generalized practice to which IDP women and children were particularly vulnerable, the RPD found that dangers faced in general by people in the IFA, even those faced by IDP women and children, did not rise to the level required by the legal tests. While the documentary evidence established a higher risk of persecution or harm for IDPs, whether violence based or recruitment, it did not establish that there was a serious possibility of persecution or a probable risk to life, or risk of cruel and unusual treatment or punishment, or danger of torture in the proposed IFA,

[7] As to the reasonableness of the IFA, the Principal Applicant testified that the family would have to live in hiding and, therefore, she would not be able to work, the children would not be able to attend school and the family would not be able to access healthcare and social services. However, the RPD again relied on its determination that the Los Urabeños would not be motivated to find the Applicants in concluding that it was more likely than not that the Applicants would not have to live in hiding. The RPD referenced *Singh v Canada (Citizenship and Immigration)*, 2013 FC 988, as standing for the principle that the standard for proof of adverse conditions in the IFA is very high, requiring the Applicants to produce actual and concrete evidence. The RPD found that the Applicants had not met this standard of proof and it would not be unreasonable for the family to relocate to Cali.

## Issues and Standard of Review

[8] The sole issue in this matter is whether the decision of the RPD was reasonable. The standard of review for decisions of the RPD concerning the availability of a viable IFA is reasonableness (*Arias Ultima v Canada (Citizenship and Immigration)*, 2013 FC 81 at para 13; *Utoh v Canada (Citizenship and Immigration)*, 2012 FC 399 at para 11; *Quebrada Batero v Canada (Citizenship and Immigration)*, 2017 FC 988 at paras 8-10). In judicial review, reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47 and 53).

## Analysis

[9] The Applicants submit that the RPD unreasonably determined that Los Urabeños would have no motivation to pursue the Applicants outside of Bogota, and, that its determination that the Applicants had an IFA was also unreasonable.

[10] As to the motivation of Los Urabeños, the RPD found the Principal Applicant and her testimony to be credible and accepted her story of events. This testimony included that she believed that state protection would not be forthcoming if the family returned to Columbia and that they would not be safe in the IFA. The Applicants submit that the RPD's finding that Los Urabeños would not be motivated to pursue the Applicants is a finding of fact that calls into question the credibility of the Applicants. In effect, the RPD found that the Applicants' fears of

being pursued upon return to Columbia are implausible. This perceived implausibility finding is subjective and dependent upon the RPD's assessment of what constitutes rational behaviour on the part of their agents of persecution. Adverse credibility findings must be made only in the clearest of cases, being where the facts as presented are outside the realm of what could reasonably be expected, or are contradicted by the available documentary evidence. Further, such finding must be based on reasonably drawn inferences and not conjecture or mere speculation.

[11] The Applicants further submit that the RPD's findings as to the motivation of Los Urabeños failed to recognize its primary motivation - being the targeting of Juliana for the purpose of forcing her involvement in the organisation's criminal activities including trafficking in narcotics and prostitution. Thus, the RPD's finding that Los Urabeños would be content with the occupation of the Applicants' home was speculative and not based on any evidence before it.

[12] As to the IFA, the Applicants argue that the RPD correctly stated the test for an IFA but that its analysis is inconsistent and unreasonable. Viewed in totality, the RPD's findings of fact concerning the operations of Los Urabeños, including their national reach, indicate that conditions in Cali do not differ from those in Bogota. Thus, as to the first prong of the test, the finding of no serious possibility of persecution or risk of life or cruel and unusual punishment to the Applicants in Cali was unreasonable. As to the second prong of the test, whether it is objectively reasonable to expect the Applicants to seek safety in Cali, amongst other things, the Applicants submit that the RPD failed to reference the objective evidence indicating significant impediments to accessibility. This included a report of the United Nations High Commissioner

for Refugees which indicates that decision makers should consider that there are illegal checkpoints throughout the country and the possibility that individuals attempting to relocate may be identified and targeted at such checkpoints by armed groups, the reach and ability of such groups to trace and target individuals, including in cities such as Cali, and the profile of the asylum-seeker and the existence of any reasonable grounds to believe that he or she will be traced and targeted (UN High Commissioner for Refugees (UNHCR), *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia*, September 2015, HCR/EG/COL/15/1 at 99). Nor did the RPD consider the ability of the Principal Applicant and her daughter, because of their gender, to travel safely to the IFA and to stay there without undue hardship, as required by the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*. The Applicants submit that the RPD's finding that it would be reasonable for them to relocate to Cali is contrary to the totality of the evidence and is unreasonable.

[13] As a starting point, I note that the test for a viable IFA is two-pronged. First, the RPD must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the IFA found to exist. Second, it must be objectively reasonable to expect a claimant to seek safety in the part of the country considered to be an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) at 709. The burden is on the applicant to show that an IFA is not viable (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ 1172 (FCA) at paras 5-6; also see *Quebrada Batero* at para 14).

[14] In this matter the RPD's IFA analysis is centered on its finding that Los Urabeños would have no motivation to pursue the Applicants outside of Bogota. This was determinative of its conclusion that there was less than a mere possibility of risk to the family in Cali, that the Applicants were not at risk as IDP, and that Applicants would not be required to go into hiding. I agree with the Applicants that the RPD's conclusion that Los Urabeños would not be motivated to target them if they were returned to a different part of Colombia was speculative and not clearly supported by the evidence, and that the RPD's reasoning fails to consider the motives of the Los Urabeños in initially targeting Juliana.

[15] The Applicants were found to be credible in all aspects of their story. The RPD stated in its reasons both the Principal Applicant and Juliana testified in a straightforward manner, without embellishment, and there were no inconsistencies that went to the core of their claims that were not explained. They both gave testimony that was clear, cogent, and consistent with the evidence before it. The RPD found that "all of the testimony given at this hearing was credible as to what the claimants experienced and believed".

[16] Juliana's testimony was that men posing as police officers befriended her, altered photographs of her to make them appear that she was using drugs and threatened to give them to her school and to harm her if she did not agree sell drugs. The Principal Applicant testified that when these men forced her into her home they threatened her, one of them grabbed her by the hair and demanded to know the whereabouts of her daughter. They then searched the apartment looking for Juliana, told the Principal Applicant that she was an informer and identified themselves as members of Los Urabeños. At this point they were looking at the apartment and



said it was pretty and that the Principal Applicant had to leave it or she and her children would be killed. Significantly, the RPD asked the Principal Applicant if the men told her what would happen if she *did* leave, she replied that they did not.

[17] In its reasons, the RPD stated, as to motivation of Los Urabeños:

[21] The panel turns back to the credible evidence given by the claimants. The mother gave detailed oral evidence about the attack that she experience [*sic*] in her home, which was consistent with a narrative provided ahead of the hearing. In this narrative, the mother wrote:

...then the man said to me: I know you have two other brats and you don't want us to give them "chumbimba" right? He told me that the apartment could be a very good site for headquarters, he said they wanted us "gone" from there and never go back, that I should get lost with my brats because if they were to catch [ the daughter] they were going to give her "chumbimba" or that maybe she could be put to work the streets so that they could get a little money out of her, he said I'd know what to do, that nothing was going to happen if I kept my mouth shut. He said: you have four hours to evacuate, old one or you all die.

[18] Based on this, the RPD said it seemed clear that should the Applicants fulfil the demand to leave the apartment, and not tell anyone of what happened, then there would be less than a mere possibility of risk to the family in the future. The RPD interpreted this as meaning that the men were telling the Applicants to leave and that they would only be at risk should they stay.

[19] In my view, the RPD's above reasoning as to motivation fails to consider that Los Urabeños's initial interest in the Applicants was with Juliana, and not with the family's apartment. The reason that Los Urabeños were pursuing Juliana was because they sought to forcibly recruit her to sell drugs and become involved in that criminal organization. They went

to the family home because they were looking for Juliana. And, when they assaulted the Principal Applicant, while looking for Juliana, they made it clear that they also viewed the Principal Applicant to be an informant. The Principal Applicant also testified that Los Urabeños had photographs of her daughter and could identify and find her anywhere in Columbia. Indeed, the RPD referenced documentary evidence which it accepted as establishing that Los Urabeños are a national organization, with the resources and ability to target the Applicants if they returned to Colombia.

[20] As stated in *Leung v. Canada (Minister of Employment & Immigration)*, [1994] FCJ No. 774:

[15] ... Findings of implausibility are inherently subjective assessments which are largely dependent on the individual Board member's perceptions of what constitutes rational behaviour. The appropriateness of a particular finding can therefore only be assessed if the Board's decision clearly identifies all of the facts which form the basis for their conclusions. The Board will therefore err when it fails to refer to relevant evidence which could potentially refute their conclusions of implausibility...

(also see *Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at paras 10-11).

[21] In *Martinez Giron v Canada (Citizenship and Immigration)*, 2013 FC 7, Justice Kane reviewed the case law on plausibility findings. This included *Ansar v Canada (Citizenship and Immigration)*, 2011 FC 1152, this referencing *Santos v Canada (Citizenship and Immigration)*, 2004 FC 937, which held that plausibility determinations must be based on clear evidence, as well as clear rationalization process supporting the inference, and that plausibly findings can be set aside when the reasons that are stated are not supported by the evidence ( also see *Divsalar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 653 at para 24 ; *Vera Awolo v*

*Canada (Citizenship and Immigration)*, 2011 FC 1122 at para 9. In *Martinez Giron*, Justice Kane also reviewed jurisprudence that cautions against speculative reasoning. This included *Beltran v Canada (Citizenship and Immigration)*, 2011 FC 1475 which stated:

[8] Here, the Board speculated that a reasonable extortionist would have specified the sum of money demanded together with the means of payment, in the first phone call. The Board also found as implausible that the extortionists would make a call warning the applicant that he would be killed for having reported the threats to the police. This presumes much as to the *modus operandi* of the extortionist. The characterization of the events as described as implausible does not withstand the test of reasonableness.

[22] In my view, even if the RPD was not making an implied plausibility finding, its finding that Los Urabeños would have no motivation to pursue the family to the proposed IFA is speculation and is not clearly supported by the evidence. The RPD assumes that this criminal organization would simply drop their interest in Juliana, and any concern as to the Principal Applicant being an informant, on the basis that the new demand, that the family vacate its home and make no further efforts to seek state protection, had been complied with. However, the members of Los Urabeños, who assaulted the Principal Applicant, did not offer any such assurance as regards to Juliana. In fact, in the narrative relied upon by the RPD included the threat that if the men were to catch Juliana they were going to give her “chumbimba” or she “could be put to work the streets”.

[23] Based on the foregoing, I find that the RPD’s decision was unreasonable. Accordingly, I need not further address the other issues raised by the Applicants.

**JUDGMENT IN IMM-5471-17**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted. The decision of the RPD is set aside and the matter is remitted for re-determination by a different panel;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

“Cecily Y. Strickland”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5471-17

**STYLE OF CAUSE:** MONICA CRISTINA GARCES SANCHEZ ET AL v  
THE MINISTER OF CITIZENSHIP AND  
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**PLACE OF HEARING:** TORONTO, ONTARIO

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**DATED:** JUNE 27, 2018

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