

Federal Court



Cour fédérale

Date: 20220503

Docket: IMM-5722-21

Citation: 2022 FC 641

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 3, 2022

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

**ANDRES FELIPE BOLIVAR CUELLAR
KELLY JOHANNA PINILLA ALDANA
ANTONIA BOLIVAR PINILLA
MATIAS BOLIVAR PINILLA
JULIETA BOLIVAR PINILLA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The principal applicant, Andres Cuellar, and the associated applicants, his wife and their three minor children, (together, the applicants) are citizens of Colombia. They are seeking judicial review of a decision issued by the Refugee Appeal Division (RAD) on July 22, 2021.

The RAD found that the applicants had an internal flight alternative (IFA) in Bogotá in their home country, confirming a decision rendered by the Refugee Protection Division (RPD).

[2] For the following reasons, the application is dismissed. The RAD correctly applied a balance of probabilities standard of proof to the facts that the applicants were required to establish, as well as the correct legal test in assessing prospective risk. Moreover, it was open to the RAD to conclude that the personal profile of the adult applicants would not place them at risk in comparison to all armed combatants in Colombia. I therefore conclude that the RAD's decision was justified in relation to the facts and law that constrain the panel under the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*).

I. Background

[3] The applicants fear returning to Colombia because organized armed groups had threatened the principal applicant and his wife because of their political activities.

[4] The adult applicants were members of a political party, the Centro Democrático Party (CDP). Their activities included distributing food and household items and organizing family conferences on human rights in marginalized areas. Since 2017, they had also been part of a youth brigade through which they helped organize election information sessions and provided free transportation to party supporters to facilitate their political participation.

[5] In March 2018, the principal applicant received an anonymous phone call from the leader of an organized armed group, the Grupo Armados Organizado (GAO), asking him to stop his community work. At the end of that same month, the principal applicant received a second call ordering him to meet with the GAO, but he did not do so. The principal applicant contacted the Attorney General's Office, which advised him not to file a formal complaint, to abandon his political activities, and to leave the country.

[6] In April 2018, two motorcyclists visited the applicants' home in the city of Neiva. The motorcyclists informed the security guard at the home that they had not forgotten the March meeting. The adult applicants immediately sent the children to live with their grandparents. The adults left the home and went to live with an uncle in another city.

[7] After being informed that they did not meet the criteria for protection by the ombudsman, the applicants left Colombia in May 2018 to travel to the United States. They arrived in Canada on May 24, 2018, where they claimed refugee protection.

[8] On December 21, 2020, the RPD denied the applicants' refugee protection claim, having found that they had an IFA in Bogotá.

[9] The applicants are appealing the RPD's decision. They argued before the RAD that the RPD made erroneous findings regarding the first prong of the IFA test, namely, their risk of persecution and risk within the meaning of section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

II. RAD decision

[10] The RAD dismissed the appeal and confirmed the RPD's decision. The RAD first noted that a viable IFA is determinative of a claim under sections 96 and 97 of the IRPA. It therefore followed that the RPD did not err in proceeding to an IFA analysis without considering the other elements of the applicants' claim.

[11] The RAD's determinative findings were as follows:

1. The applicants argued that their agent of persecution was an unknown armed organized group and not "the armed organized group (GAO)". However, the RAD noted that the evidence (the applicants' narrative; their complaint to the Attorney General) referred to "the armed organized group" and not "an armed organized group". The RAD found that evidence about the applicants' agent of persecution was vague, given that they were unable to identify the objectives, leaders, membership or modes of operation of the group.
2. The RAD rejected the applicants' argument that no internal flight alternatives were available to a person who is targeted by any of Colombia's guerrilla groups or national armed groups. The RPD concluded that the applicants were not credible in their claim that they had been targeted by a specific organized armed group. In addition, that the lack of specificity in the applicants' arguments about their persecutor, when viewed with the country condition evidence, undermined the claim that there was an armed group which targeted these applicants and who had influence across Colombia.
3. The applicants' personal profile was not sufficient for a high profile nor were their activities sufficiently public for them to be described as social leaders. The applicants do not have the profile of social leaders such that they would be at risk from all the armed combatants.
4. In light of the time elapsed since these initiating events in Colombia; the fact that the applicants were no longer performing their community work and the lack of contact by the agent of persecution with any of the applicants' family and friends (including family who live in Neiva) and the distance between Neiva and Bogotá, the agents of persecution would not have the motivation to find the applicants in Bogotá.
5. The applicants have not made any arguments about the means of the specific group, the GAO. The applicants testified to their fear that the GAO had a presence

across Colombia, but the RAD declined to speculate. As for the argument that the acronym GAO referred to “armed organized group”, a general reference, although the country condition evidence on Colombia points to collaboration between some of these groups, it also shows that there is not cohesion amongst the paramilitary or criminal groups in Colombia. Being a victim of one of these groups in one area does not mean that a person is unsafe across the country. The RAD found that the evidence in the record did not show that the group which targeted the applicants in Neiva had the means to track them down in Bogotá.

III. Analysis

[12] The determinative issue in this application is whether the RAD’s conclusions regarding its assessment of a viable IFA for the applicants were reasonable. The applicants raised two specific issues:

1. Did the RAD place too high a burden of proof on the applicants’ risk of persecution?
2. Did the RAD err in its analysis of the social leader profile of adult applicants?

[13] The parties agreed that the applicable standard of review is reasonableness. The Court agrees (*Vavilov* at paras 10, 23; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32).

Did the RAD place too high a burden of proof on the applicants’ risk of persecution?

[14] The applicants argued that the RAD erroneously imposed the burden of proof to assess the ability and motivation the applicants’ agents of persecution to pursue them at the proposed IFA. They noted the RAD’s conclusion that “on a balance of probabilities” the evidence failed to demonstrate that the group that targeted them in Neiva had the means or motivation to hunt them down in Bogotá. The applicants referred to the distinction between the burden of proof on a

balance of probabilities with respect to the facts that had to be established and the serious possibility that applies in the risk assessment.

[15] After a careful review of the decision in its entirety and in context, I find that the RAD's reasons demonstrate that it applied the correct standard of proof on a balance of probabilities to the facts that the applicants were required to establish and the appropriate legal test in assessing prospective risk (*Bakare v Canada (Citizenship and Immigration)*, 2021 FC 967 at para 28).

Contrary to the applicants' arguments, the RAD did not impose the burden of proof on a balance of probabilities in its assessment of the risks faced by the applicants, but rather in assessing the sufficiency of their evidence to support the motivation and means of their agent of persecution to track them in Bogotá.

[16] The paragraph in the decision on which the applicants base their argument is at the end of the RAD's assessment of the sufficiency of the evidence in the record regarding the persecuting agent's current means of locating them in the proposed IFA. The RAD's findings with respect to these means were: (1) the applicants have made no argument about the means of the particular group, the GAO, to locate them anywhere in Colombia; and (2) in response to the argument that the applicants were targeted by "an armed group", organized armed groups in Colombia were fighting each other over illegal activities or for ideological reasons. While there is collaboration between some of these groups, the National Documentation Package on Colombia states that "[b]eing a victim of one of these groups in one area does not mean that a person is unsafe across the country".

[17] In essence, the RAD found that the applicants had not established, on a balance of probabilities, that the armed group in the city of Neiva had the means to track them down in Bogotá. In other words, the applicants had not established the factual basis for the persecuting agent's ability to track them in Bogotá. As for the persecuting agent's motivation, the RAD determined that the applicants had in no way demonstrated a continuing interest in finding them given that the adult applicants were no longer doing their community work and the persecuting agent had not been in contact with their family and friends since 2018.

[18] It is clear from the decision that the RAD imposed the correct legal test on the applicants' risk assessment. In paragraph 13, the RAD observed that a claimant has a viable IFA when he or she does not face a serious possibility of persecution or risk of harm in the proposed IFA. The panel stated that there "can only be a serious possibility of persecution or a risk of harm if the agents of harm have both the "means and the motivation" to locate the appellant". The RAD then turned to its analysis of the evidence presented by the applicants regarding conditions in Colombia, their personal profile as social leaders, and the motivation and means of its agents of persecution to track them down anywhere in the country.

[19] After completing its findings of fact, RAD then stated its ultimate conclusion regarding the first prong of the IFA test:

[21] Having considered the totality of the evidence, I find that the [applicants] have not discharged their burden of proof to establish that, on a balance of probabilities, there is a serious possibility of being persecuted in the IFA or that they would be personally subject to a risk to life or cruel and unusual treatment or punishment or danger of torture in the proposed IFA.

[20] I see no error in this finding and therefore conclude that the RAD did not apply an undue standard or burden with respect to its analysis of the first prong of the IFA test. The RAD did not confuse the legal test for a refugee claim with the standard of proof (*Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 234 at para 38). In this case, the applicants did not establish, on a balance of probabilities, that they were targeted by the organized armed group GAO or by an organized armed group with influence throughout Colombia. The decision in *Gomez Dominguez v Canada (Citizenship and Immigration)*, 2020 FC 1098 (*Gomez Dominguez*), is distinguishable from the applicants' case. In *Gomez Dominguez*, the applicants proved on a balance of probabilities that the FARC had an unusual motivation to target the applicants' family members over a long period of time and the capacity to carry out their plans.

Did the RAD err in its analysis of the social leader profile of adult applicants?

[21] Second, the applicants argued that the RAD failed to consider subjective and objective evidence regarding the social leadership status of the principal applicant. They pointed out that the evidence in the record, including the objective documentary evidence filed by their representative, specifically identified their roles as leaders involved in the voting and human rights training process. It was therefore unreasonable for the RAD to conclude that the work they did on behalf of the CDP was limited to volunteering and training on matters of education or health.

[22] The applicants cited definitions of "social leaders" in the documentary evidence, but they did not point out a reviewable error in the RAD's reasons. I am not persuaded that the RAD's finding that the adult applicants' personal profile would not place them at risk from all armed

combatants in Colombia was unreasonable. The panel justified its findings as to the adult applicants' personal profile in light of the factual evidence in the record.

[23] It is clear from the RAD's reasons that it has taken into account the descriptions in the documentary evidence of the social leaders who have been threatened by the various Colombian armed groups. Furthermore, the RAD correctly described the activities of the adult applicants, including the distribution of food, medicine and household items, and the organization of family meetings regarding elections, education or health issues, all in a rural setting. In addition, the panel recognized that the adult applicants' activities in the CDP youth brigade could amount to political activities. However, the applicants have not established that their "personal profile is not sufficient for a high profile nor were their activities sufficiently public" to qualify as social leaders.

[24] The adult applicants were not members or leaders of the political party, notwithstanding their efforts in marginalized communities. The RAD therefore concluded that the adult applicants did not have the personal profile of social leaders that would place them at risk with any organized armed groups in Colombia. In light of its finding that the organized armed group GAO in Neiva did not possess the means or motivation to track them to Bogotá, the RAD could reasonably conclude that the applicants were not exposed to a serious possibility of persecution or risk of harm in Bogotá. It follows that the applicants had a viable IFA in their home country.

[25] Accordingly, the application for judicial review is dismissed. No question of general importance was submitted for certification and the Court is of the view that there are none.

[26] In addition, the style of cause in this case is amended pursuant to paragraph 5(2)(b) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, and subsection 4(1) of the IRPA to reflect the Minister of Citizenship and Immigration as the proper Respondent.

JUDGMENT in IMM-5722-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.
3. The style of cause is amended to designate the Minister of Citizenship and Immigration as the proper Respondent.

“Elizabeth Walker”

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5722-21

STYLE OF CAUSE: ANDRES FELIPE BOLIVAR CUELLAR
KELLY JOHANNA PINILLA ALDANA
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JULIETA BOLIVAR PINILLA
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

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JUDGMENT AND REASONS: WALKER J.

DATED: MAY 3, 2022

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