

Federal Court



Cour fédérale

Date: 20220513

Docket: IMM-6235-21

Citation: 2022 FC 717

Ottawa, Ontario, May 13, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

C.C.R.M.

Applicant

and

**MINISTER OF IMMIGRATION, REFUGEES
AND CITIZENSHIP OF CANADA**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Colombia, seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated August 25, 2021, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is not a Convention refugee or person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] In the narrative attached to his Basis of Claim form, the Applicant states that he fled Colombia and came to Canada in May of 2019 following incidents of extortion and threats to his life from paramilitary groups on separate occasions in different parts of Colombia.

[3] From April 2013 to February 2016, the Applicant owned and operated a distribution company in the city of Acacias, Colombia. During this time, the Applicant was extorted by a paramilitary group and, until the end of 2015, made monthly payments of 400,000 pesos to the paramilitary group. However, in December 2015, the paramilitary group advised the Applicant that his monthly payment had increased to 1,000,000 pesos, which amount the Applicant refused to pay. Different members of the paramilitary group visited the Applicant in January of 2016 also demanding an increased extortion fee, which the Applicant continued to refuse to pay.

[4] On February 11, 2016, two armed members of the paramilitary group approached the Applicant on the street near his home and threatened to kill him if he did not pay the increased extortion amount. That night, the Applicant relocated to his friend's home located on the other side of Acacias and two days later, the Applicant relocated to Bogota where he resided with his mother.

[5] In June of 2016, the Applicant relocated to Barranquilla, Colombia, where he formed a new company to distribute beauty products to retailers. The Applicant registered the company under the names of his mother and brother in an attempt to avoid being tracked down by the paramilitary group.

[6] In March of 2017, a man came to the Applicant's home and made a business proposal. The Applicant did not feel comfortable with the terms of the proposed business arrangement, as he suspected that the man planned to use the Applicant's business as a cover for shipping narcotics. As a result, the Applicant refused the business arrangement. In April of 2017, the man returned and tried once again to convince the Applicant to agree to the business proposal, but the Applicant said he was still not interested.

[7] In May of 2017, two men, who identified themselves as members of the Clan Del Golfo, confronted the Applicant on the street and said that if he wanted to continue to conduct business in Barranquilla, he had to work with them. In an effort to buy himself some time, the Applicant told the men that he would have to think about their proposal.

[8] On June 14, 2017, the men returned and demanded 500,000 pesos per month from the Applicant for not agreeing to their business proposal. The Applicant refused to pay. As a result of this incident, the Applicant relocated to Bogota.

[9] On August 20, 2017, the Applicant relocated to Venezuela with his common-law partner. However, his common-law partner was facing threats to her life in Venezuela and they ultimately fled to the United States, albeit separately. After the Applicant's common-law partner's refugee claim in the United States was rejected, they decided to come to Canada.

[10] The Applicant entered Canada irregularly (and separately from his common-law partner) in May of 2019 and initiated a refugee claim.

[11] On November 27, 2020, the RPD rejected the Applicant's refugee claim. The RPD rejected the Applicant's section 96 claim due to a lack of nexus between the harm feared and a Convention ground. With respect to the section 97 claim, the determinative issue before the RPD was the finding that the Applicant had an internal flight alternative [IFA] available to him in Bucaramanga. The RPD found that, on a balance of probabilities, the agents of harm would not be motivated to pursue the Applicant in Bucaramanga and that it would not be unreasonable to expect the Applicant to relocate to Bucaramanga. In making these determinations, the RPD made two adverse credibility findings against the Applicant – one in relation to an omission from his narrative regarding his assertion that he had sensitive information about the Clan Del Golfo and the lack of a reasonable explanation for the omission, and the second in relation to the Applicant's failure to mention in his narrative or in his testimony that someone had approached his friend in Acacias seeking his whereabouts (as reflected in a letter from the Applicant's friend).

[12] The Applicant appealed the RPD's decision to the RAD, asserting that the RPD erred in its assessment of nexus, credibility and the IFA. The RAD found no error in relation to the RPD's assessment of the lack of nexus between the Applicant's fears and a Convention ground and concluded that the RPD was correct to assess the claim under section 97 of the *IRPA*.

[13] The RAD found that the RPD erred in impugning the Applicant's credibility. For all of the instances where adverse credibility findings were noted by the RPD, the RAD held that the RPD misapplied the concept of credibility, as the Applicant was not recounting facts or his actual experiences, but was speculating or giving opinions. The RAD found that the RPD did not have a

sufficient basis to impugn the Applicant's credibility and the RAD made no adverse credibility findings against the Applicant.

[14] However, the RAD independently assessed the viability of Bucaramanga as an IFA and found that the Applicant had failed to demonstrate that the IFA was not viable, as: (i) the Applicant had failed to present sufficient credible and trustworthy evidence that the agents of harm are motivated to search out the Applicant in Bucaramanga; and (ii) the Applicant had failed to establish that it would be unreasonable, in his particular circumstances, for him to relocate to Bucaramanga.

[15] The Applicant asserts that the decision of the RAD should be set aside and his appeal sent back for redetermination on the basis that: (a) the RAD failed to address the objective country condition evidence; (b) the RAD's reasons are unintelligible; and (c) overall, the RAD's justification for selecting Bucaramanga was lacking.

[16] For the reasons that follow, the application for judicial review shall be dismissed.

I. Preliminary Matter

[17] The Applicant included in his application record a request for an anonymity order, which request was not determined by the Court in advance of the hearing of this application. The Respondent does not oppose the requested anonymity order and the Court is satisfied that, in the circumstances, the requested anonymity order should be granted.

II. Analysis

[18] The determination of the RAD regarding an IFA analysis is reviewable on the standard of reasonableness [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Iyere v Canada (Minister of Citizenship and Immigration)*, 2018 FC 67 at para 16].

[19] When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker. The burden is on the party challenging the decision to show that it is unreasonable [see *Vavilov*, supra at paras 15, 83, 85, 99, 100]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenjij-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[20] The two-prong IFA test was described by Justice McHaffie in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at paras 8-9 as follows:

[8] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a “serious possibility” standard), or a section 97 danger or risk (on a “more likely than not” standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu* at pp 595–597; *Hamdan v Canada*

(Immigration, Refugees and Citizenship), 2017 FC 643 at paras 10–12.

[9] Both of these "prongs" of the test must be satisfied to conclude that a refugee claimant has a viable IFA. The threshold on the second prong of the IFA test is a high one. There must be "actual and concrete evidence" of conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area: *Ranganathan v. Canada (Minister of Citizenship & Immigration)*, [2001] 2 F.C. 164 (Fed. C.A.) at para 15.

[21] The Applicant asserts that the RAD erred in that it failed to address in its reasons the objective country condition evidence included by the Applicant in his materials, which demonstrate that the Clan Del Golfo has a presence and influence in the geographical department of Meta, in which Bucaramanga is located. I reject this assertion. The objective country condition evidence on which the Applicant relies in support of this assertion is relevant to the Clan Del Golfo's ability to track down the Applicant in Bucaramanga. However, there was no dispute before the RPD or the RAD that the agents of harm had the means to track the Applicant down. The contentious issue before the RPD and the RAD was whether the agents of harm were motivated to track him down and the Applicant has not pointed the Court to any specific objective country condition documents going to motivation that were overlooked by the RAD.

[22] The Applicant further asserts that the RAD's reasons are unintelligible as they are contradictory – one the one hand, finding that there was no risk to the Applicant's life because the agents of harm are not motivated to locate him, and on the other hand, finding that in the IFA the Applicant could work in a different industry so as not to attract the attention of the agents of harm. The Applicant asserts that if there was no risk that the Applicant would be found in Bucaramanga,

there would be no reason for the RAD to indicate to the Applicant that he should change his profession.

[23] I reject this argument. The Applicant has mischaracterized the analysis undertaken, and the conclusions ultimately reached, by the RPD and the RAD. At the hearing before the RPD, the Applicant stated that if he were to return to Colombia, he would have no option but to resume his business activities which he stated would place him at risk of being extorted again. The RPD found that there was insufficient evidence to support the Applicant's assertion that operating a business would be his only option for supporting himself in Bucaramanga. The RPD made no finding that the Applicant would need to work in a different industry in Bucaramanga so as not to attract the attention of the agents of harm. Thereafter, on appeal to the RAD, the RAD focused on the Applicant's general ability to be employed and similarly made no finding of the nature asserted by the Applicant.

[24] Finally, the Applicant asserts that the RAD did not provide sufficient reasons for why Bucaramanga was a viable IFA, in light of the circumstances and the evidence put forward by the Applicant regarding his concerns for his safety. I reject this assertion. I agree with the Respondent that the onus was on the Applicant to negate the viability of the proposed IFA, not on the RAD to demonstrate that the proposed IFA was suitable [see *Ifaloye v Canada (Citizenship and Immigration)*, 2021 FC 1110 at paras 2 and 27]. Considering the RAD's reasons as a whole, I am satisfied that the RAD's IFA determination was based on an internally coherent and rational chain of analysis and was justified in relation to the evidence before it and the applicable legal principles.

[25] In his further memorandum of fact and law, the Applicant also asserted that the RPD made unclear and unfair assessments of the Applicant's credibility and improper plausibility findings that factored into the RPD's assessment of the first prong of the IFA test. However, the Court's role on this application is to review the decision of the RAD (who conducted its own independent IFA analysis and only adopted a small portion of the RPD's reasons), not the decision of the RPD and as such, this argument is not properly before the Court.

[26] In any event, the Court notes that the RAD rejected the RPD's credibility findings and made no adverse credibility finding against the Applicant. The RAD also rejected the Applicant's assertion that the RPD made any plausibility findings. Rather, the RAD held that the RPD simply noted that there was an insufficiency of evidence to support the assertions and submissions made by the Applicant regarding the agents of harm. I see no error in the RAD's reasons in this regard. The fact that the RAD found the Applicant's evidence to be credible does not alleviate the need to provide sufficient objective evidence in support of his claim [see *Iyere v Canada (Minister of Citizenship and Immigration)*, 2018 FC 67 at para 37], which the RAD reasonably found the Applicant had failed to do.

III. Conclusion

[27] As the Applicant has failed to meet his burden of demonstrating that the RAD's decision was unreasonable, the application for judicial review shall be dismissed.

[28] The parties propose no question for certification and I agree that none arises.

JUDGMENT in IMM-6235-21

THIS COURT'S JUDGMENT is that:

1. All documents and recorded entries that are prepared by the Court and which may be made available to the public shall be amended and/or redacted to the extent necessary to make the identity of the Applicant anonymous.
2. The application for judicial review is dismissed.
3. The parties proposed no question for certification and none arises.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6235-21

STYLE OF CAUSE: C.C.R.M. v MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP OF CANADA

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