

Federal Court



Cour fédérale

Date: 20230323

Docket: IMM-2974-22

Citation: 2023 FC 404

Ottawa, Ontario, March 23, 2023

PRESENT: Madam Justice Walker

BETWEEN:

**BRAYAN ALEXANDER MARTIN
BARREIRO**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of Colombia. He seeks judicial review of a decision of the Refugee Protection Division (RPD) dated March 11, 2022, refusing his refugee claim. The RPD concluded that the Applicant has a viable internal flight alternative (IFA) in Cartagena, Colombia and is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

[2] For the reasons that follow, I will allow this application for judicial review. The RPD's reasons and decision do not reflect a logical and substantive review of the evidence in the record that is consistent with the relevant legal constraints and jurisprudence.

I. Context

[3] The Applicant fears harm from one of the dissident groups of the Revolutionary Armed Forces of Colombia (FARC) because he and his spouse failed to pay the full amount of a 2019 extortion demand.

[4] The Applicant and his spouse owned and operated a business in Bogotá from the same building in which they lived. On August 28, 2019, members of a FARC dissident group kidnapped his spouse and stepson and demanded payment of 100 million pesos. The Applicant's spouse paid 30 million pesos and the group gave the couple twenty days to pay the remaining amount. The group also warned them not to report the incident.

[5] The Applicant and his spouse reported the kidnapping to the Attorney General's office on August 29, 2019 but received no response.

[6] Also on August 29, 2019, the Applicant and his family went into hiding at his parent's home in Bogotá, 20 minutes away from their own home. They stayed with his parents until September 20, 2019 when they left Colombia and travelled to the United States. From there, the Applicant came to Canada and claimed refugee protection.

[7] The Applicant's refugee claim was severed from that of his spouse and family due to domestic assault charges. His spouse subsequently dropped the charges and testified during the Applicant's RPD hearing.

[8] On January 31, 2023, Justice Mosley granted the application for judicial review of the RPD's September 17, 2021 decision dismissing the refugee claims of the Applicant's spouse and other family members.

II. Decision under Review

[9] The RPD assessed the Applicant's claim pursuant to section 96 of the *IRPA*, finding that the FARC perceives those who refuse its extortion demands as being opposed to their political goals. Although FARC's perception may not reflect the reality of the situation, the RPD concluded that the Applicant is being targeted for political reasons.

[10] The RPD found that the Applicant testified in a straightforward manner and that he had established, on a balance of probabilities, that he owned a business in Colombia and was targeted for extortion. The panel also found that the Applicant's fear of FARC dissidents is well founded based on the objective country evidence.

[11] The determinative issue for the RPD was the existence of a viable IFA for the Applicant in Cartagena, Colombia. In considering the availability of the IFA, the panel applied the two-pronged test set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA).

[12] The RPD first acknowledged the objective evidence that establishes the resources and means of FARC dissident groups to carry out attacks in all parts of Colombia. However, the panel found that the Applicant had not established that the dissidents would be motivated to track him to Cartagena. Without any continued motivation on the part of the FARC to expend its resources to find him, the RPD concluded that the Applicant would not face a serious risk of persecution or be personally subject to a risk of harm or death in Cartagena.

[13] Second, as the Applicant had failed to establish the FARC's motivation to locate him outside of Bogotá, the RPD noted that he would not have to live in hiding in Cartagena. In addition, the panel found that living conditions, including the risk of crime, in the city are not such that they would jeopardize the Applicant's life and safety. Therefore, he had not met the very high threshold required to find relocation to Cartagena unreasonable.

[14] In light of its two findings, the RPD concluded that the Applicant has a viable IFA in Cartagena, Colombia and rejected his refugee claim.

III. Analysis

[15] The RPD's reasons and conclusions regarding the availability of an IFA in Colombia for the Applicant are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32).

[16] The Applicant submits that the RPD's IFA analysis of the first part of the IFA test and the FARC dissident groups' motivation to find and harm him is unreasonable for three reasons: (1) the panel failed to consider his profile as a business owner targeted for extortion by the FARC; (2) the RPD erred in rejecting the Applicant's evidence that he has been targeted by dissidents since leaving Colombia; and (3) the decision is internally contradictory.

[17] The Applicant first submits that the RPD committed a reviewable error in failing to consider his profile as a business owner against the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia (*UNHCR Guidelines*) (*Montano Alarcon v Canada (Citizenship and Immigration)*, 2022 FC 395 at para 48). He emphasizes that the FARC dissident group targeted him because of his business and that the *UNHCR Guidelines* confirm the susceptibility of small business owners to extortion. The Applicant argues that if he was at risk in Bogotá, he will be at risk in Cartagena as his forward-looking risk profile will not have changed. He also argues that, as he has only ever worked in sales, this would be the best option for him to support his family in Colombia.

[18] Despite the Applicant's detailed submissions, I find no reviewable error in the RPD's analysis of his profile. The RPD clearly acknowledged that the Applicant had been a business owner in Bogotá and that he (and his spouse) had been targeted by FARC dissidents because of their business. The RPD's consideration of his refugee claim and forward-looking risk pursuant to section 96 of the *IRPA* and imputed political opinion was based on the Applicant's profile as a business owner who had failed to pay the full amount of a FARC extortion amount and who had been threatened by FARC dissidents. The RPD made no error in focussing its analysis on the

latter two elements of the Applicant's claim. The Applicant himself argued before the panel that he was being targeted for his imputed political opinion. In addition, the Applicant's statement concerning the second prong of the IFA test that he was a business owner in Bogotá and would inevitably and necessarily be a business owner in Cartagena has no merit (*Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at paras 19-20; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 940 at para 17). The Applicant's status as a business owner or businessman is not an immutable characteristic that is fundamental to his human dignity.

[19] The Applicant next submits that the RPD unreasonably determined that FARC dissidents are not motivated to find him. He argues that the panel ignored evidence regarding the mode of operations of paramilitary groups in Columbia and the deliberately vague inquiries about him after he left Bogotá.

[20] I agree with the Applicant's arguments.

[21] The RPD accepted that unknown people have asked about the Applicant and his whereabouts since his departure from Columbia and that the Applicant believes the individuals are FARC dissidents or agents acting on behalf of the FARC because they do not identify themselves or give a reason for their inquiries. The panel concluded, however, that the Applicant's belief in the identity of the individuals and their intent to harm him is speculative.

[22] I agree with the Respondent that the Applicant's personal belief is not sufficient to establish the identity of the unknown persons as FARC members or as individuals acting on

behalf of the FARC. However, the RPD did not address the Applicant's arguments regarding the causal and temporal aspects of the inquiries made about him and the objective evidence that establishes that criminal gangs, including the remaining FARC dissident groups, work in a clandestine manner through word of mouth and urban collaborators. As the Applicant reasonably notes, neither FARC members nor their collaborators announce their presence as FARC emissaries when inquiring about a target.

[23] The RPD referenced the objective evidence on which the Applicant relies but failed to assess its impact against the method of approach of the unknown individuals looking for the Applicant. Instead, the panel concluded that the individuals in question were "just enquiring about the Claimant". The analysis contains no substantive consideration of whether the approaches made by the unknown individuals were similar to those employed by urban collaborators or other FARC agents. The RPD also failed to assess the timing of the inquiries that followed immediately after the threats leveled at the Applicant and his spouse about the consequences of any failure to pay the full extortion amount.

[24] As a result, I find that the RPD's decision lacks a logical chain of analysis that suggests the panel failed not only to grapple with the evidence but also with the application of the evidence to the test for an IFA (*Vavilov* at paras 102-103; *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at para 30). This shortcoming in the decision is significant in light of the panel's acceptance that FARC dissidents have the means to track the Applicant throughout Columbia. The RPD's conclusion that Cartagena is a viable IFA rests solely on the absence of a continued motivation by the FARC to commit its resources to finding the Applicant.

[25] Third and finally, the Applicant argues that the RPD made contradictory findings that alone result in an unintelligible decision.

[26] In the course of its analysis of the Applicant's evidence that unknown individuals had been asking about him in Columbia, the RPD stated:

[36] ... The panel finds that based on a balance of probabilities they [the unknown persons] are not likely members of FARC but rather individuals just enquiring about the Claimant.

[27] The RPD then considered the fact that FARC dissidents had not found the Applicant while he hid briefly at his parents' home in Bogotá before leaving the country. The panel stated that the FARC has the resources to track the Applicant, particularly at his parents' home in the same city in which the extortion first occurred. The RPD concluded:

[44] ... Accordingly, the panel finds that based on a balance of probabilities, the FARC dissidents looking for the claimant do not have the motivation to locate the Claimant outside of their home and work locations.

[28] I agree with the Applicant that the RPD cannot simultaneously make these two findings (*Vavilov* at para 104). Either there are, or are not, FARC members or collaborators looking for the Applicant.

[29] The issue of whether the "unknown persons" were or were not FARC dissidents is fundamental to the RPD's IFA conclusion regarding motivation. The obvious contradiction in the panel's analysis and conclusions significantly undermines the clarity and justification of the decision under review and necessitates the Court's intervention.

IV. Conclusion

[30] In summary, the RPD's finding of a viable IFA for the Applicant in Cartagena, Colombia is not reasonable in light of the evidence and applicable law. The RPD omitted to consider the application of the objective evidence to the facts before it in concluding that the unknown persons looking for the Applicant were likely not FARC dissidents. The RPD also committed a significant error in arriving at contradictory conclusions without explanation. As a result, the application will be granted.

[31] Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division dated March 11, 2022 rejecting the Applicant's claim for refugee protection is set aside and the matter is remitted for redetermination by a different member of the Refugee Protection Division.
3. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2974-22

STYLE OF CAUSE: BRAYAN ALEXANDER MARTIN BARREIRO v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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