

Federal Court



Cour fédérale

Date: 20230609

Docket: IMM-4753-22

Citation: 2023 FC 823

Ottawa, Ontario, June 9, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**LEONARDO TORRES SAENZ
BIBIANA JUDITH CALDERON RICO
SHARON YALLENA TORRES CALDERON**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of Refugee Protection Division [RPD] determining that the Applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97(1), respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] The Applicants are a family: the Principal Applicant, Leonardo Torres Sanenz, his spouse, Bibiana Judith Calderon Rico, and their minor daughter, Sharon. They are citizens of Colombia.

[3] They claim that on September 29, 2020, the Principal Applicant was leaving his office at the Governorate of Cundinamarca when he met his friend Ricardo. They were approached by two armed men who forced the Principal Applicant to drive to a restaurant parking lot where they identified themselves as members of the 46th Front of the National Liberation Army [ELN]. They told the Principal Applicant that they had a specific job for him to do, they would be contacting him in that regard, and warned him not to speak to the police. As to Ricardo, who had been left in the parking lot, he was to be told that the incident was a mugging.

[4] On September 30, 2020, the Principal Applicant went to the police and made a denunciation regarding the incident [First Police Complaint]. At that time, he was told that the Fiscalia General de la Nacion [Attorney General's Office] would contact him to make an amplification of, or expand on, the denunciation. The next day, the family went to stay with friends where they remained until the end of October. The Principal Applicant then asked Ricardo if the family could stay with him, for reasons of safety.

[5] On November 17, 2020, the Principal Applicant was called by the Attorney General's Office and expanded his denunciation [Second Police Complaint]. According to the Principal

Applicant, when this was done, he was told that it was difficult for the Attorney General to assign a police officer to provide security and it was recommended that the family avoid visiting public places. Further, that the Attorney General's Office would initiate an investigation to determine how the ELN had entered the office of the Governorate of Cundinamarca to threaten the Principal Applicant. This would take some time but he would be kept updated and provided with confirmation of his expanded denunciation. The Principal Applicant claims that he received nothing further from the Attorney General's Office.

[6] On November 23, 2020, the school his daughter attended called and advised that there was a man there who claimed to be a relative who was to pick her up for a medical appointment. The man, as described by the school, matched the description of one of the men involved in the September 29, 2020 incident.

[7] On November 26, 2020 the Principal Applicant and his spouse were leaving a grocery store when the same two men, again identifying themselves as from the 46th Front of the ELN, approached them, threatened to kill them and told them that the Principal Applicant was to comply with an order to take into the Governorate of Cundinamarca a briefcase containing explosives and was to place it in a washroom. There were people in place who would help him bring the bag inside without the normal searching of all bags taken into the building. This event would occur in the first days of December. The men warned that the Principal Applicant must comply or that he would have the same fate as a co-worker, Luis Carlos Castillo Amya, who the men said had been killed for not obeying orders.

[8] The Applicants claim that they did not make a further denunciation because they had been warned not to do so and because they realised that the Attorney General's Office had a backlog of denunciations and therefore could not do much to resolve theirs quickly enough. On November 28, 2020, they fled, using existing United States [US] visitor visas. On December 14, 2020, they crossed from the US into Canada and made claims for refugee protection.

[9] The RPD denied their claim by a decision dated April 28, 2022.

Decision Under Review

[10] The determinative issue was credibility.

[11] The RPD found, having considered the Principal Applicant's written and oral evidence and the country conditions documentation, that there were material aspects of the Principal Applicant's evidence that were not credible and specifically addressed seven such concerns. These were: an omission from the Principal Applicant's Basis of Claim [BOC] narrative; an inconsistency between the narrative and the police complaint; concerns with the First Police Complaint and the expanded Second Police Complaint; the atypical and personalized comments and incorrect statements in the Second Police Complaint; a lack of reference to the ELN in the supporting documents of witnesses; and, based on the objective documentary evidence, that the Principal Applicant's profile did not align with the profiles of persons who would be targeted by the ELN to bomb a government building. The RPD also considered state protection and did not accept as reasonable the Principal Applicant's explanation for not reporting to the police or

Attorney General's Office the ELN's demand that he place a bomb. It drew a negative inference against the Principal Applicant's overall credibility.

[12] The RPD found, having considered all of the evidence, that the Principal Applicant was not a credible and trustworthy witness and had failed to establish, on a balance of probabilities, that the ELN had abducted him and threatened him and his family, had demanded that he take a bomb into the building of the Governorate de Cundinamarca or that he had filed a criminal complaint.

Issues and Standard of Review

[13] All of the issues raised by the Applicant fall under the umbrella question of whether the RPD's decision was reasonable.

[14] The parties submit and I agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 23, 25).

[15] When applying the reasonableness standard on judicial review, the court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency, and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

Analysis

[16] The Applicant challenges each of the RPD's credibility findings. I will address these below.

i. Omission in BOC narrative

[17] The RPD noted that in his testimony and his Second Police Complaint the Principal Applicant stated that after the incident on September 29, 2020, Ricardo had made many calls to the Principal Applicant on his mobile phone, which the Principal Applicant had missed. When the Principal Applicant did contact Ricardo, Ricardo told him he had called 123 (police and emergency services) to report what had happened in the parking lot. The police advised that both Ricardo and the Principal Applicant should immediately go to the Immediate Reaction Unit and file a report. However, this information was omitted from the Principal Applicant's narrative. The Principal Applicant's explanation for the omission was that there was a mistake in the translation due to the complexity of the subject matter, and maybe it was not expressed the way he meant it. The RPD did not accept this explanation as reasonable because the omission went to the heart of the Principal Applicant's claim, he was represented by a lawyer and had an opportunity to amend his BOC and had affirmed that his BOC was complete, true, correct and up to date. The RPD drew a negative inference against the Principal Applicant's overall credibility.

[18] The Applicants' primary assertion is that the omitted information is not central to the claim and therefore does not undermine the Principal Applicant's credibility. Further, to require

that the Principal Applicant provide details about the phone calls received from Ricardo reflects an unacceptable microscopic analysis of the evidence.

[19] The Respondent submits that it is well established that omissions from the BOC may be considered by the RPD in assessing credibility, especially where they go to a central aspect of the claim. The RPD found this omission to be important, since Ricardo was allegedly with the Principal Applicant when he was abducted and therefore would have been a first-hand witness to the originating event of the claim. Ricardo's notarized statement failed to mention the ELN, despite the Principal Applicant's claim that Ricardo knew that the ELN were involved in the incident. The RPD therefore reasonably found that the omission was significant as it contradicted the Applicants' version of events and went to the core of the claim – that is, whether the Applicant was being targeted by the ELN.

[20] This Court has held that all the important facts and details of a claim must be included in a claimant's BOC form and failing to do so can affect the credibility of all or part of a claimant's testimony. However, adding details in oral testimony not found in the BOC will not serve to impugn an applicant's credibility unless the omitted details, or incident, are significant because they go to the core of the claim (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 [*Ogaulu*] at paras 18 –20; *Manan v Canada (Citizenship and Immigration)*, 2020 FC 150 at para 44). It is not clear to me why the RPD considered the Principal Applicant's failure to mention that Ricardo called him that night telling him that he had contacted emergency services to be a significant omission.

[21] As the Applicants submit, the key issue here is the credibility of the events as asserted by the Principal Applicant. In that regard, Ricardo's notarized statement indicates that he was with the Principal Applicant in the parking lot when the abduction occurred, and it describes the incident. Further, the Principal Applicant filed the First Police Complaint the following day, a copy of which is also found in the record. While it is true, as the Respondent submits, that Ricardo's notarized statement does not identify the ELN as the abductor – which issue is addressed later in the RPD's reasons – this was not the reason given by the RPD for finding the subject omission to be significant. Indeed, the Principal Applicant's narrative indicates that the men who allegedly abducted him did not tell him that they were ELN until he had driven to the restaurant parking lot. Thus, as the Principal Applicant did not speak to Ricardo until the next day, Ricardo could not have known and reported that the ELN were the abductors when he called 123 that night. Nor do I see a contradiction arising from the omission as the Respondent submits.

ii. Inconsistency between BOC and the First Police Complaint

[22] The RPD also noted that in his BOC the Principal Applicant stated that his abductors instructed him to “drive through Avenida El Dorado going east”, however, in the First Police Report he stated they told him to “go down Avenida El Dorado to the south”. When asked to explain this inconsistency, the Principal Applicant stated that the report was written incorrectly by the police and while he noticed the mistake and asked that it be corrected he was afraid the ELN would see him in the police station and he did not want to take the time that would be required to redo the entire document, the important thing being that the date of the incident was correct. The RPD did not accept this explanation as reasonable given that the matter went to the

heart of the claim and the Principal Applicant's testimony was evolving. The RPD drew an adverse inference against the Principal Applicant's overall credibility.

[23] The Applicants submit that direction that the Principal Applicant was told to drive does not go to the heart of the claim. Further, a map was submitted showing that the road the Principal Applicant was told to take goes southeast, supporting the plausibility of the Principal Applicant's testimony. Further, this finding by the RPD further demonstrates that the RPD microscopically combed through the evidence in search of trivial errors or inconsistencies.

[24] I agree with the Applicants that this was a peripheral point and, in and of itself, could not reasonably support a negative credibility finding. However, as will be discussed below, the RPD did identify significant concerns with the evidence that did support its credibility findings.

iii. Concerns with the First Police Complaint (September 30, 2020) and the Second Police Complaint (November 17, 2020)

[25] The RPD referred to the National Documentation Package [NDP] for Columbia, which drew information from the Attorney General's website concerning criminal complaints and how they are addressed. The RPD noted that this included that once a victim reports a criminal act, a criminal complaint is created. The Oral Accusatory System of Criminal Justice system (SPOA) gives the complaint a unique and unrepeatable 21-digit number and assigns a prosecutor to the case. The assigned prosecutor then conducts an inquiry, also known as a preliminary investigation, to determine whether the act reported has the characteristics of a crime and to identify the perpetrator. If the prosecutor finds such evidence, then the inquiry concludes with the

filing of charges, after which a formal investigation is initiated. The formal investigation ends, in turn, with the filing of an indictment, which is then followed by a trial. The website provides a section where the 21-digit complaint (*noticia criminis*) number can be entered to check the complaint's status in the SPOA. A complaint can have only one of two statuses: active or inactive. Active means that the case is undergoing an inquiry (preliminary investigation), formal investigation, or trial. Inactive will appear when the investigation has stopped because the complaint was set aside/suspended, precluded (a preclusion was requested), or completed (a sentence has been rendered).

[26] The RPD noted that the First Police Complaint had a 22-digit, rather than a 21-digit identification number. Further, the Principal Applicant's evidence was that the prosecutor telephoned him to interview him and provide him with an opportunity to expand on his original complaint. According to the objective documentary evidence, the 21-digit number of the original criminal complaint and the amplified complaint are the same. This allows a complainant to check the status of his/her case. However, the number on the amplified Second Police Complaint differs from the number on the original First Police Complaint. Additionally, there was nothing in the status search of the Second Police Complaint that connected it to the Principal Applicant—his name does not appear, the date of the incident complained of (September 30, 2020) does not appear, and the location of the office noted on the status report is not the address at which the Principal Applicant filed his complaint. The RPD acknowledged the Principal Applicant's statement that this was because his complaint was forwarded to a different office, pointing to his sister-in-law's affidavit, but found that this did not address how the RPD was to know that the new number related to the original denunciation. The RPD assigned greater weight to the

objective documentary evidence than to the evidence put forward by the Principal Applicant and drew a negative inference against the Principal Applicant's overall credibility.

[27] The Applicants submit that the Principal Applicant's explanation was reasonable and that his sister-in-law's letter was sufficient to address the concern. Further, that negative credibility findings cannot be based on what supporting evidence, in this case the sister's letter, do not say, they must be considered for what they do say. Information was also submitted showing the Colombian justice system to be under-resourced and slow, but the RPD did not properly consider this when opining on what was plausible in Colombia. Further, the RPD assigned greater weight to the objective documentary evidence but failed to deal with the contradictory evidence put forward by the Principal Applicant, giving rise to a fundamental gap in its reasoning.

[28] In my view, this submission cannot succeed. As indicated by the RPD, a Response to Information Request [RIR] included in the NDP indicates that criminal complaints received by the police are linked to the SPOA of the Attorney General's Office, where a unique 21-digit number of the criminal notice is generated when the crime is reported. That number can be used to determine in which city the crime was reported and to track the status of the complaint. The RIR indicates that there is no variation of this format because it is unique and established by the Attorney General's Office. The claimant is given a copy of the complaint and can also obtain a copy of the report from outside the country through a family member or lawyer. However, the First Police Complaint contains 22 digits while the Second Police Complaint has an entirely different 21-digit number.

[29] Contrary to the Applicants' submission, the statements from the Principal Applicant's sister-in-law, Andrea Calderon Rico, do not explain the discrepancies with the number of digits and the different case numbers. The first statement, dated November 12, 2021 merely states that on November 12, 2021 Ms. Rico attended at the Attorney General's Office to obtain a copy of the November 17, 2020 complaint and "I was informed that due to the seriousness of the facts and the magnitude of said complaint, to date, it is in the Distribution Process to be Assigned to a Prosecutor Specialized Delegate, they gave me a copy of the extension of the complaint that Leonardo presented on November 17 of the years 2020", which she states that she attaches (a copy is not attached in the CTR).

[30] A second statement, dated February 16, 2022, states that on February 15, 2022 Ms. Rico attended at the office of the FGN (Attorney General's Office) Bogota Sectional Directorate – Kennedy and requested information on the November 17, 2020 complaint, referencing the case number on that complaint, that was assigned to the Kennedy Sectional Fiscalia and was informed that:

Due to the competence, the investigation was assigned to the Local Fiscalai 412 – of the Unit for Addressing and Early Intervention of Complaints located at Carrera 33N. 18 -33 Puente Aranda Central Station in the City of Bogota, since August 18 of the year 2021, and that he is currently in a state of Inactivity due to atypicality, I informed them that Mr. Leonardo Torres had not received any information on the result of the investigation, as well as his denunciation. The investigation had been assigned to another section of the Prosecutor's Office, in this regard they informed me that the Fiscalia's Office has a system called SPOA, which means Accusory Penal System, in which a file is assigned that consists of twenty-one digits, each file being different for each case created, they informed me that they would proceed to review said situation, they did not give me more information.

[31] Contrary to the Applicants' submissions, the Principal Applicant's sister-in-law's statements do not address any of the concerns raised by the RPD. Nor do the Applicants point to any other evidence that addresses these concerns.

[32] As to the status report, it indicates the file number from the Second Police Complaint, and as to the case status, states "INACTIVE – Reason, File for atypical behavior art. 79cpp".

[33] The Respondent notes that Article 79 of the Code of Criminal Procedure [CPP] is summarized in the RIR which was considered by the RPD. That document provides as follows:

ARTICLE 79. SETTING ASIDE OF PROCEEDINGS.

When the Public Prosecutor's Office becomes aware of a matter in respect of which there are determined to be no factual grounds or circumstances that allow it to be classified as an offence, or that indicate its possible existence as such, it shall order the proceedings set aside.

However, if new evidence emerges, the investigation shall be resumed until the criminal proceedings have been completed.

[3] (Colombia 2004)

[34] The Respondent submits that the fact that the Applicants' claim was listed as "inactive" and specifically referenced Article 79 of the CPP suggests that the prosecutor had found "no factual grounds or circumstances" to support their allegations. While this may be so, it is not a concern or reason given by the RPD when assessing the credibility of the status report.

Regardless, the discrepancies identified by the RPD, which were not reasonably explained by the Applicants and were contradicted by the independent documentary evidence, solidly grounded the RPD's negative credible finding.

iv. *Atypical personalized comments and incorrect statements*

[35] The RPD referred to the Second Criminal Complaint which included the statement by the police that:

This office informs Mr. Leonardo Torres that it is an excellent measure of protection for the life of him and his family, that Bibiana's Uncle, Mr. Nestor Armando Rico, has offered and supported them to be able to leave Colombia, taking into account the seriousness of the death threats and the kidnapping that Leonardo was subjected to by the ELN guerilla group, since it is well known that whoever does not comply with the request or demands of the said ELN group that is outside the law, they will be persecuted until they are assassinated. An example of this situation is the death of Mr. Luis Carlos Amaya, which took place inside the Governor's offices, a death attributed to the ELN guerilla group for not obeying his orders.

[36] The RPD disclosed two news articles indicating that Mr. Amaya had been shot on August 30, 2018 in the cafeteria of the Governorate of Cundinamarca by Amaury Garcai Berrocal [Berrocal], an alleged member of the Golfo Clan, in a case of mistaken identity. Berrocal had been arrested and charged with murder. The fact that the murderer was from the Golfo Clan was also confirmed by a news article submitted by the Principal Applicant. The RPD queried why the Second Police Complaint would contain such personalized comments and state that the ELN had killed Mr. Amaya which contradicted the statement of the Deputy Attorney General. In response, the Principal Applicant testified that during the interview with the prosecutor all manner of things had been discussed but he too was surprised to see these details included in the police report.

[37] The RPD found that a review of the objective documentary evidence on police complaints in Colombia, specifically on their standardization and appearance, indicated that a denunciation would include: the identity of the complainant, day and time of filing; a detailed account of the facts known to the complainant; and the presumed perpetrators. The RPD concluded that given the personalized comments and the incorrect statement of the prosecutor contained in the Second Police Complaint, as well the fact that the 21-digit number of that complaint was different that of the First Police Complaint, on a balance of probabilities, neither of the complaints were genuine and, therefore, assigned them no weight. The RPD further found that the Principal Applicant did not file a denunciation with the police or expand it with the prosecutor in relation to his alleged kidnapping and targeting by the ELN. Rather, that these non-genuine documents were provided to bolster his claim.

[38] The Applicants submit that the Principal Applicant could not be expected to speculate on why the prosecutor included the atypical information in the Second Police Complaint. Further, that the Amaya murder was yet to be solved so the perpetrator and motive could not be known for sure. The Applicants submit that the atypical information and personalized comments were speculative, were insufficient to call into question the genuineness of the denunciations, and that the RPD unreasonably did so.

[39] The Respondent submits that the RPD's findings with regard to both the errors in the complaints themselves and the country condition evidence were reasonable. Inconsistencies on the face of a document provided by an applicant, identified by comparison to sample documents

found in the NDP, may provide grounds in whole or in part to find that the document is not genuine. The RPD is owed deference in its assessment of such documents.

[40] I note that the CTR contains the two articles disclosed by the RPD. The first of these indicates that Berrocal entered the facilities of the Cundinamarca Government and shot and killed Mr. Amaya. Berrocal, who was a member of the Golfo criminal gang, had been captured and charged with the murder. The Deputy Attorney General was quoted as saying that Berrocal claimed that the murdered man was not the intended victim. The second article also reported these background facts and indicates that the intended victim was Luis Eduardo Cifuentes Galindo – who had a violent past as a former paramilitary chief. While the Principal Applicant may not be able to explain why the Second Police Complaint states that the death of Mr. Amaya is “attributed to the ELN guerilla group for not obeying his orders”, which statement contradicts the documentary evidence about the death, this was not the salient point. As the RPD found, the objective documentary evidence on the standardization of the appearance and content of criminal complaints brought into question the inclusion of the personalized comments found in the Second Criminal Complaint. Further, the statement of the prosecutor in the Second Police Complaint attributing the murder to the ELN for not following its orders was contradicted by the articles disclosed by the RPD. Indeed, even an article submitted by the Applicants identifies Berrocal as the murderer and a hitman for the Clan del Golfo with a significant criminal history.

[41] These findings, combined with the fact that the 21-digit number of that Second Criminal Complaint was different that of the First Police Complaint which had a 22 digit number, were

sufficient for the RPD to reasonably find, as it did, that, on a balance of probabilities, neither of the complaints were genuine and, therefore, to assign them no weight.

[42] The Applicants also point to no evidence to support their assertion that the Amaya murder has yet to be resolved and therefore that it cannot be known who the perpetrator was or his motive.

v. *No reference to ELN in supporting witness statements*

[43] The RPD noted that the Principal Applicant testified that when the Applicants stayed with Ricardo, from October 30 to November 17, 2020, he told Ricardo that it was the ELN who had abducted him. However, neither Ricardo's notarized statement dated October 29, 2021 nor his undated statement referred to the ELN. The RPD found that as the notarized statement was made in 2021 and the Principal Applicant claimed to have told Ricardo about the ELN in 2020, it was reasonable to expect that such an important detail would be included in Ricardo's statements. The RPD found Ricardo's statements not to be reliable or probative with respect to the Principal Applicant's allegation that the ELN 46th Front abducted him and gave him a mission to carry a bomb into the Governorate of Cundinamarca. It afforded the statements no weight.

[44] The Applicant submits that the RPD engaged in an impermissible microscopic examination of the evidence and that there was other corroborative evidence establishing that the ELN was responsible for the claimed events. This, along with the Principal Applicant's testimony, clearly established that the ELN was the agent of persecution. Nor was the issue put

to the Principal Applicant for a response and therefore it was unreasonable to find that Ricardo's statements were not reliable or probative.

[45] The Respondent submits that the omission was significant as it contradicted the Principal Applicant's version of events and went to the core of the claim (whether the Principal Applicant was targeted by the ELN).

[46] Ricardo's notarized statement describes two armed men intercepting the Principal Applicant and Ricardo in the parking lot, threatening and forcing Ricardo out of the car and the Principal Applicant driving the car away with the two assailants. As the RPD pointed out, even though this statement was given on October 29, 2021, after the Principal Applicant allegedly told Ricardo, when the family stayed with Ricardo from October 30 to November 17, 2020, that the ELN were the agents of persecution, this important fact was not included in Ricardo's notarized statement. Ricardo's non-notarized statement also does not identify the ELN as the agent of persecution.

[47] Accordingly, as the RPD found, Ricardo's statements do not corroborate the involvement of the ELN in the abduction or the Principal Applicant's alleged subsequent mission assigned by the ELN to carry a bomb into the Governorate, which is also not mentioned in Ricardo's statements. I do not agree with the Applicants' assertion that the RPD engaged in a microscopic examination of this evidence. Presumably, Ricardo's statements were intended to corroborate important elements of the Applicants' story, given that he allegedly witnessed the abduction, is a lifelong friend of the Principal Applicant, opened his home to the Applicants, and was told that

the abduction was by the ELN. However, they failed to mention these critical, not microscopic, points. And, even if this was not raised with the Principal Applicant, he offers no explanation for why Ricardo omitted the information or how he knows this.

[48] And while the Applicants submit that, had the RPD assigned weight to Ricardo's statements, then this might have affected the RPD's ultimate conclusion "on the critical issue of whether it was the ELN that was persecuting the Applicants", this cannot be so as Ricardo's statement did not address that critical issue. Moreover, the RPD found the Principal Applicant not to be credible and the two police complaints not to be genuine.

[49] The Applicants essentially take issue with the RPD's weighing of the evidence, however, it is not the role of this Court on judicial review to reweigh the evidence (*Vavilov* at para 125).

vi. Principal Applicant's Profile

[50] The RPD asked the Principal Applicant why the ELN would entrust him with bringing a bomb into a government building rather than preying upon more economically vulnerable employees or utilizing its collaborators that had allegedly already infiltrated the building. His response was that he was targeted because he had worked at the government headquarters for a long time, had good access to the building, knowledge of security contracts, and had the trust and confidence of government. The RPD reviewed the NDP documents and the objective country condition materials submitted by the Applicants and found that the NDP materials corroborated that the ELN uses bombing as a tactic, primarily targeting infrastructure and industry. However, there was no objective evidence that the ELN had bombed departmental government

headquarters or other government offices not related to the police or military, or that there had been a change in ELN tactics or targeting practices. The RPD also reviewed the objective documentary evidence to determine the profile of individuals typically recruited by the ELN. This indicated that the ELN forcibly recruits youth, especially in rural areas that the ELN controls, as well as migrants. Professionals may be targeted for information they possess that furthers the ELN's extortion and kidnapping activities. The ELN also relies heavily on their members and supporters for assistance. The RPD found that the Principal Applicant and his spouse did not fit the profile for targeting by the ELN.

[51] The RPD also found that there was also no objective evidence that the ELN recruits civilians for important missions like bombings, which requires special knowledge in handling explosives.

[52] Further, while the Principal Applicant alleged that it was the 46th Front of ELN that targeted him, the only reference found in the objective evidence to the 46th Front is FARC-EP Middle Magdalena Bloc (46th Front) which does not operate in Bogota.

[53] Based on its review of the objective evidence, the RPD found, on a balance of probabilities, that the Principal Applicant had not established that the ELN targeted him to carry a bomb into the headquarters of the Cundinamarca government.

[54] The Applicants submit that the RPD engaged in erroneous conclusions based on its own inferences and that inferences are not evidence. Further, the RPD erred in speculating as to the

modus operandi of the agent of harm. They submit that, in light of the Principal Applicant's testimony and the objective evidence that the Applicants produced corroborating why the Principal Applicant was targeted by ELN, it is apparent that the RPD did not properly deal with the evidence contradicting its findings which is a reviewable error. The Applicants also submit that the Principal Applicant gave a credible explanation as to why he was chosen. This was not because he has weapons or other military experience, but because of his ability to get the suitcase into the building. Thus, the circumstances are different from the Police Academy incident where the ELN used its own member to carry out the attack. Moreover, the evidence establishes that the ELN intimidates civilians to cooperate in its operations.

[55] The Respondent submits that, in finding that the Principal Applicant did not match the profile of someone likely to be targeted by the ELN, the RPD engaged with the documents in detail and made specific findings based on the evidence regarding the agent of persecution and the Principal Applicant's profile. While alone not dispositive, the fact that the Principal Applicant did not fit the risk profile for forced recruitment was a factor the RPD could consider as part of the basis for finding the claim not credible.

[56] In my view, the Applicants' submissions cannot succeed. The RPD conducted a thorough review of the NDP materials as well as the objective country conditions materials submitted by the Applicants. It also considered the Principal Applicant's view as to why he thought he had been recruited to bring a bomb into the Governorate of Cundinamarca. The RPD considered the objective evidence as to prior bombings by the ELN and pertaining to the profile of people typically recruited by the ELN. Based on this objective evidence, the RPD reached its conclusion

that the ELN had not targeted the Principal Applicant to bring a bomb into the government building.

[57] Accordingly, I do not agree with the Applicants that the RPD improperly relied on inference in reaching this finding. In that regard, the Applicants rely on *Mohammed v Canada (Citizenship and Immigration)*, 2020 FC 437 at para 11[*Mohammed*]. However, in *Mohammed* the applicant had not specified a date on which he moved in with his friend, but gave the date during testimony. The RPD inferred a different date from the basis of claim, based on other dated events therein and the flow of the document. It then used this inferred date to conclude that the claimant's testimony contradicted his BOC narrative. This Court held the finding to be unreasonable as the RPD had compared the sworn statement of the applicant with an inference it had made, and "[i]nferences are not evidence".

[58] That is not the situation now before me. Here, the RPD's inference as to the profile of persons typical recruited and used as bombers by the ELN was based on the objective documentary evidence about actual ELN recruitment and the characteristics of such persons as well as actual bombings carried out by the ELN. Unlike *Mohammed*, the RPD was not making an inference based on its own reading into the applicant's narrative evidence and then finding that this supported a contradiction in his testimony. The RPD's finding as to the profile of an ELN recruit was firmly based on the objective documentary evidence that was before it and which it described in its reasons.

[59] Nor did the RPD speculate on the *modus operandi* of the ELN, unlike *Beltran v Canada (Citizenship and Immigration)*, 2011 FC 1475 at para 8, referenced by the Applicant in support of this premise. Again, relying on the objective documentary evidence, the RPD set out why it concluded that the ELN would not utilize the Principal Applicant to bring a bomb into a government building. The fact that the Applicants disagree with this does not make the finding unreasonable.

[60] The Applicants also assert that the RPD erred by failing to consider objective evidence from the NDP demonstrating that the ELN does attack government targets and, therefore, contradicting the RPD's finding in that regard. However, the only NDP source cited by the Applicants to support this assertion is simply a list of activities carried out by the ELN from January to March 2018. This lists kidnapping, launching bomb attacks targeting police officers, attacking government targets, attacking economic infrastructure, recruiting children, using antipersonnel landmines, killing and displacing civilians. I note that the only bombing referenced in this list pertains to targeting police officers. In its reasons, the RPD referred to a NDP document listing major attacks and indicating that the majority of ELN bombings from 2011 targeted infrastructure but that in 2015 the ELN also placed bombs in the financial district an industrial area in Bogota. However, that the NDP contained no evidence that the ELN had bombed departmental government headquarters or other government offices not related to the police or the military. The list referenced by the Applicants does not contradict this.

[61] In my view, the RPD did not, as the Applicants assert, selectively refer to evidence that supports its conclusions without referring to evidence to the contrary.

[62] Finally, the Applicants assert that the RPD noted that the objective evidence does not support that the ELN recruits civilians to carry out sensitive assignments such as bombings, which required special knowledge in handling improvised explosive devices and anti-personnel mines. In that regard, the RPD referred to the bombing of a police academy where the ELN used one of its own members to carry out the attack. The Applicants submit that the situations are different and that the Principal Applicant explained why he felt he was selected to bring a bomb into the building. However, the RPD's point was that while the objective evidence confirmed that ELN has taken steps to infiltrate state agencies, rank and file security forces, municipal governments and other entities, there was no evidence that the ELN recruits civilians to carry out important sensitive assignments such as bombing. The police academy bombing was carried out by a long-time, high-ranking member of the ELN who was a weapons expert. That is, the RPD found that there was no objective evidence supporting that civilians are used by the ELN for bombings—thus, the Principal Applicant did not fit the profile of persons whom the ELN would use for such purposes. Again, while the Applicants may disagree, the RPD's finding was based on the objective evidence and was reasonable.

[63] It is also of note that the RPD found that there was reason to doubt the Principal Applicant's testimony. This rebutted the presumption of truthfulness of his sworn evidence (*Maldonado v Canada (MEI)*, [1980] 2 F.C. 302). Further, not only did the Principal Applicant not fit the profile of persons recruited by the ELN and used for bombing he claimed that his agents of persecution were the 46th Front of the ELN. The RPD noted that the ELN has 7 fronts as well as a dedicated unit for carrying out attacks in major cities, the Urban War Front. The only reference to the 46th Front found in the objective evidence is FARC-EP Middle Magdalena Bloc

(46th Front) which operates in Santander department, not Bogota. Bogota is where the Principal Applicant claims he was abducted. This was part of the totality of the evidence that the RPD relied upon in finding that the Principal Applicant was not credible.

vii. State Protection

[64] The RPD first set the legal backdrop to the premise that claimants are required to make reasonable efforts to seek state protection. It then noted that the Principal Applicant did not inform the police or the Attorney General's Office about the ELN demand that he carry a bomb into the Governorate of Cundinamarca building. When asked why he had not done so, given the serious consequences of placing a bomb, the Principal Applicant's explanation was that he had already reported that the ELN had targeted him for a job and that when the ELN is implicated this always involves killing people so the authorities were aware of the seriousness of his situation. Further, that everyone knows that if the ELN approaches you, that you either work for them or you die. The ELN had also told him not to report anything to the authorities and the ELN had infiltrated government agencies.

[65] The RPD found this explanation for not reporting the bombing assignment and not seeking state protection not to be reasonable. First, the Principal Applicant had already filed the criminal complaints, even though he had been instructed not to do so and even though he asserts that the ELN had infiltrated government. Second, the situation changed on November 26, 2020 when the bombing assignment was made known to the Principal Applicant. The objective evidence indicated that if he had informed the authorities of the ELN's precise plans they would have taken immediate emergency measures to prevent the bombing and to protect the Principal

Applicant and his family. The RPD drew a negative inference against the Principal Applicant's overall credibility.

[66] The Applicants submit that, based on the Principal Applicant's testimony and the Second Police Complaint, it is clear that he took steps to seek state protection which was not forthcoming. Further, that it was unreasonable for the RPD to expect the Principal Applicant to report the bombing assignment considering that his "previous reports filed to the various authorities" did not result in adequate protection for him. Nor was he required to risk his life to seek protection merely to prove its ineffectiveness. They submit that they exhausted all reasonable measures to seek state protection. Further, the objective evidence supports that adequate state protection is not available.

[67] The Respondent points out that while the RPD did refer to state protection, it did so in the context of its overall credibility analysis. The RPD contrasted the Principal Applicant's failure to credibly or properly seek state protection with the seriousness of the crimes he allegedly feared and found this to be inconsistent with a genuine claim. Based on the country conditions documents, the RPD found, in the circumstances alleged, that if the Principal Applicant genuinely believed that he was at risk, he would have been provided with protection. The Respondent submits that the failure to take the next step in claiming protection undermined the credibility of the claim as it was inconsistent with "the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (citing: *Faryna v Chorny*, [1951] BCJ No 152 at para 10; *Marinaj v. Canada (Citizenship and Immigration)*, 2020 FC 548 [*Marinaj*] at paras 56, 68, 76).

[68] I note that, as the Respondent submits, the failure to seek state protection finding of the RPD was made within its credibility assessment. It appears, therefore, that the RPD was not conducting an assessment of the adequacy of state protection available to the Applicants.

[69] In any event, the RPD's assessment of the Principal Applicant's reason for not reporting to the police the instructions to carry a bomb into a government building was reasonable. The Principal Applicant made the First and Second Criminal Complaints even though he had been warned by the ELN not to do so and even though he believed that the ELN had infiltrated government agencies. In the Second Criminal Complaint, he indicated that the ELN 46th Front had told him that they had a specific job for him to do with the offices of the Governorate of Cundinamarca. His testimony before the RPD was that because the ELN is always involved in killing people, the police would have been aware of the seriousness of the situation. However, as the RPD stated, the situation changed when the ELN allegedly advised the Principal Applicant that the job was to bring a bomb into the government office. At that point, not only were the Principal Applicant and his family at risk, so were all of the people in the government building and those who would be impacted by the explosion. This was a much more serious situation and was not one that could be inferred by the police based on the content of the Second Criminal Complaint. Nor did the Principal Applicant explain in his testimony why he was willing to take the risk of making the First and Second Police Complaints but not risk reporting the intended bombing. The RPD reasonably rejected this aspect of the Principal Applicant's explanation.

[70] The RPD also indicated that the objective evidence indicates that immediate measures would have been taken by the police or the Attorney General's Office had they been informed of

the bombing plans, the changed circumstances. This amounted to extreme risk – serious, exceptional and imminent – which would entitle them to emergency protection measures. The NDP does contain a document entitled *Colombia: Fact-Finding Mission Report: Conflict Dynamics in the Post-FARC-EP Period and State Protection*. This describes the National Protection Unit [UNP] as well as three levels of described risk, ordinary, extraordinary and extreme. Extreme risk is stated to be “Risk that occurs when all the criteria indicated for extraordinary risk are met and that is additionally serious and imminent”. While typically, a risk assessment is completed in 30 days:

The Director of the UNP also has the ability to grant, without the need of a formal risk assessment, [translation] "emergency" protection measures when the risk is "imminent and exceptional." A formal risk assessment is done after the initial protection measures have been granted in order to adjust or modify the existing ones.

[71] This evidence does not support the Principal Applicant’s assertion in his narrative that a further denunciation was not made because the Applicants realized that the Attorney General’s Office had a backlog of denunciations and therefore could not do much to resolve their quickly enough.

[72] The RPD’s finding that the Principal Applicant failed to reasonably explain why he had not reported and sought protection in the face of a greatly expanded, serious risk (by bombing) to not only the Applicants but others, was reasonable, and reasonably resulted in a negative credibility finding.

[73] Finally, I would also note that while the Applicants submit that, based on the Principal Applicant's testimony and the police complaints, it is clear that he took steps to seek state protection which was not forthcoming, the complaints were found by the RPD not to be genuine. As stated by Justice Norris in *Marinaj*, "As a matter of logic, if the applicant had not established a credible foundation for his fear of persecution, the question of whether he has rebutted the presumption of state protection simply does not arise. In short, it is immaterial" (at para 77).

[74] Thus, while the Applicants make arguments as to the adequacy of state protection, they cannot succeed and need not be addressed in these circumstances.

Conclusion

[75] I do not agree with the Applicant that the RPD failed to consider the totality of the evidence. And, while two of its credibility findings were not reasonable, all of the other credibility findings were justified, reasonable and together were sufficient to support the RPD's overall credibility determination.

JUDGMENT IN IMM-4753-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4753-22

STYLE OF CAUSE: LEONARDO TORRES SAENZ, BIBIANA JUDITH CALDERON RICO, SHARON YALLENA TORRES CALDERON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 25, 2023

JUDGMENT AND REASONS: STRICKLAND J.

DATED: JUNE 9, 2023

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