

Federal Court



Cour fédérale

Date: 20230405

Docket: IMM-4540-22

Citation: 2023 FC 482

[ENGLISH TRANSLATION]

Montréal, Quebec, April 5, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

SANTIAGO GONZALEZ SOTO

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This application for judicial review concerns the decision of the Refugee Protection Division [RPD] to reject the applicant's refugee protection claim because there is an internal flight alternative [IFA]. For the following reasons, the application for judicial review is dismissed.

II. Background and facts

[2] The applicant is a citizen of Colombia. He fears persecution by the National Liberation Army [ELN], who repeatedly tried to recruit him in 2015 while he was at a high school. The applicant resisted these recruitment efforts by transferring schools and then fleeing Colombia for the United States in 2016.

[3] The applicant's family attempted to join him in the United States, but they were deported to Colombia. His family subsequently fled to Chile, where they currently live. After witnessing what happened to his family, the applicant feared that the same would happen to him if he sought asylum in the United States. Therefore, he lived there illegally until he claimed refugee protection in Canada in March 2020.

[4] On February 21, 2022, his refugee protection claim was heard by the RPD. On April 1, 2022, the RPD rejected his refugee protection claim [Decision] because of the existence of an IFA in Medellin. The RPD concluded that the applicant did not meet his burden of establishing that the ELN has the motivation to locate and recruit him five years after he left Colombia.

[5] The Decision is the subject of this judicial review because the applicant's appeal to the Refugee Appeal Division was dismissed for lack of jurisdiction.

III. Analysis

[6] In this case, the issue is whether the Decision is reasonable, in other words, whether it 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” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 85).

[7] As the RPD has concluded that the events experienced by the applicant in Colombia are credible, the determinative issue is the existence of an IFA in Medellin. For this, the RPD must be satisfied on a balance of probabilities (i) that there is no serious risk of the applicant being persecuted in Medellin; and (ii) that it would not be unreasonable, given all the circumstances, including those particular to the applicant, for him to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at p 709; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at pp 595–99). The onus is on the applicant to rebut the presumption of an IFA by showing that the RPD has not established one of the two prongs of the above test (*Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 45).

[8] The applicant argues that the RPD erred in its analysis of the first prong by concluding that the ELN does not have the motivation to search for him because (i) he has no information about the organization that may put him at risk; and (ii) he is no longer a school principal and has had no relationship with the ELN since he left Colombia.

[9] The applicant argues that the RPD did not consider the ELN's perception in determining that he had no information that would put him at risk. In the applicant's view, regardless of whether he had actual knowledge of intelligence on ELN, the mere fact that the organization thought that he had overheard important conversations among its members was enough for it to target him.

[10] I disagree. The RPD reasonably concluded that the applicant did not have any information about the ELN that may put him at risk. When the RPD asked the applicant about alleged sensitive information of which he was aware, he was unable to provide a precise answer: he did not know the names of the ELN members with whom he interacted beyond their pseudonyms, he could not describe how the ELN had infiltrated some universities, and he did not know who at these universities was being extorted by the ELN, or how.

[11] It was therefore reasonable for the RPD to conclude that the applicant did not know of any confidential or sensitive information about the illegal activities of the ELN, how it operates, or the identity of its members.

[12] Furthermore, the applicant did not submit any objective evidence to support his argument that his knowledge of the ELN's operations is sufficient to establish its motivation to search for him in Medellin and therefore did not meet his high burden of proving that the proposed IFA was objectively unreasonable (*Henao v Canada (Citizenship and Immigration)*, 2020 FC 84 at para 11, citing *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at paras 15–17).

[13] I also note that in his argument on appeal to the RAD, the applicant stated that [TRANSLATION] “[a]t the hearing, the claimant testified that his agents of persecution shared important information about how they work and that, for this reason, they want to make him disappear”. The allegations of persecution filed by the applicant before the RAD were therefore not based on the ELN’s perception of his knowledge but on the information he claimed to know.

[14] In addition, the applicant relies on *Sabogal Riveros v Canada (Citizenship and Immigration)*, 2012 FC 547 [*Sabogal Riveros*], *Parra v Canada (Citizenship and Immigration)*, 2013 FC 65 [*Parra*] and *Sanchez v Canada (Citizenship and Immigration)*, 2018 FC 66 [*Sanchez*] to argue that the RPD erred in making a plausibility finding. The applicant argues that the RPD speculated on the ELN’s motivation to search for him and did not consider objective evidence that showed that the organization was active in the region of Medellin, including tabs 7.35 and 7.23 of the National Documentation Package [NDP].

[15] I cannot agree with the applicant’s argument. The RAD reasonably reviewed the objective evidence in tabs 7.35 and 7.23 and concluded that the ELN does not have a strong presence in Medellin. The evidence from the NDP to which the applicant referred in his argument to claim that the ELN had a strong presence in Medellin is not convincing. I note, for example, that at Tab 7.35, although it is indicated that the ELN was present on the outskirts of Medellin, as emphasized by the applicant in his arguments, the whole sentence explains that the government carried out two military offensives in 2002 and 2005–2006 to expel the ELN from the outskirts of Medellin and from the eastern portion of the department of Antioquia, where Medellin is located.

[16] In addition, the map in Attachment 1 to Tab 7.23 also confirms that any ELN presence in Antioquia is concentrated in the northeast, whereas Medellin is located in the southwest. I therefore conclude that the RAD did not err in its analysis of the documentary evidence or in its conclusion that the ELN did not have a strong presence in Medellin.

[17] In any event, the RPD conceded in its reasons that [TRANSLATION] “given [the ELN’s] presence in many parts of the country and its structure, it might be able to track a target relocating within Colombia”. The RPD therefore established that the ELN had the *ability* to search for the applicant throughout the country; therefore, the evidence that indicated that the ELN was active in the Medellin area has no bearing on the determining factor in the RPD’s reasoning, which was that the ELN did not have the *motivation* to pursue the applicant. For the first prong of the test to determine the existence of an IFA, claimants must establish their persecutor’s ability and motivation to pursue them (*Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13 [*Leon*]).

[18] In this case, the applicant did not submit objective evidence to support the fact that he has information about the ELN that would put him at risk. Furthermore, the applicant argues that the ELN has the motivation to search for him because he refused to be recruited when he was a school principal and that it does not like to [TRANSLATION] “leave any traces”. The applicant notes that the RPD has recognized that he was harassed and assaulted even after changing schools, demonstrating that the threats and persecution extend beyond the period during which he was a school principal.

[19] Nevertheless, the RPD noted that [TRANSLATION] “[n]othing in the NDP on Colombia suggests that that the ELN tends to seek out individuals who have refused to be recruited into the group when they were studying or to make them military targets, and the claimant has presented no objective evidence to support this allegation”.

[20] The RPD’s conclusion is therefore a reasonable inference, given the complete lack of objective evidence, and is not a plausibility finding concerning the ELN’s motivation to pursue the applicant (*Leon* at para 18). I also note that at the hearing before this Court, the applicant’s counsel was unable to indicate where in the previous reasons the alleged plausibility finding was to be found.

[21] Furthermore, the applicant’s situation differs from that of the applicant in *Sabogal Riveros*, on which the applicant relies. Ms. Sabogal Riveros was working for a bank but resigned and claimed refugee protection in Canada after refusing to help FARC members commit fraud. She had submitted several pieces of evidence to substantiate that the FARC had the means and motivation to find her if she returned to Colombia, including testimony from a member of the Colombian army that her resignation would increase her risk of persecution (*Sabogal Riveros* at para 48).

[22] In the other cases cited by the applicant, *Parra* and *Sanchez*, the Court concluded that the panel had made plausibility findings because these findings were not supported by the evidence on the record. However, in this case, the applicant has not submitted any compelling evidence to demonstrate that his personal circumstances are such that the ELN still has the motivation to find

him and has therefore failed to meet his burden of proving that there is a prospective risk if he were to relocate to Medellin. The RPD's conclusion was therefore reasonable and based on the applicant's insufficient evidence and not a hypothetical or plausibility finding.

[23] The applicant did not raise any arguments concerning the second prong of the test to establish the existence of an IFA, and I am of the view that the RPD's analysis on this point was reasonable.

IV. Conclusion

[24] For the above reasons, the Decision is reasonable, and I therefore dismiss this application for judicial review.

JUDGMENT in IMM-4540-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

“Alan S. Diner”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4540-22

STYLE OF CAUSE: SANTIAGO GONZALEZ SOTO v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 28, 2023

JUDGMENT AND REASONS: DINER J.

DATED: APRIL 5, 2023

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