

Federal Court



Cour fédérale

Date: 20240315

Docket: IMM-11617-22

Citation: 2024 FC 427

Ottawa, Ontario, March 15, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

BRAYAN YESID ZAMUDIO PARDO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant, a citizen of Columbia, seeks judicial review of a decision by the Refugee Appeal Division [RAD] refusing his claim for refugee protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] on the basis that he had an Internal Flight Alternative [IFA] in either Santa Marta or Sincelejo, Columbia.

[2] I am dismissing the application because the RAD's decision that the Applicant had a viable IFA in either Columbian city is reasonable. Applying the two-pronged test for assessing an IFA, the RAD reasonably determined that the agent of persecution – a criminal gang – did not have the motivation nor the means to find the Applicant in either city and that it was reasonable, in the Applicant's particular circumstances, for him to seek refuge in these proposed IFA locations.

II. Background

[3] Shortly after entering Canada with his partner in 2019, the Applicant made a claim for refugee protection based on his fear of harm by a criminal gang in Columbia known as Los Rastrojos. His partner's refugee claim was made separately (due to being a minor at the time) and was accepted.

[4] The Applicant alleged that his partner's brother had an affair with a Los Rastrojos member's wife, which led the gang to assassinate him. The Applicant claimed that this made his partner a target for the criminal group and that the Applicant himself became a target once his partner fled to Mexico. In particular, the Applicant alleged that he received threats from Los Rastrojos who were seeking the whereabouts of his partner's family. In January 2019, the Applicant was attacked and stabbed, causing him to flee to Mexico and then to Canada.

[5] The Refugee Protection Division [RPD] rejected the Applicant's claim in June 2022 on the basis that the Applicant had an IFA in both Santa Marta and Sincelejo. By decision dated November 7, 2022, the RAD confirmed the RPD's decision and concluded that, on a balance of probabilities, the Applicant had a viable IFA in Columbia.

III. Issues and Standard of Review

[6] The sole issue for determination is whether the RAD erred in finding that the Applicant had a viable IFA in Columbia. There is no dispute that the applicable standard of review is that of reasonableness: *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32 [*Sadiq*]; *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 5 [*Olusola*].

[7] 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”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59-61.

IV. Analysis

[8] In my view, the RAD’s determination that the Applicant had a viable IFA in either Santa Marta or Sincelejo is reasonable. The RAD thoroughly canvassed all of the Applicant’s arguments in comprehensive reasons that are intelligible, justified, and transparent.

A. *The RAD's application of the IFA test is reasonable*

[9] It is well established that a refugee claim should be dismissed where the claimant has a viable IFA in their country of nationality: *Sadiq* at para 38; *Olusola* at para 7.

[10] A two-pronged test is applicable to determining the viability of an IFA. The first prong considers whether the claimant would be subject to a serious possibility of persecution under section 96 or to a risk of harm under subsection 97(1) of the *IRPA* in the proposed IFA. The second prong assesses whether it would be reasonable, in all the circumstances, to expect the claimant to seek safety in the IFA: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at paras 8, 10 [*Singh*]; *Olusola* at para 8; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10-12 [*Hamdan*].

[11] Once an IFA is proposed, the onus is on the claimant to prove that they do not have a viable IFA: *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 20 [*Adeleye*]; *Olusola* at para 9. As set out below, the Applicant failed to discharge his burden of proof.

- (1) First prong – The Applicant failed to establish the agent of persecution's motivation and means

[12] To satisfy the first prong of the IFA test, it is incumbent on a claimant to establish that they are at risk from the same agent of persecution in the proposed IFA. In assessing this risk, the agent of persecution's "motivation" and "means" to locate the claimant in the proposed IFA are considered: *Singh* at para 8; *Adeleye* at para 21. This assessment is a prospective analysis that is

considered from the agent of persecution's perspective rather than the claimant's: *Aragon Caicedo v Canada (Citizenship and Immigration)*, 2023 FC 485 at para 12; *Adeleye* at para 21. In this case, the RAD reasonably assessed both the motivation and the means of Los Rastrojos to locate the Applicant in Santa Marta or Sincelejo.

[13] While the Applicant testified that he believed that Los Rastrojos would still be interested in him despite leaving Columbia over three years ago, the RAD concluded that this belief was not objectively reasonable. Contrary to the Applicant's argument, the RAD did not impeach the Applicant's credibility. Rather, the RAD accepted that the Applicant subjectively believed that Los Rastrojos was still motivated to find him, but found that there was no objective evidence to support this subjective belief. This reasoning is consistent with the Court's jurisprudence.

[14] As explained by Justice McHaffie, the "presumption of truth" referred to in *Maldonado v Minister of Employment and Immigration*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (CA) is "simply that a sworn witness is telling the truth" – it is not a "presumption that everything the witness believes to be true, but has no direct knowledge of, is actually true": *Olusola* at para 25. Relying on this decision, the RAD properly determined that "[t]he Maldonado presumption does not require the RPD to accept as objectively true what the Applicant believes to be true": Refugee Appeal Division's Reasons and Decision dated November 7, 2022 at para 15 [RAD's Reasons].

[15] In finding that the Applicant failed to establish that Los Rastrojos was motivated to pursue and locate him in either IFA location, the RAD relied on Los Rastrojos' lack of contact with the Applicant, his partner's family, and his own family, in Columbia:

It is more likely than not that a criminal organization motivated to pursue a person of interest throughout a country would initiate the search locally. As well, a pattern of threats or efforts to locate the person may be an indicator of strong and persistent motivation. On a balance of probabilities, contacting those closest to the person of interest to locate the individual would be a likely first step in a search before engaging more involved means or efforts at a farther distance. The absence of contact with the Appellant since departing Colombia and his family who remains in Colombia as well as SJM's mother having no issues in Mexico is not indicative of an organization motivated to locate the Appellant, on a balance of probabilities.

RAD's Reasons at para 16.

[Citations omitted]

[16] I do not agree with the Applicant that the RAD's risk assessment in this regard was speculative. Rather, this was a reasonable inference for the RAD to make. This Court has consistently held that a lack of evidence of efforts by the agent of persecution to find a claimant by contacting their family members can reasonably support that there is no ongoing motivation to locate them: *Jamal v Canada (Citizenship and Immigration)*, 2023 FC 1633 at para 27; *Ocampo v Canada (Citizenship and Immigration)*, 2021 FC 1058 at para 28; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at paras 16, 18, 23; *Rofriguez Llianes v Canada (Citizenship and Immigration)*, 2013 FC 492 at para 10.

[17] With respect to Los Rastrojos' means to locate the Applicant, the objective evidence established that the gang's presence in Columbia had declined after its leadership structure was dismantled in 2012. The RAD found that Los Rastrojos continued to operate through three factions

with little coordination or communication and that it had no presence in the proposed IFA locations.

[18] I do not accept that the RAD failed to consider the Applicant's argument that Los Rastrojos had formed alliances with other organizations that strengthened its means and reach. Indeed, the RAD accepted that, despite its diminution, Los Rastrojos "maintained enough presence and power through three factions that it would be possible for the criminal organization to track an individual of interest": RAD's Reasons at para 23. Ultimately, however, the RAD concluded that given its diminished capabilities Los Rastrojos was more likely to use its limited resources to target individuals of more significant interest than the Applicant. This finding was reasonably open to the RAD after it assessed the relevant evidence. It is not for this Court sitting in review to reweigh and reassess the evidence: *Vavilov* at para 125.

[19] Based on the totality of the evidence – the passage of time since the Applicant had left Columbia, the gang's lack of contact with the Applicant or his family, and the gang's diminution of power – the RAD reasonably concluded that Los Rastrojos did not have the motivation nor the means to locate the Applicant in either IFA location.

- (2) Second prong – The Applicant failed to establish that his life and safety would be in jeopardy

[20] A claimant's burden to satisfy the second prong of the IFA test is high. Proving undue hardship is not enough: *Fashola v Canada (Citizenship and Immigration)*, 2023 FC 1671 at para 44; *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 at para 30. A claimant must

establish with “actual and concrete evidence” that their life and safety would be in jeopardy in the IFA: *Olusola* at para 9; *Hamdan* at para 12. Here, the Applicant failed to meet this high evidentiary burden.

[21] I do not agree with the Applicant that the RAD failed to assess the relevant evidence. To the contrary, the RAD thoroughly addressed the evidence and arguments related to the Applicant’s language, religion, skills and experience, the unemployment rate in Columbia, the prospect of finding accommodation, and the absence of relatives in the proposed IFA locations: RAD’s Reasons at paras 26-33. While acknowledging that the Applicant “may experience hardship”, the RAD concluded that he failed to meet the high threshold required to find that the proposed IFA locations were unreasonable in his particular circumstances: RAD’s Reasons at para 34.

[22] The Applicant further argues that the RAD failed to consider that, in the past, he could not find employment selling flowers in Columbia and had to move to Ecuador. I disagree. The RAD acknowledged that the Applicant might not be able to find the same type of employment in the IFA locations that he previously held in Columbia or Canada. However, the RAD found that the Applicant had transferrable skills given that he had gained experience in the service industry while working for a food delivery application in Canada. Based on country condition evidence, the RAD concluded that one of the IFA locations (Santa Marta, a major seaport) “supports restaurants and requires delivery services of all kinds”: RAD’s Reasons at para 28.

[23] Furthermore, the RAD acknowledged the unemployment rate of 9.7% in Columbia, but noted that the largest employment sector in Columbia is the service industry, a sector in which the Applicant has experience.

[24] I am therefore unable to find that the RAD made any reviewable errors in assessing the second prong of the IFA test. The Applicant, in essence, disagrees with the RPD and the RAD's weighing and assessing of the evidence. Again, it is not the role of a reviewing court to reweigh and reassess the evidence.

V. Conclusion

[25] Based on the foregoing, the RAD reasonably determined that the Applicant failed to satisfy the two-pronged test determining viability of an IFA, and that he had viable IFAs in Columbia, in both Santa Marta and Sincelejo.

[26] The parties did not propose a question for certification and I agree that none arises in this case.

JUDGMENT in IMM-11617-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11617-22

STYLE OF CAUSE: BRAYAN YESID ZAMUDIO PARDO v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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**JUDGMENT AND REASONS
FOR JUDGMENT:** TURLEY J.

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