Federal Court  Cour fédérale

Date: 20240410

Docket: IMM-1503-23

Citation: 2024 FC 558

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 10, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

WILSON ALBERTO MORALES QUINTERO
JENNIFER PAOLA MONDRAGON GONZALEZ
JUAN ESTEBAN MORALES MONDRAGON
SARA VALENTINO MORALES MONDRAGON

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The principal applicant, Wilson Alberto Morales Quintero; his wife, Jennifer Paola Mondragon Gonzalez; and their children, Juan Esteban Morales Mondragon and

Sara Valentino Morales Mondragon (the minor associate applicants) [collectively the Applicants], are citizens of Colombia. They are seeking judicial review of the decision by the Refugee Protection Division [RPD] made on January 5, 2023 [the Decision]. At that time, the RPD concluded that the Applicants had not established that, on a balance of probabilities, they were at risk of being personally subjected to a risk to their lives or a risk of cruel and usual treatment or punishment if they returned to Colombia and that they were not refugees within the meaning of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Immigration Act], or persons in need of protection within the meaning of subsection 97(1) of the Immigration Act.

[2] The RPD stated that the determinative issue in the case at hand was the internal flight alternative [IFA] in Mitú or Inrida, cities in Colombia.

[3] In relation to the first prong of the IFA test, the RPD considered that the Applicants had not established, on a balance of probabilities, the risk of being personally subjected to a risk to their lives or a risk of cruel and usual treatment or punishment in Mitú or Inrida, as the alleged agent of harm, the Clan del Golfo, would have no motivation to locate them in these cities.

[4] With respect to the clan's interest in locating the Applicants in the proposed IFAs, the RPD (1) noted that the Applicants had failed to mention in their Basis of Claim Form (BOC Form) that the note that was left with them by the Clan del Golfo in August 2020 identified them as a [TRANSLATION] "military target", and the RPD did not accept the reasons raised by the Applicants to explain this omission and therefore concluded that they were not designated as a military target; (2) noted that the Applicants did not receive any other threats

between August 2020 and their departure from Colombia on December 30, 2020, which is inconsistent with the alleged designation and indicates that the Clan del Golfo is not motivated to find them; (3) noted that the Applicants had failed to mention in their BOC Form the threats that two family members had allegedly received in October 2021 and February 2022, and the RPD did not accept the reasons raised by the Applicants for this omission and therefore found that neither of the family members had received such threats; (4) gave no weight to the affidavits of these two family members; and (5) noted that the proposed cities are not located in areas under the influence of the Clan del Golfo according to the objective evidence (National Documentation Package, Colombia, October 3, 2021, Tab 1.2: *Colombia's illegal armed groups* (maps), Colombia Reports, August 12, 2022 [NDP]).

[5] Having concluded that the Clan del Golfo is not motivated to locate the Applicants in the proposed IFAs, the RPD did not analyze the clan's ability to locate them there. The RPD concluded that the Applicants could live safely in Mitú and Inrida and that, on a balance of probabilities, they would not be subjected to one of the risks listed in subsection 97(1) of the Immigration Act.

[6] In relation to the second prong of the IFA test, the RPD noted that the Applicants have acknowledged that they could find work and housing in the two proposed IFAs and that the minor associate applicants could go to school in these two IFAs. The RPD therefore concluded that the two cities proposed as IFAs are objectively reasonable places where the Applicants could relocate.

[7] Before the Court, the Applicants are only challenging the RPD's conclusions on the first prong of the test. The Applicants essentially argue (1) that the RPD conducted an unreasonable analysis of the two omissions and should instead have accepted the explanations they provided, which were reasonable given the presumption of truthfulness; (2) that it is unreasonable for the RPD to use a group's inactivity for a few months to deny the motivation to find the Applicants, which had persisted for years; (3) that the RPD unreasonably dismissed the warning included in the same document in the evidence it used to argue that the IFAs are not within areas under the Clan del Golfo's influence, which the Applicants consider to be related more to the clan's means than to its motivation to locate them.

[8] For the reasons set out below, I will dismiss the application for judicial review. The Applicants have not demonstrated that the RPD erred and that its Decision is unreasonable; on the contrary, the RPD's reasons show that its Decision is based on an internally coherent and rational chain of analysis that is justified in light of the applicable legal and factual constraints (*Canada (MCI) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

II. Analysis

[9] The RPD's conclusions regarding the existence of a viable IFA must be reviewed on the reasonableness standard (*Djeddi v Canada (Citizenship and Immigration)*, 2022 FC 1580 at para 16; *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at para 19; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 14; *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 at para 6; *Singh v Canada (Citizenship and Immigration)*,

2020 FC 350 at para 17; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11).

[10] The Court must therefore determine whether the Decision is based on an internally coherent and rational chain of analysis that is justified in light of the legal and factual constraints (*Vavilov* at para 85).

[11] Furthermore, in the context of a judicial review, the reviewing court is not authorized to reassess the evidence or substitute its own assessment for that of the RPD in the case at hand. Deference to an administrative decision maker includes deferring to its findings and its assessment of the evidence. This means that the reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55, citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 64).

[12] Furthermore, and with respect to the assessment of credibility, I note the words of Denis Gascon J. in his decision *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paragraph 15:

> [15] This deferential approach is particularly required when, as in this case, the impugned findings relate to the credibility and plausibility of a refugee claimant's story. It is well established that RPD's conclusions in that regard command a high degree of judicial deference upon judicial review, considering the role of trier of fact conferred to the administrative tribunal (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [Khosa] at paras 59, 89; *Lawal v Canada (Citizenship and Immigration)*, 2015 FC 155 at para 9). Credibility findings go to the very core of the RPD's expertise and have indeed been described as the "heartland" of the RPD's jurisdiction (*Siad v Canada (Secretary of*

> *State)*, [1997] 1 FC 608 (FCA) at para 24; *Gomez Florez* at para 19; *Soorasingam* at para 16; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 [*Lubana*] at paras 7-8). The RPD is better placed to assess the credibility of a refugee claimant as the panel members see the witness at the hearing, observe the witness's demeanour and hear his or her testimony. The panel members thus have the opportunity and ability to assess the witness in respect of frankness, readiness to answer, coherence and consistency of oral testimony before them (*Navaratnam v Canada (Citizenship and Immigration*), 2011 FC 856 at para 23). In addition, the RPD benefits from the specialized knowledge of its members to assess evidence relating to facts stemming from their field of expertise (*El-Khatib v Canada (Citizenship and Immigration)*, 2016 FC 471 at para 6).

[13] In addition, the Federal Court of Appeal has developed a two-pronged test to determine whether there is an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 1993 CanLII 3011 (FCA) [*Thirunavukkarasu*]).

[14] Thus, (1) the administrative decision maker must be satisfied, on a balance of probabilities, that there is no serious possibility of the refugee protection claimant being persecuted in the part of the country to which it finds an IFA exists; and (2) the conditions in the part of the country proposed as an IFA must be such that it would not be unreasonable in all the circumstances to seek refuge there (*Gonzalez Pastrana v Canada*, 2024 FC 296 at para 27 [*Gonzalez Pastrana*]; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15; *Reci v Canada (Citizenship and Immigration)* 2016 FC 833 at para 19).

[15] Under the first prong of the test, refugee protection claimants must establish that the agent of persecution has the means and motivation to locate them in the proposed IFA (*Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29). This Court has determined that both tests (means and motivation) must be established for the refugee protection claimant to successfully challenge the suggested IFA under the first prong of the test (*Ortega v Canada (Citizenship and Immigration)*, 2023 FC 652; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428).

[16] The burden is on the refugee protection claimant to establish that an IFA is unreasonable, and it is a very high burden (*Thirunavukkarasu* a 594–95; *Manzoor-Ul-Haq v (Citizenship and Immigration)*, 2020 FC 1077 at para 24; *Gonzalez Pastrana* at para 28; *Huenalaya Murillo v Canada (Citizenship and Immigration)*, 2022 FC 396 at para 13; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 14). Refugee protection claimants must provide actual and concrete evidence of conditions that would jeopardize their life or safety in the location identified by the RPD (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) at para 15; *Campos Navarro v Canada (Citizenship and Immigration)*, 2008 FC 358 at para 20; *Olivares Sanchez v Canada (Citizenship and Immigration)*, 2012 FC 443 at para 22).

[17] The Decision must be reviewed with these guidelines in mind.

[18] First, in relation to the omissions, the Applicants essentially reiterate their explanations to the RPD and ask the Court to substitute the RPD's assessment with its own.

[19] The Applicants therefore reiterate that at the hearing, they told the RPD that they may have forgotten to write certain information in their BOC Form, which, what is more, they completed on their own, and that their error stems from the fact that they did not translate the entire note from the agents of harm. The Applicants also point out that they stated that they only speak Spanish and did not have the assistance of an interpreter to complete their form and their written account (Applicants' Memorandum at para 34).

[20] In relation to the threats directed at two of their family members, the Applicants explain that these events occurred after they had written the account in March 2021 and that they were unaware that they could amend their account to include the facts in question. They add that the fact they are now assisted by counsel is not enough as they completed their BOC Form without counsel's support.

[21] Finally, the Applicants explain that they filed sworn statements of individuals who were approached by the agent of harm in October 2021 and February 2022, evidence that corroborates the allegations that the Clan del Golfo had the motivation to locate them and that they had been designated as a military target. They allege that the RPD used circular reasoning that affects the internal rationality of the Decision and that this makes the Decision unreasonable under *Vavilov*. They further explain that the rejected statements are documents validated by a notary, a public officer that, in Colombia, has the authority to issue authentic documents. They also have a logical structure that coincides with their allegations. They submit that depriving these statements of any probative value, because of the prior credibility findings, is unreasonable and an error reviewable by this Court (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1999] 1 FC 52).

[22] The Applicants confirmed at the hearing for this application that the omissions raised by the RPD are proven, which is also confirmed by a review of the record.

[23] Before the Court, the Applicants therefore reiterate the same explanations presented to the RPD and are asking this Court to conclude differently. However, there are no grounds that would allow or justify the Court's intervention. In this respect, I note that (1) the designation as a military target is important and has adverse consequences, so it is reasonable to expect the Applicants to include this element in their account, which is many pages long and quite detailed; (2) the documents in the certified tribunal record confirm on the contrary and unequivocally that the Applicants were assisted by an interpreter when they wrote the account attached to their BOC Form; and (3) the Applicants had counsel before the RPD.

[24] The RPD reasonably rejected the explanations provided by the Applicants as insufficient. There is no evidence that the RPD's analysis is too narrow, overzealous, or microscopic.

[25] With respect to the period between August 2020 and the Applicants' departure in December 2020, it is certainly not unreasonable for the RPD to note and consider, for the purpose of assessing the agents of harm's interest in them, the fact that the Applicants have not received any threats, even though the RPD accepted the facts regarding the activity from 2013 to 2020.

[26] In addition, the case law has confirmed that when the RPD questions the Applicants' credibility, it can give little probative value to the documentary evidence (*Gebetas v Canada*

(Citizenship and Immigration), 2013 FC 1241 at paras 28–29; *Elmi v Canada (Citizenship and Immigration)*, 2015 FC 557 at para 28; *Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704 at para 28).

[27] Finally, the Applicants did not establish that the reference to the NDP is incorrect, or that an error in this regard would have a material impact on the Decision.

III. Conclusion

[28] For these reasons, the Applicant's application for judicial review is dismissed. The Decision has the qualities of intelligibility, transparency and justification required under the reasonableness standard (*Vavilov*), and there are no grounds for the Court to intervene.

JUDGMENT in IMM-1503-23

THIS COURT ORDERS as follows:

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

"Martine St-Louis"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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