

Federal Court



Cour fédérale

Date: 20240307

Docket: IMM-9570-22

Citation: 2024 FC 384

Ottawa, Ontario, March 7, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

NICOLAS BENJUMEA GALINDO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Protection Division (the “RPD”). The Decision found that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

II. Background

[2] Nicolas Benjumea Galindo (the “Applicant”) is a 30-year-old citizen of Colombia.

[3] The Applicant resided in the city of La Union, Colombia, where he worked as a driver for a company. In February 2017, armed members of the Fuerzas Armadas Revolucionarias de Colombia (hereafter, the “FARC”) stopped him at a checkpoint and informed him that he was not permitted to work in the area, citing his company’s failure to provide them with payments they demand to grant such permission. They forced the Applicant to leave the area and threatened him with death if he returned.

[4] The Applicant did not report the February 2017 incident to either his employer or to the authorities. He claims that he omitted to do so out of fear that he would lose his job, since finding another job would have been difficult and he needed to support his family. However, the Applicant also admits that he took no steps to protect himself.

[5] The Applicant alleges that in May 2017, the FARC came to his home and threatened him. The Applicant subsequently resigned from his job and fled to the city of Florencia.

[6] The Applicant again failed to report the incident to his employer or to the authorities. He justified his decision in various ways at different times. At certain points, he claimed that he did not want to report the May 2017 incident because the employer would have already known what was happening, and because he did not want to worry his family, particularly his mother, who was

being treated for cancer at the time. At other points, he stated that the authorities would not have taken action.

[7] The Applicant resided in Florencia without issue until January 2019. During a visit to La Union, the Applicant alleges that he was approached by an individual who threatened him with death for being in the city, against the FARC's demand that he not return there. The Applicant ran away and when he encountered a soldier who stopped him and asked for identification, he did not inform the soldier of the threats he was facing. He claims that he was fearful of retaliation should he report the matter to the authorities.

[8] The Applicant first reported the February 2017 and the January 2019 incidents to the Fiscalia (i.e. the prosecutor's office) in April 2019 (the "Fiscalia Report"). The Fiscalia Report made no mention of the May 2017 incident and did not name the FARC specifically. The Applicant claims that he decided to omit those details because he did not trust the Fiscalia, whom he believed to be corrupt, and wanted to protect himself from retaliation by the FARC. He nevertheless admits that he never followed up with the authorities regarding his report.

[9] The Applicant also reported the February and May 2017 incidents to the Ombudsman's Office in April 2019 (the "Ombudsman Report"). The Applicant did not follow up with the Ombudsman about his complaint. This is despite the fact that the Applicant acknowledged in his personal narrative that he "believed this office was not corrupt like the [F]iscalia".

[10] The Ombudsman provided a response (the “Ombudsman Response”), in which the Applicant was informed that he would be guaranteed protection and reparations. The Applicant claims that, despite the content of the Ombudsman Response, he was not afforded protection. However, he also admits that he never contacted anyone to clarify what protection would be offered.

[11] In September 2019, the Applicant alleges that the FARC attempted to kidnap him. The Applicant subsequently fled to Bogota, then the United States, and then Canada, where he claimed refugee protection in February 2020.

III. The Decision

[12] The RPD denied the Applicant’s claim. It found that the Applicant’s allegations related to criminality and presented no nexus to a Convention ground under section 96 of the Act. Therefore, the sole question was whether the Applicant’s allegations demonstrate that he is a person in need of protection under section 97 of the Act.

[13] The RPD concluded that the Applicant was not a person in need of protection because his allegations lacked credibility. The RPD’s conclusion was based on various inconsistencies and omissions in the Applicant’s story.

A. *The February and May 2017 Incidents*

[14] The RPD observed that the Applicant alleges that he did not immediately report the February 2017 incident to his employer or to the authorities because he feared losing his job. The RPD noted that, assuming that this justification is true, the Applicant would be expected to report the incident if that underlying fear is no longer present. Therefore, the Applicant's failure to disclose the February and May 2017 incidents after he resigned from his job undermined his credibility.

[15] The Applicant's response to the RPD concern was that he did not inform his employer once he resigned from his job after May 2017 because the employer would have already known about the incidents. The RPD found this response to be inconsistent with the Applicant's evidence that he informed none of his colleagues about the incidents. The inconsistency further undermined the Applicant's credibility.

[16] The RPD also found that the Applicant marred his credibility with his testimony that he took no steps to protect himself after the February 2017 incident and that he never thought of the incident again. The RPD concluded that the Applicant's conduct was inconsistent with someone who fears for their life.

[17] The RPD was also unsatisfied by the Applicant's argument that his failure to report the incidents arose out of a concern not to alarm his sick mother or the rest of his family. The RPD noted that the Applicant was not able to explain why reporting the incidents would worry his

family. When asked about the subject, the Applicant abruptly changed his justification and alleged that the authorities would not take any action. Based on the level of risk he is alleging, the RPD expected the Applicant to prioritize reporting the incidents to the authorities and to mitigate his family's concern by not informing them of his report. The RPD drew an adverse inference from the Applicant's failure to do so.

[18] More generally, the RPD found that the Applicant's justifications for his failure to report the February and May 2017 incidents shifted and evolved along with the concerns the RPD raised. This undermined his credibility generally, but particularly with regards to the alleged incidents that took place in February and May 2017.

[19] The RPD held that, on a balance of probabilities, the Applicant was not attacked or threatened in February or May 2017.

B. *The January 2019 Incident*

[20] The RPD observed that the Applicant's evidence identified conflicting dates as to when the incident took place. The Applicant testified that it occurred in late January 2019, whereas the Applicant's stepfather alleged that it took place in mid-February of that year. The RPD drew a negative inference from the Applicant's inability to justify the discrepancy.

[21] The RPD also noted that, according to the Applicant, immediately after the January 2019 incident took place, and as he was fleeing from the agents of harm, he was asked by a soldier to present identification papers in the midst of a crowd near a stage. The RPD expected a person in

the Applicant's position to inform the soldier of the threat they are facing. The RPD found that the Applicant's failure to seek assistance from the soldier undermined his credibility.

[22] The RPD concluded that the Applicant was not attacked or threatened in January 2019 as alleged.

C. *The Reports*

[23] The RPD examined the Fiscalia Report and the Ombudsman Report. It stated that both reports fail to specify that the FARC is the agent of harm and the instigator of the incidents of which the Applicant complains. It also observed that the reports do not identify all of the incidents. The Fiscalia Report discusses the February 2017 incident and the January 2019 incident, whereas the Ombudsman Report discusses the February and May 2017 incidents.

[24] The RPD also examined the Ombudsman Response and identified the authorities' explicit commitment therein to provide protection to the Applicant. The RPD noted the Applicant's failure to inquire as to the nature and extent of that protection and how he can make use of it. It also noted his failure to follow up on the Fiscalia and Ombudsman Reports.

[25] The RPD found that the reports were submitted and acquired by the Applicant for the purpose of bolstering his refugee claim. It was not satisfied with the Applicant's submission that his failure to name the FARC and to identify all incidents that took place in his complaints was due to a fear of potential retaliation, since such a fear would be antithetical to the idea of submitting any complaint in the first place.

[26] The RPD assigned little weight to the reports and found that they further undermined the Applicant's credibility.

D. *The September 2019 Incident*

[27] Based on the credibility concerns above, the RPD also found that the Applicant was not targeted by the FARC in September 2019 as alleged.

IV. Issue

[28] Was the RPD's finding that the Applicant is not a person in need of protection unreasonable?

V. Analysis

[29] The standard of review with respect to the RPD's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25).

A. *The February 2017 Incident*

[30] The Applicant argues that the RPD disregarded his justification for continuing on in his job after the February 2017 incident despite the threat it posed on his life. He claims that the RPD's analysis in that respect was based on speculative assumptions.

[31] The Applicant's arguments decontextualize the RPD's decision. The RPD found that the Applicant had elected not to seek the protection or support from his employer or the authorities and reasonably inferred that, in the absence of such protection and support from others, the Applicant's choice not to leave his job would have been combined with at least some consideration of how he himself can mitigate and protect himself against the risk posed by the FARC. The Applicant testified that he gave no thought to such a question, and the RPD found that this is inconsistent with the Applicant's claim that he was under threat. The decision was coherent, reasonable and not based on speculation.

B. *The May 2017 Incident*

[32] The Applicant also claims that the RPD's finding that the May 2017 incident did not happen was also based on speculation. The Applicant's position disregards the substance of the Decision. The RPD noted that the FARC threatened the Applicant for the second time. It reasonably assumed that individuals in the Applicant's circumstances would seek protection from the authorities. When the Applicant was asked why he did not act accordingly, he provided an inadequate and inconsistent series of answers, as discussed above.

[33] The RPD's examination of the May 2017 incident was reasonable.

C. *The January 2019 Incident*

[34] The Applicant further claims that the RPD's finding that the January 2019 incident did not take place was also based on speculative assumptions.

[35] The RPD's comments were not speculative. The RPD relied on the Applicant's own evidence that he was in a large crowd, near a theater, amidst a celebration. It inferred from this that an onlooker would have a difficult time listening in on the Applicant's conversation with the soldier. This was reasonable.

[36] The Applicant also argues that the RPD failed to consider that speaking to the soldier would not only pose a risk of retaliation from the FARC in that moment, but that it would also pose an ongoing risk in the future. However, the premise of the Applicant's submission is that others in the area would be able to overhear the Applicant's conversation with the soldier – something the RPD's finding precludes.

[37] The RPD's examination of the January 2019 event was reasonable.

D. *The Fiscalia and Ombudsman Reports*

[38] The Applicant argues that the RPD was unclear as to whether the Fiscalia and Ombudsman Reports are authentic. He states that the RPD's failure to clearly articulate that conclusion was unreasonable. The Applicant also argues that there was no basis on the record for the RPD to conclude that the reports were made only to bolster his claim.

[39] However, it is clear from the RPD's reasons that it considered the reports to be authentic:

[20] The panel notes that the claimant did go on to report the above noted incidents to the authorities. The claimant filed a report with the Fiscalia on April 10, 2019. In this report, he informed the police of the threat that was made in February 2017 and also of the threat

that he received in January 2019 when he returned to La Union for an event.

[...]

[26] The claimant also filed a denunciation with the Ombudsman's office on April 23, 2019. This report included details about the February and May 2017 incidents. [...]

[Emphasis added]

[40] The RPD was not obligated to clarify further that it determined the reports to be authentic. The RPD's assessment focused on the Applicant's choices regarding the substance and timing of the reports.

[41] The RPD did not err in concluding that the Applicant filed the reports to bolster his claim. While the Applicant is correct that the Ombudsman Report identifies the FARC, the RPD's error in that respect is minor when placed in the broader context of the RPD's analysis. The RPD observed that the Applicant filed his claim roughly two years after the alleged incidents took place. When he did so, the Applicant failed to disclose all the incidents. He also decided not to follow up with the Fiscalía or the Ombudsman's Officer regarding the reports, even after the Ombudsman Response guaranteed him protection. It was reasonable for the RPD to find on this basis that the Applicant was not serious about seeking protection and to infer from this that he only wished to bolster his claim.

[42] The Applicant also states that the delay in filing his claim was due to his fear of retaliation, and that it was unreasonable of the RPD to disregard that justification, particularly in light of the

country evidence, which shows that paramilitary and criminal organizations like the FARC have infiltrated all aspects of Colombian society.

[43] I do not agree. The RPD considered the Applicant's allegation that he is afraid of retaliation and concluded that this was inconsistent with his decision to report his complaints in the first place. The Applicant also stated in his personal narrative that he approached the Ombudsman's Office because he "believed this office was not corrupt like the [F]iscalia".

[44] The Applicant is, in all respects, essentially asking the Court to reweigh the evidence, which is not the role of the Court.

[45] The RPD's conclusions with respect to the Fiscalia and Ombudsman Reports were reasonable.

VI. Conclusion

[46] The application is dismissed.

JUDGMENT in IMM-9570-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9570-22

STYLE OF CAUSE: NICOLAS BENJUMEA GALINDO v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

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