

Federal Court



Cour fédérale

**Date: 20250117**

**Docket: IMM-10603-23**

**Citation: 2025 FC 100**

**Toronto, Ontario, January 17, 2025**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**JAVIER ALBERTO CALLE GALLEGO**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board. In that decision, the RAD confirmed a decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection.

[2] For the reasons that follow, I believe this application for judicial review should be dismissed. The RAD reasonably assessed the evidence and the arguments before it, and provided justified, intelligible, and transparent reasons for dismissing the Applicant's appeal.

## II. BACKGROUND

### A. *Facts*

[3] Mr. Calle Gallego is a citizen of Colombia. He alleges that he was targeted by two criminal organizations – the Los Urabeños and Los Pachelly gangs – stemming from his work as a driver. The events that form the basis for Mr. Calle Gallego's claim are as follows.

[4] Mr. Calle Gallego lived and worked in Medellín, Colombia prior to coming to Canada. As a driver, he primarily transported medical professionals around the city. This occasionally required him to drive through dangerous, gang-controlled neighbourhoods. He was employed by a company called Transceal from 2015 until August 2019.

[5] On March 18, 2019, the Applicant drove a nurse into a dangerous neighbourhood in order to attend a patient who had apparently been attacked by the Pachelly gang. When he arrived, members of the gang stopped him, smashed his rear car window, threatened him, and warned him not to return to the area. Mr. Calle Gallego reported the incident to the authorities and to his company.

[6] On August 19, 2019, the Applicant again drove a nurse to a house call near the San Cristobal neighbourhood. After the nurse had entered the home, members of Los Urabeños, a

large, national gang, approached Mr. Calle Gallego. They forced the nurse to leave the house and threatened to kill them both if they returned. The Applicant again reported the incident to the authorities and his employer. As a result, he claims his employer reassigned him to drive civil servants to and from the airport.

[7] On September 21, 2019, Mr. Calle Gallego alleges that he was once again stopped by members of Los Urabeños. He was beaten and told he did not have permission to enter the area. He complained to the office of the prosecutor.

[8] Soon after, in October 2019, the Applicant began receiving threats. They began as telephone calls, which then escalated to notes left at the door to his home. Once again, he reported the threats to the prosecutor.

[9] Mr. Calle Gallego left Colombia for Canada on November 3, 2019, having earlier applied for a temporary resident visa [TRV] in September. He made a claim for refugee protection almost a year later, in September 2020. For reasons set out below, the timing of the Applicant's TRV application and subsequent departure were important issues in the RPD and RAD decisions.

[10] The RPD denied the Applicant's claim in a decision dated February 23, 2023. The determinative issues were credibility and forward-facing risk. Mr. Calle Gallego appealed to the RAD.

B. *Decision under Review*

[11] The RAD confirmed the RPD's decision that the Applicant is neither a refugee nor a person in need of protection. The determinative issues were once again credibility and forward-facing risk in Colombia.

[12] In arriving at this conclusion, the RAD agreed with the RPD's conclusion that the September and October 2019 incidents described in the Applicant's Basis of Claim [BOC] narrative did not occur. This conclusion was based on a number of findings.

[13] First, the RAD confirmed the RPD's finding regarding a discrepancy in the work history noted in the Applicant's documentation. In his Basis of Claim form, the Applicant indicated that the September 2019 attack took place while he was working, as he was on his way to pick up a passenger to take to the airport. Elsewhere in his documentation, however, the Applicant indicated that he had stopped working in August of that year. The RAD found that the RPD correctly rejected the Applicant's evolving explanation for this discrepancy and that this undermined his credibility.

[14] The RAD also agreed with the RPD's findings related to the timing of the Applicant's TRV application. In testimony, the Applicant explained that he decided to leave Colombia after he started to receive threats in October 2019. This being the case, the RPD found (and the RAD confirmed) that the Applicant was unable to credibly explain why he had applied for a Canadian visa in September 2019. The RAD noted that Mr. Calle Gallego signed his Canadian visa application on August 28, 2019 – long before he allegedly received the threatening phone calls

and notes. The only events that had occurred at that time were the two unrelated incidents involving separate gangs, in which he drove into a neighbourhood, and was told to leave (the March and August 2019 incidents).

[15] The RAD further agreed with the RPD's negative credibility inferences stemming from the lack of corroborative evidence about the events that occurred in Colombia. It noted that the Applicant claimed he filed criminal complaints several times in 2019, in response to each incident, but did not provide evidence of those complaints – which should have been available to him, according to the documentary evidence. In arriving at this conclusion, the RAD found that Mr. Calle Gallego had failed to provide a reasonable explanation for his inability to provide any documentation related to his reporting to the police.

[16] Finally, the RAD assessed the personal evidence tendered by the Applicant, which consisted of notarized letters from his brother, sister-in-law, a former neighbour, and a friend. Ultimately, the RAD found that the documents did not overcome its credibility concerns; the letters contained limited personal knowledge and seemed to be based on information provided by the Applicant himself.

[17] The letter from the Applicant's sister-in-law stated that the telephone threats have continued and that the Mr. Calle Gallego's wife and daughter had to move in with her as a result, but did not state how she knew that the telephone threats continued. None of the letters mentioned the identity of the groups threatening to harm the Applicant and his family, nor what happened in any incidents alleged by the Applicant. Therefore, given the lack of detail in the

letters and the lack of explanation as to how the authors had personal knowledge of the contents, the RAD member found that they do not overcome the RAD's credibility concerns.

[18] On the question of the Applicant's forward-looking risk of harm, the RAD agreed with the RPD's conclusion that since the Applicant was unable to establish that the September and October 2019 incidents occurred, the agents of persecution likely did not contact Mr. Calle Gallego again after the August 2019 incident, and have no continuing interest in him. Therefore, the RAD confirmed, there is no forward-facing risk to the Applicant.

### III. ISSUES

[19] The only issue raised in this matter is whether the RAD's decision was reasonable. Specifically, the Applicant submits that the RAD erred in its assessment of his credibility, and his forward-facing risk of mistreatment.

### IV. ANALYSIS

#### A. *Standard of Review*

[20] The parties agree that the appropriate standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 23, 25 [Vavilov].

B. *Inconsistencies with respect to the Applicant's period of employment*

[21] It is not disputed between the parties that the Applicant provided inconsistent evidence about his employment for the period leading up to his departure from Colombia, that is, between August and November 2019. What is disputed, however, is the significance of this inconsistency. The Applicant concedes the discrepancy in this aspect of his claim, and does not directly challenge the RAD's findings on this point. He argues, however, that other elements of the RAD's decision are unreasonable, and that this finding alone provided an insufficient basis upon which to reject his appeal. Since the Applicant does not contest this aspect of the RAD's decision, I will simply observe that the Applicant's claimed encounters with Los Pachellys and Los Urabeños were explicitly related to his work as a driver. As such, the Applicant's statement that he was unemployed after August 2019 was clearly a material inconsistency on an issue that touched very close to the heart of the Applicant's claim.

[22] It was therefore not an error for the RAD to attribute weight to this issue in its larger assessment of the Applicant's credibility.

C. *Inconsistencies with respect to the timing of the Applicant's planned departure from Colombia*

[23] The Applicant does challenge the RAD's findings with respect to the timing of his TRV application and his departure from Colombia. He argues that, in agreeing with the RPD's findings on this issue, the RAD engaged in an overly microscopic assessment of the evidence, and failed to grapple with the fact that, by the time of his visa application, he had already been threatened on two occasions by members of both Los Pachellys and Los Urabeños. I respectfully

disagree. The RAD provided detailed reasons for confirming the RPD's reasons on this issue. It outlined the nature of the inconsistency and carefully considered the Applicant's explanation for it.

[24] I recognize and agree with counsel for the Applicant's general statement that there may be multiple factors that motivate an individual's decision to leave their country of origin. I also recognize that such decisions are often the product of a process rather than an event. However, in this case, I find it neither unreasonable, nor overly microscopic for the RAD to have relied on the Applicant's inconsistent testimony with respect to his planned departure from Colombia. Prior to pointing out the inconsistency, the Applicant was quite explicit that he only considered leaving Canada after he started receiving threats in October 2019. This being the case, it was not surprising that the RPD inquired as to why he had applied for his TRV prior to the occurrence of these events. In evaluating the RPD's line of questioning and the Applicant's responses to these questions, the RAD (reasonably, in my view) determined that the RPD had not erred in finding this issue undermined the Applicant's credibility.

[25] I would also refer here to the RAD's observation that the discrepancy, with respect to both the Applicant's employment history and his TRV application, mutually called into question the events of September and October 2019. On my review of the record, I believe that this finding was reasonably open to the RAD.



D. *The RAD's treatment of corroborative evidence*

[26] The RAD's decision touches on two distinct issues related to corroborative evidence.

First, the RAD confirmed the RPD's finding that the absence of any documentation related to the Applicant's complaints to the authorities undermined his credibility. Second, the RAD found that the corroborative documents that the Applicant *had* provided were insufficient to overcome the credibility concerns already mentioned. For the following reasons, I find these conclusions to be reasonable.

[27] On the question of the Applicant's failure to produce any of the complaints that he allegedly made to the public prosecutor, the jurisprudence is relatively clear and includes two distinct principles. The first is that credibility findings should not typically be made strictly on the absence of corroborative evidence. The second is that where such corroborative evidence would reasonably have been available to the Applicant, in their own particular circumstances, and there is no reasonable explanation for its absence, decision-makers are entitled to draw a negative inference based on the absence of such documents: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 25.

[28] Here, the Applicant argues that the RAD erred in finding that the complaints would have been available to him, because it relied on one report contained in the National Documentation Package for Colombia when another, more recent document was available. According to the Applicant, the report relied upon by the RAD related only to complaints made online; and this more recent report calls into question whether the Applicant, who filed his complaints in person, could obtain a copy of the complaint. The Applicant argues that, at the very least, this more

recent report “troubles the contention” that he could have obtained at least some documentation related to his complaints.

[29] I disagree for two reasons. First, I find that this argument largely amounts to a request that this Court re-weigh the documentary evidence, which is not the function of courts sitting on judicial review of administrative decisions. Second, the Applicant’s argument is not clearly supported by the facts. On my own review of the report that the Applicant urges the Court to privilege over the one relied upon by the RAD, I see no indication that those who make complaints in person are unable to receive a copy of the complaint. If anything, I find that language in that report supports the RAD’s conclusions.

[30] On the second question, related to the supporting documents the Applicant did provide, I similarly find that the RAD did not err. These documents consisted of notarized letters from the Applicant’s brother, sister-in-law, former neighbour, and friend. The RAD independently assessed each of these letters and concluded that while the RPD may have committed some errors in assessing them, such errors were immaterial.

[31] More generally, the RAD found that the RPD correctly assessed the probative value of the documents and concluded, on its own review, that these documents were insufficient to overcome the credibility concerns arising from the Applicant’s claim. I see no reviewable error in this conclusion. The RAD accurately summarized the contents of each letter, and provided coherent reasons as to why they were – individually and cumulatively – insufficient to overcome its credibility concerns. It was reasonable for the RAD to observe that several of the letters were

vague, were lacking in detail, or contained information that emanated from the Applicant himself.

[32] The Applicant submits that the RAD misapprehended the evidence contained in the letters, and that it erred by discounting the letters for what they did not say, instead of focusing on what the letters did say. With respect, I disagree. Rather than focusing on what the letters did not say, I find that the RAD explained why, in the end, the letters lacked sufficient probative value to overcome its credibility concerns. While this explanation invariably identifies deficiencies in the quality of the evidence presented, I do not find in this case that the RAD's reasons fall into the kind of error identified by this Court in cases such as *Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 640.

E. *Forward-Looking Risk*

[33] Finally, I find that it was reasonable for the RAD to conclude that the Applicant had not established that he faced a forward-looking risk from either the Pachelly or the Urabeños gangs. While the RAD and the RPD both accepted that the Applicant did have encounters with these groups in March and August 2019, it observed that these incidents were “were far less targeted in nature, and the harm threatened against the Appellant was from two separate groups in two seemingly unconnected incidents.” Based on the evidence before it, and its previous findings, this conclusion was reasonably open to the RAD. Moreover, I disagree with the Applicant that the RAD neglected to consider whether the gangs came to consider him as an “annoyance”, such that they would have an ongoing interest in targeting him. On the contrary, the RAD explicitly considered this possibility at paras 40-41 of its reasons, but concluded that there was simply

insufficient evidence to establish that the two groups had a shared and ongoing interest in him, particularly since he has been out of the country for over three years, and would not need to resume his previous employment were he to return.

V. CONCLUSION

[34] For the foregoing reasons, I believe this application for judicial review should be dismissed. The Applicant has failed to point to a reviewable error and therefore judicial intervention is not warranted. The parties did not propose a question for certification and I agree that none arises.

**JUDGMENT in IMM-10603-23**

**THIS COURT'S JUDGMENT is that:**

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

"Angus G. Grant"  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-10603-23

**STYLE OF CAUSE:** JAVIER ALBERTO CALLE GALLEG0 v MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 9, 2025

**JUDGMENT AND REASONS:** GRANT J.

**DATED:** JANUARY 17, 2025

**APPEARANCES:**

|                      |                    |
|----------------------|--------------------|
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| Nicole John          | FOR THE RESPONDENT |

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