Federal Court  Cour fédérale

Date: 20190917

Docket: IMM-775-19

Citation: 2019 FC 1182

[REVISED ENGLISH TRANSLATION]

Montréal, Quebec, September 17, 2019

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

HARVEY YAMPIER CASILIMAS MURCIA
MARIA ELENA CASTANEDA ROBLES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision rendered by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dated January 9, 2019, which found that the applicants are neither Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicants are a couple and are citizens of Colombia who lived in the city of Bogota. They allege that they risk being persecuted in Colombia and that they are also persons in need of protection because of their involvement in a non-governmental organization [NGO].

[3] The Convention ground invoked by the applicants before the Refugee Protection Division [RPD] was their membership in a social group: [TRANSLATION] “social workers seeking to defend human rights, members of an NGO that works with displaced persons in order to help them reclaim their lands” (Certified Tribunal Record [CTR] at p 371).

[4] The RPD found that the applicants did not establish a reasonable possibility of persecution based on a Convention ground or that, on a balance of probabilities, they were personally subjected to a danger of torture, to a risk to their lives or to a risk of cruel and unusual treatment or punishment if they were to return to Colombia. Essentially, the RPD concluded that the applicants were [TRANSLATION] “logistical supporters” who lived in Bogota [TRANSLATION] “far away from high-risk areas” and that they did not have the profile of individuals who would be at risk as a result of their support for this cause.

[5] Before the RAD, the applicants tried to present new evidence indicating that the male applicant was a key player within the NGO, and they requested a new hearing. The applicants also submitted that errors of interpretation made by their translator at the initial hearing had misled the RPD and deprived them of their right to procedural fairness.

[6] The RAD did not accept the new evidence or the arguments concerning the translation at the hearing before the RPD and upheld the decision rendered by the RPD. The request for a new hearing was denied. The RAD affirmed the decision rendered by the RPD, finding that the applicants were neither Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the IRPA.

[7] For the reasons that follow, the application for judicial review is dismissed.

I. Context

[8] The applicants, Harvey Yampier Casilimas Murcia, and his common-law partner, Maria Elena Castaneda Robles, are relying on the account submitted with the male applicant's Basis of Claim [BOC] Form. The male applicant described, among other things, his involvement with *Tierra Nuestra* [TN], an NGO whose mission it is to help peasants in their fight to recover their lands. According to the BOC Form, the applicants created TN in 2007 and were involved with it until 2016. From 2007 to 2012, TN helped approximately 35 families, including relatives and close friends of the male applicant, to reclaim their lands.

[9] In 2012, all the families who were helped were able to recover their land without incident. The NGO's work with these 35 families was therefore completed and, according to the male applicant, up to that point, he did not face any threats or risks to his life.

[10] According to his BOC Form and his testimony, the male applicant scaled back his role with TN in 2013, because he started a job as an accountant in a construction company.

[11] In 2014, the male applicant resumed his activities and the applicants participated in training to guide and train leaders and representatives of populations affected by the armed conflict in Colombia, specifically with regard to land restitution. Between 2014 and 2016, the male applicant participated in several forums, meetings and training sessions about land restitution in Colombia, but continued to work as an accountant in Bogota.

[12] On September 1, 2016, the applicants were invited to participate in such a forum in San José del Guaviare. At this event, the police arrested some individuals suspected of compromising the event's security. The premises had to be abandoned for security reasons. Before returning to Bogota, the applicants spent some time talking to victims of displacement and violence in this area of the country.

[13] The male applicant alleges that on September 30, 2016, he received a call from someone identifying himself as William Farro. Mr. Farro told him that he was a leader in the department of North Santander. The male applicant found this call to be suspicious and did not understand what Mr. Farro wanted. A few hours later, Mr. Farro called him back and asked him for information on the individuals the male applicant had had a meeting with and whom he had helped in Bogota. The male applicant pretended that he did not understand what Mr. Farro wanted. Finally, Mr. Farro threatened the male applicant and told him that he knew the names of his family members.

[14] On October 27, 2016, almost a month later, the applicants were attacked at night, while using public transportation near their home. At the time, the male applicant was carrying a

backpack containing his computer. Around 11:00 p.m., two individuals grabbed the applicants by the arm, ordered the male applicant to hand over his computer and tried to steal his wallet from his pocket. One of the men hit the male applicant in the face, threw him to the ground, pointed a gun at his face and kicked his back a number of times. After the male applicant gave them his backpack containing his laptop, the men ran away. The next day, the male applicant filed a criminal complaint about the incident.

[15] The male applicant informed the leaders within his network of the incident. They told him that [TRANSLATION] "it [had been] ordered by large owners of land being claimed" and that this was [TRANSLATION] "their way of persuading people to refrain from helping".

[16] Fearful of another attack, and after consulting the male applicant's brother, who was a junior officer with the Colombian national police, the applicants left Colombia for New York on November 5, 2016. They entered Canada illegally two days later, on November 7, 2016. The BOC Form was submitted on November 21, 2016.

II. RPD decision

[17] The RPD held hearings on January 6 and 9, 2017. The male applicant testified on both days, while the female applicant testified on the second day. The applicants benefitted from translation services via teleconference (the same translator was not used for both days).

[18] On January 16, 2017, with the RPD's permission, the applicants filed written submissions concerning the risks enumerated in sections 96 and 97 of the IRPA to which they were subjected,

particularly regarding the assessment of facts and credibility, and the inadequacy of the protection offered by the Colombian state. At that stage, the applicants had yet to file submissions about the shortcomings of the translation.

[19] In a decision dated February 6, 2017, the RPD found that the applicants had not established a reasonable possibility of persecution based on a Convention ground or that, on a balance of probabilities, they were personally subjected to a danger of torture, to a risk to their lives or to a risk of cruel and unusual treatment or punishment if they were to return to Colombia.

[20] After summarizing the allegations, the RPD analyzed the file.

[21] The RPD confirmed that the male applicant's testimony about the evidence was credible. It accepted the fact that the applicants, with friends, had set up TN in 2007. The RPD accepted the fact that the male applicant had participated in training and meetings about land restitution, that he had a database and that he had provided regional leaders with IT advice. However, the RPD was not satisfied that these activities had put the applicants' lives in danger in Colombia.

[22] With respect to the telephone calls on September 30, 2016, the RPD accepted that the male applicant had received the call from Mr. Farro, but found that he had not established that his life would be in danger in Colombia; Mr. Farro had not made any demands or articulated his intentions; and Mr. Farro had not contacted the male applicant again after he changed his telephone number.

[23] The RPD also accepted the fact that the applicant had been the victim of a robbery on October 27, 2016. However, the RPD did not accept that there was a link between the robbery and the male applicant's activities within TN. Most notably, the thieves did not identify themselves during the robbery and made no mention of the applicants' involvement in land restitution. The RPD concluded that robberies were a frequent occurrence in Bogota and that the applicants had been in a dark and isolated area at around 11:00 p.m. Even though the thieves wanted the male applicant's computer, this did not establish that they were connected to Mr. Farro's telephone call, or that the objective of the robbery was to obtain the computer and its contents.

[24] With respect to the Convention ground invoked by the applicants, the RPD concluded that the applicants were not [TRANSLATION] "leaders in the fight to reclaim land", but were individuals with an interest in the issue and who provided regional leaders with [TRANSLATION] "logistical support".

[25] Furthermore, the RPD found, for several reasons, including the following, that the male applicant had [TRANSLATION] "grossly exaggerated his importance in the fight led by the regional leaders":

- The amount of time that the male applicant spent in Cordoba would not have been enough to complete the ground work he alleges he did for 50 families in this region.
- The male applicant stated that police and military officers were present at the meeting in San José del Guaviare on September 1, 2016, but would not have been able to protect the applicants when the meeting ended. After questioning the applicants further, the RPD found that the police and soldiers had actively protected the participants, contrary to what the applicants had wanted the tribunal to believe.

- The male applicant took notes about the displaced persons that he met in the street after the meeting on September 1, 2016. However, he admitted that he [TRANSLATION] “didn’t do anything” with the notes.

- Individuals who are at risk in the fight for land restitution are beneficiaries, regional leaders, peasant leaders and Indigenous leaders, or even judges, lawyers, journalists and spokespeople, not [TRANSLATION] “logistical supporters” who live in Bogota, far from the countryside.

[26] Lastly, the RPD drew negative inferences regarding the issue of the applicants’ subjective fear, based on the fact that they did not file a claim for asylum in the United States.

III. RAD decision

[27] After conducting its own analysis of the file and establishing that this was not a situation where the RPD enjoyed a meaningful advantage in assessing credibility, the RAD applied the standard of correctness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*]; *Rozas del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145).

[28] On appeal before the RAD, the applicants filed several documents as new evidence under subsection 110(4) of the IRPA and requested a new hearing under subsection 110(6) of the IRPA. The RAD refused to admit this new evidence and consequently, did not hold a hearing. Based on the merits of the case, the RAD confirmed that the applicants were not Convention refugees or persons in need of protection.

[29] First, the RAD refused to admit the same two statements that the RPD had refused to admit, finding that they were not relevant and that the RPD had the power to reject them for this

reason under paragraph 35(a) of the *Refugee Protection Division Rules*, SOR/2012-256 (CTR at pp 59–70).

[30] The RAD then refused to admit three statements and two letters dated February 20, 2017, February 21, 2017, February 27, 2017, and March 6, 2017 (CTR at pp 75–92). In each case, the RAD reached the same conclusion. Even though the dates on these documents postdated the RPD's decision rejecting their claims, the documents did not satisfy the requirements set out in subsection 110(4) of the IRPA concerning the admissibility of evidence on appeal.

[31] Lastly, the RAD refused to admit a table taken from a database concerning victims in Cordoba (CTR at pp 93–98). The RAD acknowledged that the applicants received this document on February 27, 2017, that is, after the RPD's decision. It also accepted the applicants' explanation that they had lost this information as a result of the theft of the computer, and that they had only been able to reconstruct the data with the help of their friends in Colombia, using information contained in their emails. Nevertheless, the RAD found that the table did not present any evidence that arose after the RPD rejected their refugee protection claims and that the applicants did not establish why they had failed to contact their friends in order to reconstruct the table before the RPD rejected their claims.

[32] With respect to the translation-related problems, the RAD first concluded that the translation errors "related to peripheral aspects of the refugee protection claims and did not compromise the understanding of the overall meaning of the appellants' testimony". The RAD noted that at one point during the hearing, counsel for the applicants intervened after noting that

the interpreter had made a translation error. According to the RAD, counsel never indicated that the interpretation was flawed to the extent that it could prejudice the applicants.

[33] With respect to the applicants' profile, the RAD concluded that the RPD was not "overzealous" in minimizing their role as leaders, as claimed by the applicants. The RAD upheld the RPD's findings that the applicants did not match the profile of individuals in Colombia who were targeted because of their work with vulnerable individuals in the context of the fight for land restitution. With respect to the robbery incident on October 27, the RAD upheld the RPD's finding that the applicants had rather been the victims of a "random crime". The RAD also affirmed the RPD's negative inference, whereby the applicants lost all credibility regarding their subjective fear, because they did not claim asylum in the United States before arriving in Canada on November 7, 2016.

[34] Lastly, the RAD noted that the applicants did not produce any evidence to establish that the thieves were still targeting them.

IV. Issues and standard of review

[35] This case raises three issues:

- Did the RAD commit a reviewable error by refusing to admit the new evidence presented by the applicants?
- Did the RAD err in concluding that the translation of the hearing before the RPD did not violate the applicants' right to procedural fairness?
- Did the RAD otherwise commit a reviewable error in analyzing the merit of the claims?

[36] The parties agree on the issue of the standard of review applicable to assessing the RAD's credibility findings, namely, that of reasonableness. The Court will intervene only if the decision under review is not justified, transparent or intelligible and does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts of the case and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47; *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 [Khosa] at para 59). These criteria are respected when the reviewing court is able to understand why the tribunal made its decision and can determine whether the conclusion falls within the range of possible, acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland*] at para 16).

[37] The decision to refuse to admit new evidence under subsection 110(4) of the IRPA is reviewable against a standard of reasonableness (*Denis v Canada (Citizenship and Immigration)*, 2018 FC 1182 at para 5; *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 22-30 [*Singh*]).

[38] The analysis of the allegations concerning translation errors raises questions of procedural fairness and will be reviewed against a standard of correctness (*Khosa* at para 43).

[39] The RAD's findings concerning the issue of whether the applicants are Convention refugees or persons in need of protection are also reviewable against a standard of reasonableness, because this issue involves questions of mixed fact and law (*Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at para 6).

V. Analysis

Refusal to admit new evidence and hold a new hearing

[40] In their memorandum, the applicants maintain that the RAD committed reviewable errors by refusing to admit the new evidence. In their opinion, these documents [TRANSLATION] "enhanced the applicants' credibility in the context of the appeal". However, at the hearing, counsel for the applicants limited himself to challenging the RAD's decision regarding just one of these documents, the table taken from a database, which supposedly establishes the applicants' involvement in the cause.

[41] In my opinion, the RAD did not commit any reviewable error by refusing to admit this evidence.

[42] From the outset, it is helpful to reproduce subsection 110(4) of the IRPA:

110(4). On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	110(4). Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles où, s'ils l'étaient, qu'elle n'aurait pas normalement présenté, dans les circonstances, au moment du rejet.

[43] It has been established that this provision imposes a high admissibility threshold and should therefore be narrowly construed (*Ogundipe v Canada (Citizenship and Immigration)*, 2016 FC 771 at para 25). In *Singh*, the Federal Court of Appeal explains that this provision must

be interpreted in light of Parliament's intention to limit the introduction of new evidence (at paras 32 and 51). In this same decision, the Court of Appeal stipulates that the RAD does not have the power to order a new hearing unless the documents fail to satisfy the admissibility criteria in subsection 110(4) of the IRPA.

[44] In light of these principles, the RAD was right to uphold the RPD's rejection of the two statements (one written by the male applicant's high school friend and the other, by his mother) on the ground that they were not relevant. I agree that these documents have no relation to the applicants' profile or to the September and October 2016 incidents and essentially speak to the male applicant's general personality. Moreover, these documents do not offer any evidence that arose after the RPD rejected the refugee protection claims.

[45] With respect to the three other statements and the two letters, it is reasonable to conclude that these pieces of evidence did not arise after the claims were rejected or that they were reasonably available. Even though all these documents bear a date later than the date of rejection of the refugee protection claims, they essentially attest to facts concerning the applicants' past involvement in TN or impressions about the robbery on October 27, 2016.

[46] With respect to the data table, the only document that is still being challenged before me, the RAD clearly explained its position in paragraphs 21 to 23 of its decision. The RAD did not seem to doubt that the applicants received this table after the hearing before the RPD, but noted that three months elapsed between the theft of their computer and the rejection of their refugee protection claim by the RPD. The RAD also noted that the applicants nonetheless failed to

establish why they had failed to contact their friends in order to reconstruct this database before their refugee protection claim was rejected.

[47] The RAD concluded that the applicants did not present any evidence that, based on the information contained therein, arose after the RPD rejected the refugee protection claims or that was not reasonably available before the RPD rejected the claims.

[48] Since the applicants were not able to establish why, under the circumstances, this table was not reconstructed in time to be presented before the RPD, this table fails to satisfy both the second and third criterion of subsection 110(4) of the IRPA.

[49] As the Federal Court of Appeal held in *Singh*:

> [35] These conditions appear to me to be inescapable and would leave no room for discretion on the part of the RAD. In the first place, the very wording of subsection 110(4) specifies that the person who is the subject of the appeal "may present only" (« ne peut présenter ») evidence that falls into one of these three categories, thereby excluding any other evidence.
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> . . .
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> [54] . . . The role of the RAD is not to provide the opportunity to complete a deficient record submitted before the RPD, but to allow for errors of fact, errors in law or mixed errors of fact and law to be corrected.

[50] Consequently, the RAD did not have the discretion to admit them. As Mr. Justice Bell reminds us in *Ilias v Canada (Citizenship and Immigration)*, 2018 FC 661, the applicant cannot seek to complete a deficient record or present new evidence "every time he or she is surprised by the RPD's decision" (at para 34).

Misunderstanding of evidence

[51] The applicants submit that the RPD misunderstood their testimony concerning some important evidence. First, in its summary of the allegations, the RPD claimed that the male applicant had *abandoned* the NGO in 2013 because of his new job, that he had participated in training in 2014 and that he had resumed activities within the NGO in 2015. Counsel for the applicants stresses the fact that the applicants did not *abandon* the NGO in 2013, but simply *scaled back* their efforts related thereto.

[52] In his BOC Form, the male applicant explains that in 2013, [TRANSLATION] "[u]nfortunately, over the course of that year, I was not able to help any family reclaim rights to their lands. I was consumed by my work and to a certain degree, I even abandoned the activities specifically related to the NGO". In his testimony before the RPD, he acknowledged that he had [TRANSLATION] "somewhat neglected" his social work in 2013 because of his involvement with the construction company.

[53] The events that served as the basis for the refugee protection claims filed by the applicants occurred in 2016. In my opinion, whether or not the male applicant *abandoned* the NGO in 2013, or *somewhat neglected* or *scaled back* his social work is not an important distinction in regard to all the issues in this case.

Translation-related errors

[54] The applicants maintain that the translation errors made at the initial hearing before the RPD violated their right to procedural fairness. In the applicants' memorandum, their counsel

gave some examples of these translation errors by providing his own correct French translation, as he did before the RAD. In this regard, the applicants allege that the RPD's finding that the male applicant exaggerated his involvement in TN resulted from a poor translation.

[55] First and foremost, it is important to state that the applicants' right to an accurate translation at the hearing before the RPD is protected by section 14 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[56] According to the Federal Court of Appeal, it is important to determine whether the interpretation services provided resulted in a failure of "linguistic understanding", and not whether the applicants established that they suffered actual prejudice (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at paras 4–6, 16 [*Mohammadian*]). In other words, the applicants bear the burden of demonstrating that the alleged errors were material to the RPD's findings (*Kidane v Canada (Citizenship and Immigration)*, 2019 FC 167 at para 23). The standard is not perfection; the interpretation services provided must be continuous, precise, competent, impartial and contemporaneous (*Mohammadian*; *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497 at para 13).

[57] I will note that in this case, the applicants did not provide a side-by-side translation of the entire hearing. Consequently, like the RAD, the Court can only work with the excerpts translated by counsel for the applicants reproduced in the applicants' memorandum of fact and law (as well as their substantially similar memorandum filed before the RAD (CTR at pp 99–133)) in order to

determine whether there was a breach of procedural fairness in this case (*Nebret v Canada (Citizenship and Immigration)*, 2017 FC 769 at para 12).

[58] To understand this conclusion, it is first necessary to consider the three translation errors alleged by the applicants before the RAD and the Court. These errors can be summarized as follows:

- The male applicant explained that he helped 50 families claim their land in three different regions: (1) Cordoba; (2) North Santander; and (3) San José del Guaviare. However, the translator only said, [TRANSLATION] "in Cordoba, in North Santander". The RPD understood that the applicants had only helped families in one region (Cordoba, in North Santander) (memorandum at paras 38–42) (the first error).

- The male applicant indicated that he succeeded in [TRANSLATION] "becoming aware" of the testimony of the victims of violence and armed conflict. However, the translator said that the male applicant had "gathered" the victims' testimony (memorandum at paras 47–48) (the second error).

- During the call between the male applicant and Mr. Farro, the latter had asked him to provide [TRANSLATION] "information concerning certain leaders" that the male applicant had met with in Bogota, in the words of the translator at the hearing. However, acc
- ording to the male applicant, Mr. Farro had asked him to provide [TRANSLATION] "information for certain leaders", that is, their contact information (memorandum at paras 65–70) (the third error).

[59] With respect to the first alleged translation error, the applicants' submissions on this issue can be summarized as follows:

(a) The translation error supposedly led the RPD member to believe that the applicants had travelled to Cordoba only to conduct titles searches for 50 families, even though the male applicant initially testified that he had done so in three different regions. The applicants stated that they had helped approximately 50 families, but that because of errors in the interpretation, there was confusion about the period during which these families had been helped, the number of hours devoted to them and the nature of the applicants' involvement with these families.

(b) An analysis of the actual interpretation shows that during the hearing, the applicants stated that they had travelled by air five times. This does not mean that they did not travel by other means, especially given that they stated that they had often travelled to different regions.

[60] After a full reading of the RPD's decision and listening to the recording of the hearing, there is no doubt that both the RPD and the RAD understood that the applicants had travelled to four different regions in Colombia. In this regard, the RPD concluded as follows:

> [TRANSLATION]
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> [36] . . . [The RPD] also believes that the principal applicant travelled five times to four different regions for meetings since 2014. . . .
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> [37] [The female applicant], who served as the secretary of the NGO, allegedly bought five airplane tickets in the last three years for Cordoba, where the principal applicant had travelled to, twice for a period of 24 hours; Villa Vincensio [*sic*] in the department of Meta for one day; two days in North Santander and one day in San José Gueviera [*sic*].

[61] I am aware of the fact that the RPD concluded that the male applicant had exaggerated his involvement with TN by claiming that he had helped 50 families in Cordoba to reclaim their land, when the number of days spent in Cordoba seemed insufficient to allow the male applicant to do the [TRANSLATION] "ground work" necessary to help them.

[62] In this regard, at the hearing, the RPD member asked the male applicant to indicate the other regions of Colombia where the applicants had carried out activities. The applicant responded that he had carried out activities in San José del Guaviare, in the south of the country, on two occasions: in June and September 2016 [1:00]. The male applicant testified that he had attended meetings concerning land claims during these trips.

[63] Later during the hearing, the RPD member asked whether, besides the work carried out in Cordoba and San José, [TRANSLATION] "there were any other regions in Colombia where you . . . for whom you worked?" [1:17]. The male applicant replied that he had travelled to North Santander once for land restitution training in 2015 and that he had never travelled to North Santander before or after that. The male applicant testified that he had not helped citizens of North Santander directly, but that he had obtained information from leaders to enter into his database. The applicant also stated that he had attended a meeting in the Colombian municipality of Villavicencio on one occasion. Furthermore, the female applicant testified that both she and the male applicant had travelled by air five times between 2014 and 2016, to visit Cordoba, Villavicencio (for one day), San José del Guaviare (for one day), and North Santander (for two days).

[64] Even though the translator failed to mention at the beginning of the hearing that the applicants had travelled to North Santander and San José del Guaviare, the tribunal continued this line of questioning and ultimately obtained clarifications about the regions in Colombia where the applicants had travelled for TN and about the purpose of each visit. In fact, after a slightly confusing exchange, the following was noted:

> [TRANSLATION]
>
> **RPD:** So, explain to me, how, in one day, you could carry out title searches, have land recognized for 50 families, if you were only in Cordoba for two days in four years?
>
> **Male applicant:** We met with another group of leaders in that region who worked with us based on this information and we would feed the general database on victims.
>
> . . .

> **RPD:** Ok, but you only did this twice within a four-year period for 50 families in Cordoba, is that correct?
>
> **Mr. Casilimas Murcia:** Yes, we only went there twice, but we worked with other leaders in the region.

[65] Consequently, I believe that the conclusion drawn by the RPD was nonetheless reasonable, given the exchanges that took place. There was no breakdown in communication in this case in that regard. The RPD also gave the male applicant an opportunity to describe all of TN's activities in the regions, and a chance to clarify whether the 50 families that were allegedly helped were only in the Cordoba area.

[66] With respect to the last two errors alleged, I agree with the RAD's opinion that they are of little significance. They are essentially semantic objections. The translator could perhaps have chosen his words better, but the standard is not perfection. These errors are minor and did not affect the male applicant's ability to convey his claims and answer questions (*Siddiqui v Canada (Citizenship and Immigration)*, 2015 FCF 1028 at para 71). In this regard, the words chosen did not mislead the RPD.

[67] I will note that with respect to the third alleged error, the account in the male applicant's BOC Form (translated into French) indicates that Mr. Farro allegedly used the following words: [TRANSLATION] "I need you to cooperate with me regarding information on the individuals that, to my knowledge, you met with and assisted in Bogota". This is consistent with the RPD's understanding.

[68] In my opinion, this is a matter of interpretation. According to the translation, Mr. Farro asked for information. However, after listening to what he said in Spanish, it can be determined that he requested information on the leaders. The applicants claim that individuals were seeking to obtain contact information and not general information. After reviewing the RAD's decision, I conclude that it carefully considered the translation issues raised by the applicants. The RAD stated that the panel listened to the recording of the hearing and assessed the sections, which, according to the applicants, included translation errors. The RAD concluded that the differences noted related to peripheral aspects of the refugee protection claims and did not compromise the understanding of the overall meaning of the applicants' testimony. I do not see anything unreasonable about those findings.

[69] The applicants believe that the RAD erred in assessing their arguments concerning the translation errors. They submit that the RAD imposed an unfair burden on their Spanish-speaking counsel and that the RAD could not make their counsel responsible for correcting the translation errors.

[70] The respondent's position is that the RAD analyzed the translation and rightly concluded that there was no breach of procedural fairness and that, in any case, the applicants should have raised any translation errors as soon as possible, which they did not do, because they waited for the appeal before the RAD. The respondent points out that the male applicant did not mention these translation errors in his affidavit and that the female applicant did not file an affidavit. The RAD also notes that the applicants' Spanish-speaking counsel did not allege any shortcomings in the interpretation in her written submissions produced after the hearing before the RPD.

[71] The case law has established that it will be a question of fact in each case whether it is reasonable to expect a complaint to be made and that concerns about the quality of interpretation that could be prejudicial to the applicants should be raised at the first opportunity (*Mohammadian* at para 13).

[72] Counsel for the applicants points out that the parties only obtained a copy of the recording of the hearing with the RPD's decision rejecting the claim. I will begin by noting that the RAD's conclusion (at para 29 of its decision) that the applicants' Spanish-speaking counsel should have intervened at the hearing, or mentioned the translation errors in her written submissions following the hearing, is debatable.

[73] The errors raised by the applicants are subtle and could be missed by even the most careful listener who does not have the benefit of a transcript or recording.

[74] In my opinion, the applicants in this case had an opportunity to raise the translation errors at the appeal before the RAD, since they would have noticed the alleged translation errors after receiving the RPD's written reasons (*Fu v Canada (Citizenship and Immigration)*, 2011 FC 155 at paras 6–7; *Quiroa v Canada (Minister of Citizenship and Immigration)*, 2005 FC 271 at paras 9–10).

[75] That said, I nevertheless share the RAD's opinion that the translation errors reproduced above relate to peripheral aspects of the claims and were not material to the decision affirmed by the RAD. Consequently, procedural fairness was not breached in this case.

[76] The applicants also raise the fact that the interpretation during the hearing before the RPD was done via telephone. The details where mistakes were made allegedly caused serious prejudice to the applicants' credibility with regard to their interest and the factors supporting a finding that there was actual persecution.

[77] It is important to examine these errors in context. In my opinion, the translation errors raised by the applicants did not result in a failure of linguistic understanding. In any case, these errors were not material to the RPD's decision or that of the RAD. Therefore, the RAD correctly concluded that the RPD respected the applicants' right to procedural fairness.

[78] Consequently, the applicants have failed to satisfy me that the possible errors raised were serious enough to prejudice them. In any case, I do not find anything unreasonable in the RAD's conclusions concerning the alleged translation errors.

Reasonableness of the decision

[79] Regarding the merits, the applicants are contesting the RPD's findings, upheld by the RAD, that the two incidents which occurred prior to their departure from Colombia (the call on September 30, 2016, and the robbery on October 27, 2016) have no nexus to a Convention ground and do not establish a personalized risk. The applicants are also challenging the RPD's conclusion, upheld by the RAD, that they did not establish a reasonable possibility of persecution based on their general profile of individuals associated with an NGO involved in land claims. In the applicants' opinion, the RPD and the RAD unreasonably minimized the importance of their respective roles in TN.

[80] The applicants are attempting to link several factual elements to establish persecution. They add that when one considers all the elements, namely, the fact that the applicants helped several families, that they participated in meetings or met with other individuals, that they travelled to several regions over several years and, finally, that they received calls from someone asking them for information on individuals involved in the fight for land restitution, individuals who are actually being targeted and actively sought, one should come to the conclusion that there was persecution, particularly given that the applicants have clearly established their social participation, especially with regard to land restitution.

[81] In my opinion, even if they believed the applicants' submissions on the nature of their activities, neither the RPD nor the RAD were prepared to draw hasty conclusions on the applicants' leadership positions.

[82] The RAD's decision is justified, transparent and intelligible, and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*). I understand that the RAD's reasons on the merits were very brief. Nevertheless, both the RAD's and the RPD's reasons, which were upheld, were enough to allow the Court to understand why the decision was made and permit it to determine whether the conclusion is within the range of acceptable outcomes (*Newfoundland* at paras 11–16; *Asif v Canada (Citizenship and Immigration)*, 2016 FC 1323 at para 30).

[83] First the RAD did not commit a reviewable error in concluding that the telephone call on September 30, 2016, and the incident on October 27, 2016, were insufficient to establish that the applicants are Convention refugees or persons in need of protection.

[84] Furthermore, it was not unreasonable for the RAD to uphold the RPD's finding that Mr. Farro's request was not clear enough to give rise to a reasonable fear of persecution. Moreover, as pointed out by the RPD and confirmed by the RAD, the male applicant was not contacted by this man again after the call. It was therefore reasonable to conclude that Mr. Farro did not have a serious interest in the applicants.

[85] The RAD's findings concerning the robbery that occurred in Bogota on October 27, 2016, are also reasonable. As noted by the RPD, the thieves made no mention of TN or the applicants' activities for TN. At best, these individuals told the male applicant to hand over his computer (and wallet), attacked him and fled as soon as they had his computer. Without a clear demonstrable link between the applicants' activities with TN and Mr. Farro, it was reasonable for the RAD to infer that the incident was a random crime rather than an incident related to the applicants' profile or one that could give rise to a personalized risk.

[86] It is trite law that unless it can be established that a crime was committed because the victim was a member of a group enumerated in section 96 of the IRPA, or resulted in a personalized risk within the meaning of section 97 of the IRPA, it cannot be concluded that the victim is a Convention refugee or a person in need of protection (*Salazar v Canada (Citizenship and Immigration)*, 2018 FC 83 at paras 56, 65).

[87] Having reasonably concluded that the incidents experienced by the applicants in the past could not give rise to a reasonable chance of persecution on a Convention ground or a personalized risk within the meaning of section 97 of the IRPA, the Court must now determine whether the RAD reasonably concluded that the applicants' general profile did not give rise to a reasonable fear of persecution on a Convention ground.

[88] According to the applicants, the decisions rendered by the RPD and the RAD suggest that the applicants were no longer involved after 2013, contrary to the evidence showing their ongoing involvement, even though it was scaled back from 2014 to 2016. According to the applicants, several factual elements establish that they are potentially targeted because of their involvement in the fight for land restitution, and the interpretation problems resulted in the finding that the applicants had exaggerated their activities. This affected the applicants' credibility when they claimed to have the profile of individuals who are typically persecuted. Since these findings are the result of errors in the interpretation during the hearing, they are unreasonable.

[89] The applicants add that Exhibit C-13 describes the profile of individuals who are persecuted in this situation: judges, police officers, journalists and lawyers. Counsel submits that what is being attacked is not such people's titles, but their activities, and their involvement in such matters.

[90] In this regard, I note in passing that it is not necessary to establish that persecution occurred in the past in order to establish a reasonable chance of persecution in the future. The

Federal Court of Appeal has ruled accordingly (*Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250, 1990 CanLII 7978 (FCA); *Arocha v Canada (Citizenship and Immigration)*, 2019 FC 468 at paras 13, 23–24).

[91] I also find it relevant to reproduce an excerpt from the National Documentation Package [NDP] (before the RAD at the appeal stage): *Land Restitution in Colombia: why so few applications?* (Refugee Studies Centre, University of Oxford):

> But perhaps the most urgent threat to the restitution process is the attempt to crush it using violence. At least 72 land restitution claimants and leaders have been murdered, and thousands more have received threats against their lives. In some cases, the displaced are forced to flee their homes once again because of their involvement in restitution processes. Representatives from accompanying organisations and human rights defenders, as well as state officials involved in restitution cases, have also been targeted. Paramilitary 'successor groups' are responsible for the majority of crimes against land claimants and restitution leaders, as is well documented and widely acknowledged.

[92] In its reasons dated February 2017, the RPD also cited the following excerpt from a document by the United Nations High Commission for Refugees included in the NDP (*UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia*):

> Depending on the particular circumstances of the case, UNHCR considers that human rights defenders, including but not limited to land restitution claimants and their leaders, may be in need of international refugee protection on the basis of their (imputed) political opinion, or on the basis of other Convention grounds.

[93] In general, these excerpts aptly summarize the documentation in the certified record on the situation in Colombia for individuals involved in land claims.

[94] The applicants submit that not only social leaders are persecuted, but that anyone carrying out the same activities as the applicants is a potential victim of the agents of prejudice and persecution (memorandum at para 18).

[95] I do not believe that the documentation supports the applicants' arguments. In this regard, I believe that the RAD's conclusions are reasonable. As noted by the RPD, not every individual who helps victims of displacement reclaim their lands is necessarily at risk. It depends on the role of the person in question. The RPD's main finding, upheld by the RAD, was that the applicants were essentially [TRANSLATION] "individuals who are interested in the issue [of land claims] and who provide logistical support to regional leaders from Bogota".

[96] In short, no credible link was established between the factual elements and the documentary evidence. As far as I can see, the applicants simply failed to discharge their burden of proof. In fact, the connection that the applicants sought to make between their situation, the telephone call, the theft of their computer and their profile as high-ranking social leaders was not established to the satisfaction of either the RPD or the RAD.

[97] Ultimately, it was not unreasonable to conclude that the evidence did not establish that the applicants' involvement in land restitution cases was as significant as that of individuals who, according to the objective documentation, risk persecution.

[98] The RAD analyzed the RPD's decision against a standard of correctness. It gave clear and well-developed reasons demonstrating that it considered all of the evidence and allegations.

With respect to the rejection of the applicants' refugee protection claim, the RAD's decision clearly shows that the applicants failed to establish an adequate nexus between the level of their involvement in land claim work and the profile of individuals referred to in paragraphs 96 and 97 of the IRPA. I do not find anything unreasonable in the RAD's conclusions about these issues.

VI. Conclusion

[99] For these reasons, I find that the RAD's decision was reasonable. The application for judicial review is dismissed. No serious question of general importance was raised and none arises in this case.

JUDGMENT in Docket IMM-775-19

THIS COURT ORDERS THAT:

1. The application for judicial review is dismissed; and

2. No question is certified.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-775-19
STYLE OF CAUSE:	HARVEY YAMPIER CASILIMAS MURCIA, MARIA ELENA CASTANEDA ROBLES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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