Federal Court  Cour fédérale

Date: 20200708

Docket: IMM-4441-19

Citation: 2020 FC 749

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, July 8, 2020

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

SONIA GARCES CANGA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Sonia Garces Canga, is a citizen of Colombia who was living in exile in Chile. In May 2019, an officer from Immigration, Refugees and Citizenship Canada rejected her Pre-Removal Risk Assessment [PRRA] on the grounds that Ms. Garces Canga would not be

subjected to a risk of persecution, a danger of torture, or a risk to her life or of cruel or unusual treatment or punishment upon returning to her country of origin, Colombia [Decision]. In his Decision, the PRRA officer concluded that Ms. Gaces Canga did not provide adequate probative evidence to support her alleged fear and to establish a reasonable possibility of persecution under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], or a personalized risk under section 97 of the IRPA. In addition, the officer determined that Ms. Garces Canga had not rebutted the presumption that the Colombian state is able to protect her.

[1] Ms. Garces Canga is now applying for judicial review of the Decision. She submits that the PRRA officer violated a principle of procedural fairness by not conducting an oral hearing and that he erred in his appreciation of risk under section 96 of the IRPA by not considering the evidence on the record. She asks the Court to set aside the Decision and to submit her file to another PRRA officer for reconsideration.

[2] Ms. Garces Canga's application raises two questions: (i) Did the PRRA officer err and/or breach procedural fairness by not conducting an oral hearing? (ii) Was the PRRA officer's Decision unreasonable?

[3] After examining the evidence before the PRRA officer and the applicable law, I found no reason to overturn the Decision. First, I am satisfied that no oral hearing was necessary in this case, since the PRRA officer found that the evidence submitted by Ms. Garces Canga was simply insufficient to support her application for protection, and did not call into question her

credibility. Second, the PRRA officer's reasons regarding the assessment of the evidence in the file are logical and coherent in light of the relevant legal and factual constraints. There are no grounds to justify the Court's intervention, and I must therefore dismiss the application for judicial review.

II. Factual background

A. *Facts*

[4] The facts relevant to this application for judicial review may be summarized as follows. I note at the outset that Ms. Garces Canga's claim for refugee protection upon her arrival in Canada was not assessed by the Refugee Protection Division [RPD], having been found ineligible because of the Canada-U.S. Safe Third Country Agreement. Ms. Garces Canga had travelled through the United States before entering Canada. As a result, she was given the option of applying for a PRRA.

[5] In support of her application for protection, Ms. Garces Canga stated that she feared for her life if she returned to Colombia because she participated in the arrest of a notorious Colombian criminal named Fanny Gruesco Bonilla, alias La Chilly. In addition, she alleged that she would be at risk of persecution because of her Afro-Colombian origin and her role as chair of a foundation for the development of the Afro-Colombian population [Foundation]. In fact, these different aspects at the root of Ms. Garces Canga's application for protection are closely

interrelated because, according to her, it was her profile as Afro-Colombian chair of the Foundation that led La Chilly to seek her assistance.

[6] Originally from Colombia, Ms. Garces Canga lived in exile in Chile. While Ms. Garces Canga was president of the Foundation, La Chilly allegedly contacted her, as a representative of the Afro-Colombian community, and gave her his identity card so that Ms. Garces Canga could help him obtain asylum in Chile. La Chilly was known to be a major criminal connected to drug trafficking networks and the Revolutionary Armed Forces of Colombia [FARC], and was actively wanted by Interpol at the time. In a meeting, Ms. Garces Canga reported to the Colombian Consul in Chile, with whom she had good contacts, that La Chilly had approached her. Colonel Nelson Rincon, who was present at the meeting, allegedly requested that Ms. Garces Canga work with them by informing on La Chilly in order to arrest him. Ms. Garces Canga allegedly agreed to work with the Chilean and Colombian authorities to arrest La Chilly in exchange for a new identity and the possibility of asylum in Canada, the United States or France.

[7] In September 2014, La Chilly was arrested, and the arrest was then filmed by the police and broadcast on social media. In the video, Ms. Garces Canga is seen without handcuffs, which leads to rumours that she was behind the arrest and acted as an informant for the police.

[8] Following La Chilly's arrest, Ms. Garces Canga allegedly contacted Colonel Rincon so that, as agreed, he could help her obtain refugee protection in Canada. The colonel allegedly took advantage of her distress to ask her for sexual favours and to touch her. Ms. Garces Canga then

contacted the Consul to report the colonel's actions. Ms. Garces Canga alleges that, following this event, she began receiving death threats from the embassy. Ms. Garces Canga also filed a complaint against the colonel with the Chilean Human Rights Commission, but her complaint was rejected due to lack of evidence.

[9] It was then that Ms. Garces Canga decided to change regions in Chile and go to Arica, where a Jesuit organization helped her to flee the country. Ms. Garces Canga passed through Peru, Mexico and then the United States before finally reaching Canada.

B. *PRRA decision*

[10] In the May 2019 Decision, the PRRA officer denied Ms. Garces Canga's application, finding that she would not face a risk of persecution, a danger of torture, or a risk of cruel and unusual treatment or punishment if she returned to Colombia. The PRRA officer stated that all of the evidence filed by Ms. Garces Canga was taken into consideration in examining her PRRA application but that, since the evidence filed did not raise questions of credibility, an oral hearing was not necessary. The PRRA officer reached this conclusion after noting that, not having been heard by the RPD, Ms. Garces Canga's credibility was never assessed.

[11] The outcome of the Decision hinged on the lack of evidence to support Ms. Garces Canga's claims and account.

[12] The PRRA officer first dealt with the asylum application that Ms. Gaces Canga states she filed in Chile. However, the PRRA officer noted that Ms. Garces Canga did not provide any evidence regarding the application itself or its basis. Furthermore, there was no evidence that Ms. Garces Canga fled her country because of a threat of extortion, that her claim for refugee status was excluded, or that she suffered violence at the hands of her former spouse.

[13] The PRRA officer then addressed the various allegations made by Ms. Garces Canga in support of her application for protection. Ms. Garces Canga, I remind you, feared a return to Colombia for three reasons presented in her PRRA file. First, she is a woman of Afro-Colombian origin, and she claims that this community is subject to violence in Colombia. Second, Ms. Garces Canga was chair of the Foundation and feared returning to Colombia because of her involvement as a social activist for the Afro-Colombian community. Finally, Ms. Garces Canga infiltrated a criminal group at the request of the Colombian and Chilean authorities to identify and arrest La Chilly, and had received assurances of protection from the Colombian authorities, which were not honoured.

[14] Regarding the fear related to Ms. Garces Canga's involvement in the Afro-Colombian community, the PRRA officer reviewed the various documents that Ms. Garces Canga filed (including a business card and a constitution of the Foundation) but concluded that this evidence was insufficient to determine that there was a risk within the meaning of sections 96 and 97 of the IRPA. The officer acknowledged that Ms. Garces Canga was in some form involved in representing her community, but found that the documentation was general in nature, was not determinative and did not, by itself, give Ms. Garces Canga the profile of an activist described in

the documents submitted, which would likely to expose her to danger should she return to Colombia.

[15] After reviewing the evidence on file, The PRRA officer concluded that Ms. Garces Canga did not provide any compelling evidence to support her allegations that she played a determining role in La Chilly's arrest. The bulk of the evidence submitted was limited to WhatsApp messages which were inconclusive and could not, in the officer's opinion, be sufficient to demonstrate that Ms. Gaces Canga was cooperating with the authorities. In addition, the PRRA officer noted that Ms. Garces Canga could have presented compelling evidence confirming her involvement in the arrest, such as the video of the arrest posted on social media, La Chilly's identity document that she claimed to have in her possession, or evidence of her undercover activities. In the absence of compelling evidence, the PRRA officer concluded that he could give weight to the allegation that Ms. Garces Canga was a key player in the arrest of La Chilly, or that this would be grounds putting her at risk.

[16] The officer also noted a document stating that the attorney general's victim/witness assistance program unit has protective measures in place to ensure Ms. Garces Canga's safety. However, in his opinion, this document did not make it possible to link the protection referred to in it to the arrest of La Chilly. Also, the existence of Ms. Garces Canga's testimony and the protection resulting from it did not establish a "personalized risk". Rather, the officer concluded that this evidence demonstrates that the Colombian government takes Ms. Garces Canga's testimony seriously and is taking the necessary steps to protect its citizens.

[17] In the final part of his reasons, the PRRA officer addressed the protection of the Colombian state and determined that Ms. Garces Canga had not discharged her burden of rebutting the presumption that the state has the capacity to protect her. As to her membership in the Afro-Colombian community, the PRRA officer acknowledged that because of her membership in that particular social group, Ms. Garces Canga has had to live with discrimination. However, the officer determined that she failed to demonstrate a personalized risk in order for him to grant the PRRA application.

C. *Standard of review*

[18] Since *Minister of Citizenship and Immigration v Vavilov,* 2019 SCC 65 [*Vavilov*], the analytical framework for judicial review of an administrative decision is now based on a presumption that the standard of reasonableness is applicable in all cases (*Vavilov* at para 16). This presumption can only be rebutted in two types of situations. The first is where the legislature has prescribed the applicable standard of review or provided a mechanism for appealing the administrative decision to a court of law; the second is where the issue under review falls into one of the categories of issues for which the rule of law requires review on the standard of correctness (*Canada Post Corporation v Canadian Union of Postal Workers,* 2019 SCC 67 [*Canada Post Corporation*] at para 27; *Vavilov* at paras 10, 17). None of the situations justifying a departure from the presumption of applying the standard of reasonableness applies in this case.

[19] Case law recognized, prior to *Vavilov*, that PRRA applications involve issues of mixed fact and law and that the standard of review applicable to the assessment of evidence by PRRA officers is that of reasonableness (*Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 36; *Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at para 15; *Fares v Canada (Citizenship and Immigration)*, 2017 FC 797 at para 19). Therefore, there is no doubt that the standard of reasonableness continues to apply to this issue.

[20] With respect to the decision to hold a hearing in the context of a PRRA application, the Court's jurisprudence regarding the applicable standard of review has been variable and has taken different approaches to characterizing the issue at hand (*Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 12–16). Some decisions apply the standard of correctness because the issue is considered to be one of procedural fairness, while others apply the standard of reasonableness because the issue is considered to be a question of mixed law and fact concerning the interpretation of the IRPA.

[21] In the context of a PRRA application, the right to a hearing is derived from paragraph 113(b) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. These provisions read as follows, respectively:

113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit :
. . .	. . .
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is	**b)** une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

required;	
. . .	. . .
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	**a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[22] Section 167 of the Regulations therefore expressly provides that a hearing is required when all three of the listed factors are present: the evidence must relate to the applicant's credibility, it must be material to the decision, and it could justify allowing the PRRA application. In my opinion, where the issue raised on judicial review is whether a PRRA officer should have granted a hearing, the standard of reasonableness applies: the decision on this issue depends on the officer's interpretation and application of the officer's enabling legislation, namely paragraph 113(b) of the IRPA, which provides that a hearing may be held if the Minister considers it necessary, based on the specific factors set out in section 167 of the Regulations.

Since *Vavilov*, it is no longer disputed that the standard of reasonableness applies when a question is one of statutory interpretation, which is at the heart of an administrative decision maker's expertise. In the present case, this is especially true since Ms. Garces Canga's submissions relate to the first of the factors specified in section 167 of the Regulations, namely, whether there was evidence that raised a significant issue of credibility.

[23] However, I pause to note that, in any event, my conclusions would remain the same if I were to examine the issue of holding a hearing from the perspective of the duty of procedural fairness and apply the more rigorous standard of correctness, under which no deference would be accorded to the PRRA officer.

[24] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on "an internally coherent and rational chain of analysis" and "is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Canada Post Corporation* at paras 2, 31). The reviewing court must consider "the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). The reviewing court must therefore consider "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 47, 74, and *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2 at para 13).

[25] It is not enough that the decision is justifiable. In cases where reasons are required, the decision "must also be *justified,* by way of those reasons, by the decision maker to those to whom the decision applies" (*Vavilov* at para 86). Therefore, review under the reasonableness standard is concerned with both the outcome of the decision and the reasoning process that led to that outcome (*Vavilov* at para 87). I note that this approach is consistent with *Dunsmuir*, which held that judicial review should focus on both the result and the process (*Dunsmuir* at paras 27, 47–49). That said, the reviewing court must focus on the actual decision made by the administrative decision maker, including his or her rationale, and not on the conclusion that the Court itself would have reached had it been in the shoes of the decision maker.

III. Analysis

A. *There was no obligation to convene a hearing*

[26] Ms. Garces Canga first alleges that the PRRA officer failed to respect the principles of procedural fairness by refusing to convene a hearing, an error that is all the more flagrant given that she had never been assessed by Canadian immigration authorities (*Garza Galan v Canada (Citizenship and Immigration)*, 2008 FC 135 at paras 17, 20, 23). In summary, Ms. Garces Canga maintains that a hearing was required pursuant to paragraph 113(b) of the IRPA and section 167 of the Regulations because significant issues of credibility were central to her PRRA application. In Ms. Garces Canga's view, this failure to hold a hearing is sufficient, in itself, to justify allowing her application for judicial review.

[27] I cannot agree with Ms. Gaces Canga's contentions. Rather, I am of the opinion that, as the Decision shows, the PRRA officer did not make a credibility finding with respect to Ms. Garces Canga but rather concluded that the evidence submitted was insufficient and did not have the probative value required to establish her allegations of risk under sections 96 and 97 of the IRPA. The text of section 167 of the Regulations and the case law clearly establish that the right to a hearing in the context of PRRA proceedings exists when credibility is the key element on which the officer bases his or her decision (*Sylla v Canada (Citizenship and Immigration)*, 2004 FCJ No 589 at para 6). This is clearly not the case here.

[28] It is important to recall at the outset that it is incumbent on persons applying for a PRRA to establish, on a balance of probabilities, that they are persons in need of protection (*Adetunji v Canada (Citizenship and Immigration)*, 2012 FC 708 at para 19; *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 [*Ferguson*] at para 22). To this end, they are required to "to put [their] best foot forward" (*Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 49). In other words, a PRRA applicant must place before the officer "all the evidence necessary for the officer to make a decision", given that the officer does not play a role in the submission of evidence and the officer has no obligation to inform the applicant if the evidence is insufficient or flawed (*Lupsa v Canada (Citizenship and Immigration)*, 2007 FC 311 at paras 12–13).

[29] At the outset of his Decision, the PRRA officer simply stated that the [TRANSLATION] "evidence does not raise issues of credibility" and that, in these circumstances, [TRANSLATION] "a hearing is therefore not required under section 167 of the Regulations". Contrary to

Ms. Garces Canga's arguments, I am not persuaded that this justification can be characterized as deficient or that it reflects a failure on the officer's part to properly consider her request for a hearing. While the comments are brief and terse, they clearly explain the reason the officer declined Ms. Garces Canga's request for a hearing: the absence of a significant credibility issue. This is not a situation where, as was the case in *Montesinos Hidalgo v Canada (Citizenship and Immigration)*, 2011 FC 1334 [*Hidalgo*], cited by Ms. Garces Canga, the officer simply checked a box on the form and left the Court with the impression that he had not thought about the issue and had provided insufficient reasons (*Hidalgo* at paras 20–22). In this case, the officer clearly referred to there being no credibility issue as alleged by Ms. Garces Canga in her application for protection, a statement which he later elaborated upon in his reasons by identifying the lack of probative evidence on all aspects of Ms. Garces Canga's account.

[30] Hearings are not normally held when deciding PRRA applications. However, as provided for in paragraph 113(b) of the IRPA, a hearing may be held if the Minister considers it necessary, based on prescribed factors. The prescribed factors are set out in section 167 of the Regulations and provide that a hearing will generally be required if there is a serious credibility issue with respect to the evidence that is central to the decision and that, if accepted, would justify allowing the application. This provision echoes *Singh v Canada (Minister of Employment and Immigration)*, [1985] 1 SCR 177, in which the Supreme Court of Canada noted that where a significant issue of credibility is involved, fundamental justice required that the issue be determined by way of a hearing. The reviewing court must therefore consider whether, regardless of the wording, a PRRA officer's decision to reject an applicant's statements was based on a credibility finding or whether it was, rather, based on insufficient evidence.

[31] Ms. Garces Canga asserts that, despite the language used by the PRRA officer in the Decision, his rejection of her PRRA application was based on disguised findings of credibility, not on insufficient evidence or the fact that the evidence was not corroborated. In her submissions, Ms. Garces Canga relies heavily on *Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 [*Ahmed*], where Justice Norris had discussed the distinction between issues of insufficiency of evidence and issues of credibility of an applicant. At paragraph 31, he stated the following:

> Credibility assessments can be an important consideration when weighing evidence. However, a decision maker can also find evidence to be insufficient without any need to assess its credibility. One useful test in the present context is for the reviewing court to ask whether the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application for protection. If they would not, then the PRRA application failed, not because of any sort of credibility finding, but simply because of the insufficiency of the evidence. On the other hand, if the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application and, despite this, the application was rejected, this suggests that the decision maker had doubts about the veracity of the evidence.

[32] In *Ahmed*, the Court found that the officer's reasons for rejecting the application were understandable only if the officer had doubts directly related to the applicant's credibility, specifically, doubts about the veracity of statements in the applicant's statutory declarations, which, if taken as fact, would likely justify allowing the application for protection (*Ahmed* at para 33). In such circumstances, the duty of procedural fairness required a hearing.

[33] In Ms. Garces Canga's case, I consider that we are rather in the first situation referred to in *Ahmed*, namely a situation where the assertions of fact that the evidence presented is intending

to establish, assuming that they are true, were not likely to justify granting the application for protection. The PRRA officer assessed the probative value of Ms. Garces Canga's evidence, without drawing any conclusions on credibility, and concluded that the evidence in question was insufficient, in and of itself, to establish that the events in question had taken place.

[34] I recognize that a decision maker's conclusion that the evidence presented is insufficient to support an allegation can sometimes hide a veiled adverse credibility finding. I further acknowledge that there are several decisions of the Court that have determined that PRRA officers' findings of insufficient evidence were nothing more or less than implied, disguised or veiled credibility findings. However, whether a finding of insufficient evidence is, in fact, a disguised credibility finding is directly dependent on the facts of the case. Sometimes it is, sometimes it is not. It depends on the language used in the reasons, the analysis of the particular facts of the case and the context of the decision. As with any issue subject to judicial review, the starting point is the decision itself, what it says and what it actually means. The Court must, of course, look beyond the language expressly used in the officer's decision to decide whether, in fact, the applicant's credibility is in issue.

[35] While it is sometimes difficult to distinguish between a finding of insufficient evidence and a finding of lack of credibility, I am of the view that this is not the case here. Throughout his Decision, the PRRA officer noted the lack of evidence, documentation and information provided by Ms. Garces Canga. He characterized the evidence provided as insufficient on several occasions, without ever raising Ms. Garces Canga's credibility regarding her statements or expressing doubts about her testimony. The PRRA officer's findings are formulated and written

expressly in terms of insufficient evidence, and a review of the officer's analysis and the file does not suggest that his conclusions were related to credibility. This is not a situation where the language used by the officer is obscure and the analysis conducted is open to different interpretations. Nor is it a situation where, on its face, the PRRA officer's decision appears to be based on a disguised credibility finding, and where the analysis of the evidence can only be understood as an indirect assessment of credibility. In my opinion, Ms. Garces Canga's case can be distinguished from precedents such as *Ahmed, Cho v Canada (Citizenship and Immigration)*, 2010 FC 1299, or *Abdillahi v Canada (Citizenship and Immigration)*, 2020 FC 422, referred to in her submissions.

[36] The PRRA officer consistently expressed himself in terms of the absence or insufficiency of probative evidence. Not only are the PRRA officer's conclusions regarding Ms. Garces Canga's testimony specifically and repeatedly expressed in terms of [TRANSLATION] "sufficiency of evidence", but I also find no expression or statement suggesting that the officer had any doubts about Ms. Garces Canga's credibility. The officer never referred to any inconsistencies in Ms. Garces Canga's statements and never suggested that she was not being honest. There is nothing in any of the passages that raises ambiguity or creates uncertainty. There are no expressions or comments that refer to variations in Ms. Garces Canga's account, or to contradictory assertions, or to questioning the veracity of her statements. Nowhere in the Decision is there any reference to her credibility, whether express or implicit. Nor did Ms. Garces Canga's lawyer refer the Court to any such reference.

[37] In my opinion, the argument that the PRRA officer brought Ms. Garces Canga's credibility into question does not stand up to analysis and is simply unfounded. Given that there was no [TRANSLATION] "significant issue" with respect to Ms. Garces Canga's credibility, her assertion that the PRRA officer acted unreasonably or unlawfully in failing to convene a hearing is without merit.

[38] An adverse finding of credibility should not be confused with a finding of insufficient probative evidence. As I stated in *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068, at para 35, "[a]n adverse finding of credibility is different from a finding of insufficient evidence or an applicant's failure to meet his or her burden of proof". In cases where an immigration officer concludes that the evidence does not support the claim, it cannot be presumed that the officer did not believe the applicant (*Gao v Canada (Citizenship and Immigration)*, 2014 FC 59, at para 32).

[39] The term "credibility" is often misused in a broader sense to mean that the evidence is not convincing or sufficient. However, there are two different concepts. The assessment of credibility relates to the reliability of the evidence. When the evidence is found not to be credible, the origin of the evidence (for example, the applicant's testimony) is determined to be unreliable. The reliability of the evidence is one thing; however, the evidence must also have sufficient probative value to meet the applicable standard of proof. The assessment of sufficiency relates to the nature and quality of the evidence that an applicant must present to obtain relief, its probative value, and the weight that the trier of fact, whether a court or an administrative decision maker, must give to the evidence.

[40] The trier of fact may decide to give little or no weight to the evidence and find that the statutory standard of proof has not been met. Similarly, the presumption of veracity or reliability of statements made by refugee protection claimants, as expressed in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA), cannot be taken as a presumption that the evidence is satisfactory and sufficient. A claimant's evidence, even if presumed credible and reliable, cannot be presumed sufficient, in and of itself, to establish the facts on a balance of probabilities. This issue must be decided by the trier of fact. Where the analysis identifies gaps in the evidence, it is up to the trier of fact to determine whether the claimant has met the burden of proof. In doing so, the trier of fact does not question the claimant's credibility. Rather, the trier of fact seeks to determine, assuming the evidence presented is credible, whether it is sufficient to establish, on a balance of probabilities, the facts alleged (*Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305 at paras 17–18).

[41] In *Ferguson*, Justice Zinn provides a useful summary of the relationship between the weight, sufficiency and credibility of the evidence. As the Court indicates at paragraph 27, when triers of fact assess the weight and sufficiency of evidence, they simply state that "the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, that fact for which it has been tendered". Evidence need not meet the standard of reliability (i.e., credible evidence) for its weight and sufficiency to be assessed. The trier of fact may well assess the weight and probative value of the evidence without first examining its credibility (*Ferguson* at para 26). This will occur when the trier of fact considers that little or no weight should be given to the evidence,

even if it has been considered reliable, or when the evidence is found not to be directly relevant to the facts alleged or not to be reliable for reasons other than credibility.

[42] In the case of Ms. Garces Canga, the PRRA officer concluded that there was not enough hard evidence to prove that she was at risk in Colombia because of her membership in the particular social group of Afro-Colombian women, or her involvement in the arrest of La Chilly. Such a decision does not call into question Ms. Garces Canga's credibility. I find no evidence in the officer's Decision or in the PRRA application file to support a finding that Ms. Garces Canga presented evidence that the officer did not believe. On the contrary, as the PRRA officer's reasons specifically state, the Decision was based on the officer's conclusion that there was no compelling evidence to support a finding in Ms. Garces Canga's favour. Having concluded that the PRRA officer did not base his decision on disguised credibility findings, the procedural fairness arguments that Ms. Garces Canga advanced in this application for judicial review must by the same token fail.

[43] Where an application for judicial review concerns procedural fairness and the duty to act fairly, the issue is not so much whether the decision was "correct", but rather whether, having regard to the particular context and circumstances of the case, the process followed by the decision maker was fair and gave the parties the right to be heard and the opportunity to know and respond to the case against them. Thus, even if I were to consider that the right to an oral hearing in the context of a PRRA application is primarily a matter of procedural fairness, a hearing is not necessarily required in the name of the "right to be heard" or the "full and fair chance to respond". It becomes a right when it would be unfair to decide an issue, particularly

one of credibility, without giving the party concerned an opportunity to address the matter orally. That is not the situation here. In the circumstances of this case, even if the matter is considered from the standpoint of procedural fairness, the PRRA officer was not obliged to hold a hearing since credibility was not at issue. Contrary to Ms. Garces Canga's assertion, this is not a situation where she was unaware of the burden of proof she had to meet or did not have a full and fair chance to respond. Rather, it is a case where the process followed by the PRRA officer achieved the level of fairness required by the circumstances of the case.

[44] Mrs. Garces Canga was entitled to a reasonable decision and a fair process, and that is what she received from the PRRA officer.

B. ***The Decision was reasonable, including on the application of section 96***

[45] On the merits of the Decision, Ms. Garces Canga argues, secondly, that the PRRA officer erred in law in his assessment of the component of her application under section 96 of the IRPA by requiring proof of personalized risk. The PRRA officer therefore, according to Ms. Garces Canga, treated this part of the PRRA application as if it were a section 97 application and confused the two criteria. Ms. Garces Canga argues that there is no requirement for a personal fear of persecution under section 96.

[46] In the same vein, Ms. Garces Canga also alleges that the officer rejected her PRRA application without considering all of the evidence on file. She submits that the documentary evidence showed that the Afro-Colombian community is stigmatized, and that because of her membership in the particular social group of Afro-Colombian women, she had a well-founded

fear of persecution. In addition, Ms. Garces Canga argues that the officer failed to consider whether the cumulative effect of the discrimination suffered by Afro-Colombians amounted to persecution. She adds that her involvement as a leader in the community in conjunction with the documentary evidence was sufficient to conclude that she faced a serious possibility of persecution. Ms. Garces Canga therefore maintains that the PRRA officer erred in his assessment of the evidence and did not provide sufficient reasons for his Decision.

[47] I do not agree with Ms. Garces Canga's arguments, and I am not persuaded by her comments that the section 96 analysis was allegedly glossed over by the PRRA officer in the Decision

[48] It is well established that the elements required to establish the merits of a claim under section 97 of the IRPA differ from those required under section 96. For the purposes of section 97, the administrative decision maker must consider whether the removal of the applicant could expose him or her personally to the risks and threats specified in that section. The risk must be individualized and must be established on a balance of probabilities; it is prospective and has no subjective component (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at para 33; *Alcantara Moradel v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 404 [*Moradel*] at paras 22–23; *Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 409 [*Jarada*] at paras 26–28). On the other hand, where the claim is based on section 96, the applicant does not necessarily have to prove that he or she has personally been persecuted in the past or would be persecuted in the future; the applicant need only show that his or her fear stems from wrongdoing committed or likely to be committed against members of a group to

which he or she belongs, not that it stems from wrongdoing committed or likely to be committed against him or her. It is also sufficient to show that there is a reasonable possibility that the risk of harm associated with that fear will occur, that is, that there is more than a mere possibility that the risk will materialize (*Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 at para 17 (FCA); *Dezameau v Canada (Citizenship and Immigration)*, 2010 FC 559 at para 29).

[49] However, a refugee protection claimant who claims to have been persecuted for a Convention ground must still establish both a subjective fear of persecution and an objectively well-founded fear (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689). The claimant must therefore show that he or she is a member of the group whose members face a risk of persecution that is feared (*Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 1061 at para 28; *Conka v Canada (Citizenship and Immigration)*, 2018 FC 532 at para 17; *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at para 16).

[50] In order to meet the definition of "Convention refugee" in section 96 of the IRPA, the claimant must show that he or she meets all the elements mentioned in that definition, beginning with the existence of a subjective and objective fear of persecution (*Yusuf v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 629 (CA); *Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 15; *Somasundaram v Canada (Citizenship and Immigration)*, 2014 FC 1166 at para 21). And it is up to the claimant to relate the general documentary evidence to his or her specific situation *(Prophète v Canada (Citizenship and Immigration*), 2008 FC 331 at para 17; *Jarada* at para 28). A claimant must thus establish a nexus between

him- or herself and persecution for a Convention ground. The claimant must be targeted for persecution in some way, either “personally” or as a “collectively”, and must have a well-founded fear of persecution by reason of race, religion, nationality, membership in a particular social group or political opinion. In addition, the existence of persecution under section 96 can be established through an examination of the treatment of persons who are in similar circumstances to the claimant, and the claimant does not have to prove that he or she has been persecuted in the past or would be persecuted in the future.

[51] Ms. Garces Canga is therefore correct that it is not necessary to show that she has been personally targeted or persecuted in the past to establish the existence of a risk under section 96 (*Olah v Canada (Citizenship and Immigration)*, 2017 FC 921 at para 14). However, it is not sufficient to simply refer to the general situation in the country without establishing links to a claimant’s personal circumstances. Under sections 96 and 97, the assessment of the risk of persecution or harm that a claimant might face if returned to his or her country must be related to the claimant’s situation. Just because the documentary evidence shows that the situation in a country is problematic from the point of view of respect for certain human rights does not necessarily mean that a risk to a particular individual must be inferred.

[52] However, according to the PRRA officer, Ms. Garces Canga did not demonstrate this in this case. As noted by the officer, the risk faced by Afro-Colombians returned to their country concerns first and foremost activists with a certain profile, such as those involved in environmental causes or in the defence of the rights of indigenous peoples. According to the officer’s assessment of the evidence, the documentation submitted by Ms. Garces Canga on her

Basis of Claim Form and her activities did not support the conclusion that she had such a profile as an activist. The PRRA officer concluded that the documentary evidence described the conditions of persons who were not in a similar situation to that of Ms. Garces Canga and that Ms. Garces Canga had not linked the evidence of the situation in Colombia to her particular circumstances as a member of the Afro-Colombian community.

[53] I therefore disagree with Ms. Garces Canga that the PRRA officer did not assess Ms. Garces Canga's application for protection on the basis of the persecution she fears as a result of her membership in a particular social group and according to the analytical framework of section 96 of the IRPA. Ms. Garces Canga criticizes the PRRA officer for referring to [TRANSLATION] "personalized risk" on a number of occasions. The fact that the PRRA officer used the term [TRANSLATION] "personalized risk" does not mean that he was confusing the two criteria in sections 96 and 97. A section 96 application requires both a subjective and an objective basis, and the evidence must relate to the applicant's personal circumstances. The use of phrases such as [TRANSLATION] "personally exposed to a risk", [TRANSLATION] "a personalized risk", or [TRANSLATION] "the risk must be individualized" does not necessarily mean that section 96 is being merged with section 97. Both sections 96 and 97 require that the risk be to the person claiming refugee protection, and that there be made a nexus with the claimant's personal circumstances. In this case, there was no evidence of a nexus with Ms. Garces Canga's personal situation and how she would be at risk following her return to Colombia.

[54] I concede that the PRRA officer could perhaps have better separated and focused his analysis of the criteria in sections 96 and 97 of the IRPA. It would have been desirable for the officer to have explained this in more detail in the Decision. However, when the reasons for decision are considered, as they should be and as a whole, they do not lead to the conclusion that the officer confused the criteria applicable to each of the two components of the PRRA application, in my opinion. The PRRA officer determined that Ms. Garces Canga has not demonstrated that she [TRANSLATION] "would be at risk should she return to Colombia", or that she "risks being personally exposed to either a risk to her life or a risk of cruel and unusual treatment or punishment". In the Decision, the officer explicitly refers to the risk indicated in section 96 at the level of considerations common to all grounds for protection, and to the fact that the risk must be personal or that other individuals in a similar situation face the same risk. The Decision refers to risk of persecution under section 96 of the IRPA, danger of torture under paragraph 97(1)(a) and risk to life or risk of cruel and unusual treatment or punishment under paragraph 97(1)(b).

[55] Following *Vavilov*, the reasons given by administrative decision makers take on greater importance and become the starting point for the analysis. They are the primary mechanism by which administrative decision makers show that their decisions are reasonable, both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They serve to "explain how and why a decision was made", to demonstrate that "the decision was made in a fair and lawful manner" and to guard against "the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79). In short, it is the reasons that make it possible to establish the justification for the decision. They must be interpreted holistically and contextually in order to understand

"the basis on which a decision was made" (*Vavilov* at para 97; *Canada Post Corporation* at para 31).

[56] In Ms. Garces Canga's case, I am satisfied that the officer's reasons justify the Decision in a transparent and intelligible manner (*Vavilov* at paras 81, 136; *Canada Post Corporation* at paras 28, 29). They demonstrate, in my opinion, that the officer followed rational, consistent and logical reasoning in his analysis and that the Decision is consistent with the relevant legal and factual constraints affecting the outcome and the issue in dispute (*Canada Post Corporation* at para 30, citing *Vavilov* at paras 105–107). In the end, nothing in the errors alleged by Ms. Garces Canga leads me "to lose confidence in the outcome reached by the decision maker" (*Vavilov* at para 123).

[57] I would add that the reasons for a decision need not be perfect or even exhaustive. They need only be understandable. The standard of review of reasonableness is not the degree of perfection of the decision, but rather its reasonability (*Vavilov* at para 91). This standard requires the reviewing court to begin with the decision and an acknowledgment that the administrative decision maker has the primary responsibility for making findings of fact. Such findings command deference. The reviewing court examines the reasons, the record and the result and, if there is a logical and consistent explanation for the result, it refrains from intervening. Moreover, the Court must be careful, on judicial review of an administrative decision maker's decision, not to engage in "a line-by-line treasure hunt for error" (*Vavilov* at para 102). Unfortunately for Ms. Garces Canga, this is the trap into which she seems to have fallen in trying to find an error in the assessment of risk under section 96 of the IRPA in the Decision.

[58] The party challenging the decision must satisfy the reviewing court that "any alleged flaws or shortcomings . . . are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). In this case, I am satisfied that the PRRA officer's reasoning can be followed without a decisive flaw in rationality or logic. There is no serious flaw in the Decision that would hamper the analysis and that would be likely to undermine the requirements of justification, intelligibility and transparency. In the end, Ms. Garces Canga's arguments express her disagreement with the PRRA officer's assessment of the evidence and, in fact, invite the Court to prefer her opinion and her reframing of the evidence to the analysis made by the officer. This is not the role of a reviewing court on judicial review.

IV. Conclusion

[59] For the reasons above, Ms. Garces Canga's application for judicial review is dismissed. I see nothing in the record to suggest that Ms. Garces Canga's right to be heard was violated or that the decision-making process that the PRRA officer followed was unfair. In all respects, the officer met the requirements of procedural fairness in processing Ms. Garces Canga's application and in his decision to not hold a hearing. Moreover, I find nothing irrational in the decision-making process that the officer followed and in his findings. Rather, I conclude that the officer's analysis has all the required attributes of transparency, reasonableness and intelligibility, and that there are no reviewable errors in the Decision.

[60] Neither party suggested any question of general importance to certify, and I agree that there are none.

JUDGMENT in IMM-4441-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.

2. No serious question of general importance is certified.

"Denis Gascon"
Judge

Certified true translation
This 31st day of July 2020.

Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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