

Federal Court



Cour fédérale

Date: 20211028

Docket: IMM-1052-20

Citation: 2021 FC 1114

Fredericton, New Brunswick, October 28, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

**KELLY FERNANDA GOMEZ ARANGO  
ANDRES FELIPE PALOMO SANCHEZ  
JUANA VALENTINA PALOMO GOMEZ**

**Applicants**

and

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**AMENDED JUDGMENT AND REASONS**

[1] This is a judicial review of the Refugee Protection Division (RPD) decision, dated January 28, 2020, refusing the refugee claims of the Applicant family from Columbia, and finding that they had an internal flight alternative (IFA).

[2] For the reasons that follow, this judicial review is granted.

## **Background**

[3] The principal applicant, Ms. Gomez, is the common law spouse of Mr. Arango (referred to in the RPD decision as the “associate claimant”). Their daughter is the minor applicant.

[4] The Applicants resided in Mariquita, Columbia, where Ms. Gomez worked as a nurse’s aid and Mr. Arango worked as a hotel manager at a hotel owned by his parents. When his parents retired in 2019, Mr. Arango became the general manager of the hotel.

[5] On April 11, 2019, Mr. Arango received a phone call at the hotel asking for his parents. Mr. Arango replied that his parents no longer worked at the hotel, and that he was in charge. The caller identified himself as a member of a “new group in Mariquita” and demanded that Mr. Arango pay a monthly installment. When Mr. Arango refused to comply, the caller said “No problem. That will be worked out with your life, or your wife’s or daughter’s life.”

[6] Mr. Arango reported this to the police the next morning and on April 16, 2019, he received a letter from the police entitled “Security and Self-Protection Standards” with a list of suggested precautions for the Applicants to take for their own protection.

[7] Mr. Arango continued receiving phone calls that he states became increasingly vulgar and belligerent.

[8] The Applicants received two letters at their home demanding that Mr. Arango cooperate with the armed group or be killed alongside his family.

[9] On May 3, 2019, Ms. Gomez and her daughter were ambushed by a group of armed men near her daughter's school. Ms. Gomez testified at the RPD hearing that one of the armed men told her to remind her husband, Mr. Arango, to "pay the quota", or they would hurt their daughter. Following this incident, Ms. Gomez and Mr. Arango stopped sending their daughter to school.

[10] On May 5, 2019, Mr. Arango was intercepted while on his motorbike by the armed group, who identified themselves as members of the ELN, put a gun to his head, and threatened to kill his wife and daughter if he did not comply with their extortion demands.

[11] On May 13, 2019, the Applicants left Colombia for the United States. They entered Canada on June 4, 2019.

### **RPD Decision**

[12] The RPD found the claimants to be "generally credible with respect to the allegations they have made." The RPD also found that the evidence corroborated their allegations.

[13] The RPD concluded that the Applicants had no nexus to a Convention ground under s. 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)* because they "do not fear harm on the basis of their race, religion, nationality, political opinion, or membership in a particular social group." Their claims were assessed under s. 97 of *IRPA*.

[14] At paragraph 33 of the decision, the RPD stated:

The associate claimant testified that the armed group identified itself as affiliated with the ELN only once, during the altercation which occurred on May 5, 2019. At this point, the armed group had contacted the claimants twice over the phone, had written one threatening letter, and had threatened the associate claimant and the minor claimant in person in order to convince the claimants to give into their extortion demands. Given these circumstances, I do not find there is sufficient evidence to tie the armed group to the ELN and find that it was just as likely that the armed gang referenced the ELN during the altercation in order to cause the claimants to become fearful and take their threats seriously.

[15] At paragraph 31, the RPD then concluded as follows:

However, I disagree with the claimants' characterization of the agent of harm and their affiliation with the ELN. I have insufficient evidence before me to conclude that the armed individuals who were threatening the claimants have a significant position with the ELN. This is significant because it has direct bearing on the capacity of the armed group to locate the claimants in another city.

[16] The RPD concluded that the Applicants had a viable IFA in Cartagena.

## **Issue**

[17] The determinative issue on this judicial review is whether the decision of the RPD is reasonable.

## **Standard of Review**

[18] On a reasonableness review, as stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [Vavilov], "A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the

decision as a whole is reasonable. To make this determination, the reviewing court asks 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” [Citations omitted].

[19] At para 102 of *Vavilov*, the Court defines a reasonable decision as one that is “based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside.”

[20] *Vavilov* further instructs at para 103 that “a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis” [Citations omitted].

## **Analysis**

[21] The Applicants argue that the RPD decision is not logically coherent as the RPD made contradictory findings within the IFA analysis. First, when discussing the “means” of the agent of harm to pursue the Applicants in the IFA area, the RPD concluded that the agent of harm was not affiliated with the ELN. At paragraph 33, the RPD stated:

The associate claimant testified that the armed group identified itself as affiliated with the ELN only once, during the altercation which occurred on May 5, 2019 [...] Given these circumstances, I do not find there is sufficient evidence to tie the armed group to the ELN and find that it was just as likely that the armed gang reference the ELN during the altercation in order to cause the claimants to become fearful and take their threats seriously.

[22] However, at other parts of the decision, the RPD seems to have concluded that the agents of harm do not have the means to pursue the Applicants due to their position within the ELN. At paragraph 35, the RPD concluded that:

There is insufficient evidence to establish that the members of the armed group that targeted the claimants are high-level members of the ELN or the FARC who have any level of influence or power. Given the evidence that is before me, I find it is speculative to suggest that the armed group that targeted the claimants would have the connections or the resources to locate the claimants throughout Columbia (emphasis added).

[23] The RPD also stated at paragraph 31, “I have insufficient evidence before me to conclude that the armed individuals who were threatening the claimants have a significant position with the ELN” (emphasis added).

[24] First, the RPD’s conclusion that the armed group was not affiliated with the ELN is not consistent with the evidence. Specifically, Mr. Arango stated that when he was apprehended on May 5, 2019, the armed group identified themselves as members of the ELN. The RPD finding that it was “just as likely” that the extortionist group was merely posing as ELN is speculation. Further, Mr. Arango’s witness testimony clearly identified the armed group as associated with the ELN.

[25] As the RPD made no negative credibility findings against the Applicants, the allegation that the armed group harassing and terrorizing the Applicants were ELN-affiliated should have been accepted. There was no evidence before the RPD that armed groups will pose as members of the ELN in order to increase their chances of success at extortion. Consequently, this aspect of the decision is unreasonable.

[26] Secondly, the RPD's contradictory findings that, on the one hand, the armed group did not present a risk to the Applicants in Cartagena because they were not affiliated with the ELN, and on the other hand, that they did not pose a threat because they were not "high level" or "significant" members of the ELN is unreasonable. I further note that the evidence before the RPD was not that only "high level" members of the ELN pose a threat. To the contrary, the documentary evidence indicated that the ELN is comprised of "independent groups loosely united under a central authority", and that these groups "are in constant dialogue".

[27] Finally, there was evidence before the RPD confirming the ability of the ELN to track down the Applicants throughout Colombia. This does not appear to have been considered by the RPD in undertaking its IFA analysis, and it is not clear whether this is because the RPD concluded the armed group was not associated with the ELN, or because the armed group did not consist of "high level" ELN members. While a decision-maker is not required to refer to every piece of evidence before them, "a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact" (*Cepeda Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 17). Further, the "reasonableness of a decision may be jeopardized where the decision-maker has [...] failed to account for the evidence before it" (*Vavilov* at para 126).

## **Conclusion**

[28] Overall, the RPD's reasons are inconsistent with the evidence and fail to demonstrate a rational chain of analysis. This is contrary to Vavilov (paras 102-103), therefore the decision is unreasonable.

[29] Accordingly, this judicial review is granted.



**JUDGMENT IN IMM-1052-20**

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

1. The application for judicial review is granted. The decision of the RPD is set aside and the matter is remitted for redetermination; and
2. No question of general importance is proposed by the parties and none arises.

**“Ann Marie McDonald”**

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Judge

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

**DOCKET:** IMM-1052-20

**STYLE OF CAUSE:** KELLY FERNANDA GOMEZ ARANGO ET AL v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 23, 2021

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** OCTOBER 28, 2021

**APPEARANCES:**

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