

Federal Court



Cour fédérale

**Date: 20211026**

**Docket: IMM-7721-19**

**Citation: 2021 FC 1141**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, October 26, 2021**

**PRESENT: The Honourable Madam Justice Walker**

**BETWEEN:**

**OMAR FABIAN PEREZ SOTO  
MARTHA LUCIA SOTO DUITAMA  
OMAR ORLANDO PEREZ MUNOS  
SARA ALEJANDRA PEREZ SOTO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The principal applicant, Omar Soto, and the associated applicants, his father, mother and minor sister, are citizens of Colombia. They seek judicial review of a decision issued by the Refugee Appeal Division (RAD) on November 27, 2019 (Decision). The RAD found that the

applicants had an internal flight alternative (IFA) in Florencia in their home country, confirming a decision rendered by the Refugee Protection Division (RPD) on that basis.

[2] For the following reasons, the application is dismissed.

I. Background

[3] The applicants fear returning to Colombia they are afraid of being persecuted there by a criminal group called the “Black Eagles” who asked the principal applicant to provide confidential information about the clients of the bank where he worked in Bogotá.

[4] After receiving death threats during a call in April 2018, the principal applicant alleged that he was intercepted on May 8, 2018, by two armed men belonging to the Black Eagles. They allegedly made threats against him and his family members because of his refusal to respond to their calls. Then, in June 2018, four people intercepted his mother and threatened her. They informed her that they were looking for her son. The next day, the principal applicant resigned from his job at the bank and left with the other applicants to live in a remote village. Having been threatened again by members of the Black Eagles in July 2018, the applicants left Colombia for the United States. On August 9, 2018, they crossed the Canadian border and sought Canadian protection.

[5] On May 2, 2019, the RPD rejected the applicants’ claim. The panel noted some credibility issues with the applicant’s profile as a customer service manager at the bank. However, the panel considered that the decisive issue in the case is the existence of an IFA. The

RPD undertook a detailed analysis of the Black Eagles' operations, the facts, and the arguments before concluding that the applicants could benefit from a secure IFA in Florencia.

[6] The applicants appealed this decision to the RAD. They argued before the RAD that the RPD's decision is based on erroneous findings regarding their risk under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, their credibility, and the IFA analysis. The applicants presented new evidence in support of their appeal, but the RAD found that evidence inadmissible. The applicants do not contest this aspect of the Decision.

[7] The RAD's Decision focuses on the applicants' arguments regarding the existence of an IFA in Colombia. The RAD rejected the applicants' arguments that the RPD erred in relying on the documents contained in Colombia's National Documentation Package (NDP) to qualify the city of Florencia as an IFA. In addition, the RAD conducted a two-part analysis necessary to establish the existence of an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 709–11 (FCA) (*Rasaratnam*)). The RAD found first that the applicants had not established a serious possibility that the Black Eagles were motivated to pursue them in Florencia. As for the second prong, the RAD noted that the applicants had not presented any argument that they could not live safely in that city.

## II. Issues and standard of review

[8] The issue in this application is whether the RAD committed a reviewable error in its assessment of a viable IFA for the applicants. In the alternative, the applicants argue that there

was a breach of procedural fairness in their appeal to the RAD because they did not have adequate representation before the RAD or the RPD.

[9] The RAD's reasons and conclusion regarding the existence of an IFA are subject to the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32). Where the standard of reasonableness applies, the Court must ensure that it understands the decision maker's chain of analysis to determine whether the decision as a whole is reasonable. It must ask 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).

[10] The applicants' allegations of breach of procedural fairness do not necessarily lend themselves to a standard of review analysis (*Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 (*Canadian Pacific*)). Rather, this Court's role is to determine whether the procedure is fair in all the circumstances (*Canadian Pacific* at paras 54–56; *Alkhoury v Canada (Citizenship and Immigration)*, 2020 FC 153 at para 10).

### III. Analysis

[11] The test for establishing the existence of an IFA has two prongs. The RAD must be satisfied, on a balance of probabilities: (1) that there is no serious possibility that the claimants will be persecuted in the proposed IFA; and (2) that it is not unreasonable, in light of all the circumstances, including the personal circumstances of the claimants, for them to seek refuge

there (*Rasaratnam* at pp 709–11; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA)).

[12] The applicants argued that the RAD did not conduct its own analysis of the issue of an IFA in Florencia and that, in any event, the RPD and RAD erred in concluding that the Black Eagles did not have operational capability in all regions of Colombia.

[13] The Court cannot agree with the applicants' arguments. A reading of the Decision as a whole demonstrates that the RAD undertook an independent analysis of the NDP, the evidence in the record, and the applicants' arguments filed in support of their appeal. The RAD's reasons reflect a rational analysis of the arguments presented by the applicants and the existence of a safe IFA for the applicants in Florencia.

[14] The RAD first considered the RPD's reliance on the NDP documents in its determination of the existence of an IFA. The RAD concluded that the RPD did not err because the information in the NDP was reliable. The RAD noted that the documents the applicants referred to were based on information provided by the Colombian national police.

[15] Most importantly, the RAD relied on the applicants' lack of evidence or argument regarding the Black Eagles' continued motivation to pursue them. The RAD concluded:

[49] Lastly, in view of the fact that the principal appellant stopped working entirely at Scotiabank in Bogotá in June 2018 and left the country for such an extended period, the RAD is of the opinion that the appellants did not produce any satisfactory evidence to the RPD or the RAD demonstrating that the Black

Eagles have the motivation to look for them in the proposed city, Florencia.

[16] With respect to the first prong of the test for establishing the existence of an IFA, a serious possibility that the applicants would be persecuted in the proposed IFA can only be found if the agents of persecution have the means and motivation to pursue them. Setting aside the geographic reach of the Black Eagles and their allies, the burden is on the applicants to demonstrate that their agents of persecution are motivated to find them. This aspect of the first prong does not focus on the capabilities and means of the agents of persecution to track down applicants throughout Colombia.

[17] The RPD concluded that there was no evidence that the Black Eagles are motivated to spend time, energy, and money tracking down the applicants in a country of more than 47 million people. The fact that the agents of persecution found the applicants in another village in 2018 does not undermine the RPD's finding. The panel asked applicants if their respective family members in Colombia had had any problems with the Black Eagles since 2018. They responded in the negative. Additionally, the applicants did not present any evidence to suggest that they had raised the issue of the Black Eagles' motivation before the RAD. However, the RAD addressed this issue and reached the same conclusion. The RAD correctly pointed out that principal applicant does not have access to the confidential information sought by the Black Eagles and has not since 2018.

[18] It also follows that the relevance of the NDP on Colombia, whether it is the 2018 or 2019 version of the NDP, is diminished. The existence of an alliance between the Black Eagles and the

“Urabeños,” an armed and illegal group in Colombia, does not affect the issue of the Black Eagles’ motivation to pursue the applicants.

[19] I find no reviewable error in the RAD’s analysis of the first prong of the test for determining the existence of an IFA. In my view, it was reasonable for the RAD to conclude that the applicants had not presented compelling evidence that the Black Eagles are motivated to seek them out in Florencia.

[20] With respect to the second prong of the test, the RAD stated in its Decision that the applicants did not present any argument that they could not live safely in Florencia (*Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 13). The panel noted that they did not raise any problems in this regard during the RPD’s examination, other than difficulties in finding work. The applicants do not challenge the RAD’s findings in this regard in this application.

[21] Finally, the applicants argued that they did not have adequate representation before either the RAD or the RPD. They fault their RPD counsel for failing to put into evidence how the Black Eagles could locate the applicants in Florencia. They point out that their RAD counsel did not correct this omission. The applicants argue that the omission of this evidence is not reasonable professional assistance and resulted in a miscarriage of justice.

[22] Incompetence of counsel constitutes a breach of natural justice only in “extraordinary circumstances” (*Memari v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1196 at

para 36; *Chen v Canada (Citizenship and Immigration)*, 2021 FC 561 at para 21). To demonstrate such a breach, the applicants must meet three criteria: 1) the representative's alleged acts or omissions constituted incompetence; 2) there is a reasonable probability that the result would have been different; and 3) the representative be given notice and a reasonable opportunity to respond (see the Procedural Protocol issued by the Chief Justice on March 7, 2014 entitled *Re: Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court; Guadron v Canada (Citizenship and Immigration)*, 2014 FC 1092 at para 11).

[23] The applicants informed their former counsel of their allegations of incompetence against him and gave him the opportunity to respond to those allegations. Thus, they have satisfied the third criterion of the Protocol. However, the onus is on the applicants to establish the impact of the alleged omission on the basis of the Decision. They have not done so. The applicants have not shown that presenting new evidence regarding Black Eagle operations throughout Colombia would have led to a different result. Furthermore, they make no reference in their submissions to the Court to the nature of any missing evidence regarding the Black Eagles' motivation to search for them in Florencia in light of the fact that the principal applicant does not have access to the information sought by his persecutors.

[24] It is important to remember that the RAD's findings on the existence of an IFA are essentially factual and based on its assessment of all the evidence. The RAD could reasonably conclude that the applicants had not demonstrated, on a balance of probabilities, that the agents of persecution had an incentive to track them down outside of their city of residence while the



principal applicant was working at the bank. It is not the role of this Court to reweigh and balance the evidence to reach a conclusion that would be favourable to the applicants. Its role is to determine whether the Decision has the characteristics of a reasonable decision (*Vavilov* at paras 99, 125). The Court finds that it does, and the application for judicial review is therefore dismissed.

[25] No question of general importance is submitted for certification, and the Court is of the view that none are raised by this case.

**JUDGMENT in IMM-7721-19**

**THIS COURT ORDERS as follows:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Elizabeth Walker”

---

Judge

Certified true translation  
Michael Palles

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

**DOCKET:** IMM-7721-19

**STYLE OF CAUSE:** OMAR FABIAN PEREZ SOTO, MARTHA LUCIA SOTO DUITAMA, SARA ALEJANDRA PEREZ SOTO, OMAR ORLANDO PEREZ MUNOS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 19, 2021

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** OCTOBER 26, 2021

**APPEARANCES:**

Kristin Debs	FOR THE APPLICANTS
Samar Musallam	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Debs Law Professional Corporation Ottawa, Ontario	FOR THE APPLICANTS
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT