

Federal Court



Cour fédérale

Date: 20220705

Docket: IMM-3691-21

Citation: 2022 FC 992

Ottawa, Ontario, July 5, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

**MARIA ASTRID PIZA YEPES and
JUAN DAVID REY PIZA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division (RAD), dated May 4, 2021, finding that the Applicants are not Convention refugees nor persons in need of protection and finding that they had an internal flight alternative (IFA) in Cartagena.

[2] For the reasons that follow, I have concluded that the RAD decision is reasonable, therefore, this judicial review is dismissed.

I. Background

[3] The Applicant, Maria Astrid Piza Yepes (Ms. Yepes) and her minor son, Juan David Rey Piza, are citizens of Colombia. They arrived in Canada in October 2018 and made a refugee claim, alleging they were being extorted by the National Liberation Army (ELN). The Applicant's husband and daughter are not included in the refugee claim.

[4] In Columbia, the Applicants lived in Neiva where they owned a butcher shop. Ms. Yepes alleges that in 2016, she and her husband started receiving threatening phone calls with demands for money from the ELN. They reported the incident to police, but the calls continued.

[5] In February 2017, men came to the butcher shop, identified themselves as members of the ELN, held a gun to her husband's head, and forced them to give them money from the cash register. They were robbed by the same men again in May and August 2017. The Applicants moved to Rivera – an hour away – however, they were robbed again in December 2017 and April 2018. The Applicants closed their butcher shop and moved to Campoalegre.

[6] In August 2018, Ms. Yepes' husband was kidnapped and returned that night. He said the kidnappers had taken him to an unknown location, shown him pictures of his son and daughter leaving their schools, and photos of Ms. Yepes at a shopping centre.

A. *Refugee Protection Division (RPD) Decision*

[7] The RPD found that the Applicants had a viable IFA in Cartagena, Columbia. The RPD held there was insufficient evidence to establish “that the ELN or other hazards would make it unreasonable for the claimants to travel within Colombia to the proposed IFA, particularly as Cartagena has an international airport and the claimants would not be required to travel on rural roads.”

[8] The RPD acknowledged evidence that “it is possible that [the ELN] can monitor a target across Colombia,” but held this would be more directed towards high profile targets rather than the Applicants. The RPD also noted the ELN did not have a presence in Cartagena.

B. *RAD Decision*

[9] On appeal to the RAD, the Applicants argued that the objective evidence shows the ELN has an active presence in Cartagena. The RAD reviewed country condition evidence, and, agreeing with the RPD, found as follows:

The objective evidence indicates that the ELN “operates mainly in the rural and mountainous areas of northern, northeastern and southwestern Colombia as well as border regions with Venezuela.” The objective evidence also points that the ELN has a presence in the rural areas of southern Bolivar, Arauca, Norte de Santander and Cesar. Multiple sources in the NDP show that the ELN does not have a presence in Cartagena (at para 25).

[10] The RAD also found that the Applicants did not have the risk profile that would motivate the ELN to search for them, and noted there was no evidence that the ELN had continued to search for the Applicants since they left Colombia. On this, the RAD stated:

The UNHCR sets out a number of potential risk profiles for asylum seekers from Colombia while noting that the profiles are neither exhaustive nor conclusive. There is no evidence that the Appellants have any of these profiles (such as human rights defenders, community leaders or politicians) which would motivate the ELN to search for them. I find that there was no error in the RPD's finding that the motivation for the ELN's targeting of the Appellants was due to their financial success of their business (at para 27).

[11] The RAD similarly held that there was no evidence that the minor Applicant was at risk of forced recruitment, as alleged by the Applicant. The RAD noted:

The evidence also shows that the profile of boys and girls who are most at risk are indigenous youth, rurality, poverty, youth working in the informal economy and youth leaders who oppose the drug trade or forced recruitment. There is no evidence that the risk factors for internal displacement apply to Mr. Rey Piza by virtue of his personal circumstances.

[12] The RAD held there was not a serious possibility of persecution in the IFA.

[13] In considering if it would be reasonable for the Applicants to relocate to Cartagena, the RAD considered the Applicants' arguments that there were gendered differences in employment, and that internally displaced persons are subject to human rights abuses and other hardships. The RAD noted Ms. Yepes is well-educated, a member of the majority ethnic, religious and linguistic groups, had work experience as a TV producer and co-owner of a business, and had family living in Colombia. The RAD also noted the evidence relied on by Ms. Yepes was not specific to her characteristics, as the evidence was regarding women in leadership positions or who are human rights defenders. The RAD found "that Ms. Piza Yepes' personal circumstances reduce her risk

of internal displacement” and “there is insufficient evidence of the risk from internal displacement for the Appellants given their personal circumstances.”

[14] The RAD, therefore, dismissed the appeal.

II. Issue and Standard of Review

[15] The only issue raised by the Applicant is whether the RAD erred in finding the Applicants had a viable IFA.

[16] The parties agree that the standard of review is reasonableness.

III. Analysis

[17] The Applicants argue the RAD misapprehended the evidence in finding that the ELN operates mainly in rural and mountainous areas and that their profile would not put them at risk. The Applicants also argue the RAD erred by referring to the ELN as a criminal “cartel” rather than a guerrilla group.

[18] In considering if an IFA exists, the applicable two-prong test was outlined in *Rasaratnam v Canada* [1992] 1 FC 706 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), as follows:

- 1) The Board must be satisfied on a balance of probabilities that there is no serious possibility of persecution in the proposed IFA, and

- 2) Conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[19] The Applicants argue that the evidence relied upon by the RAD indicates that, as of 2018, the ELN has a presence in 109 municipalities in Colombia, and has cells operating in major cities. Although the Applicants disagree with the RAD's statement that the ELN does not operate in rural areas, this information is taken directly from June 2020 country condition evidence.

[20] Further, the Applicants argue the RAD erred when finding that they did not have the profiles that would put Ms. Yepes at risk of being sought out by the ELN. The Applicants point to the UNHCR Guidelines that define twelve risk profiles, including three that are applicable to the Applicants, namely: persons in professions susceptible to extortion, women with certain profiles, and children with certain profiles.

[21] The RAD explained why the evidence was insufficient to show Ms. Yepes falls into these profiles, noting that she is not a human rights leader. Further, the RAD noted the ELN initially targeted Ms. Yepes due to the financial success of their business, which was now closed. The RAD also explained why the minor Applicant did not fit into the risk profiles, based on "his personal circumstances, including his age, continued education, residence with his mother and extended family in Colombia".

[22] Overall, the RAD did consider the profiles outlined in the UNHCR Guidelines and noted they were not “exhaustive nor conclusive”. The RAD’s reasons were directly responsive to the evidence and concluded that the Applicants did not meet the profiles.

[23] With respect to referring to the ELN as a “cartel” and not a “guerilla group”, the Applicants have not shown how the use of a different descriptor led to any error by the RAD. The country condition evidence notes that the ELN collaborates with cartel groups. Therefore, even if this is a mischaracterization by the RAD, in my view nothing turns on the use of the phrase “cartel” rather than “guerilla” to refer to the ELN.

[24] Although the Applicants argue that the ELN has a presence in the IFA, this assertion was not supported by the evidence. In any event, even if the ELN has a transitory presence in the IFA, the RAD concluded that the Applicants lacked profiles that would put them at risk of the ELN.

[25] The findings of the RAD are reasonably supported by the evidence. The Applicants submissions are essentially an invitation for the Court to reweigh the evidence considered by the RAD – that is not the role of the Court on judicial review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125-126).

[26] The RAD’s conclusion that the Applicants have a viable IFA in Cartagena is, therefore, reasonable.

IV. Conclusion

[27] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT IN IMM-3691-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3691-21

STYLE OF CAUSE: MARIA ASTRID PIZA YEPES and JUAN DAVID REY
PIZA v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 8, 2022

JUDGMENT AND REASONS: MCDONALD J.

DATED: JULY 5, 2022

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