

Federal Court



Cour fédérale

Date: 20221205

Docket: IMM-8662-21

Citation: 2022 FC 1656

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 5, 2022

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

JAVIER ORLANDO HERNANDEZ ARIZA

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] Mr. Javier Orlando Hernandez Ariza, a Columbian citizen, is seeking judicial review of a decision of the Refugee Appeal Division [RAD] confirming the decision of the Refugee Protection Division [RPD] dismissing his refugee protection claim in Canada.

[2] Mr. Hernandez Ariza argues that the RAD erred in concluding that the Revolutionary Armed Forces of Colombia (FARC) did not pose a forward-looking risk to him should he return to Bucaramanga, Colombia.

[3] For the reasons that follow, this application is allowed.

I. Facts

[4] The applicant claims that the FARC guerrilla movement has threatened his life many times for refusing to cooperate with them. He claims that the FARC declared him a [TRANSLATION] “military target”.

[5] From April 2011 to June 2012, the applicant was a hospital manager in the department of Nariño in southwestern Colombia. He states that, in 2012, the FARC’s 48th Front threatened him several times after he refused to provide it with medication and medical supplies for wounded FARC soldiers. Mr. Hernandez Ariza filed a complaint with the local police and subsequently resigned from his position in the hope that the threats would cease.

[6] He then founded an ambulance service company, also in the department of Nariño. The applicant submits that the FARC’s 48th Front also targeted his company and stole medication and other supplies from him on several occasions. In September 2013, one of his ambulances was reportedly attacked while transporting a pregnant woman to the hospital. Following this event, the applicant chose to relocate to Bucaramanga to manage his company’s operations from this city in northern Columbia.

[7] In July 2016, two FARC members visited the applicant while he was at his company's offices and asked him to use his ambulances to transport narcotics. He was reportedly threatened with death because he refused. As a result of these threats, he had to leave the region, settle permanently in Bucaramanga and abandon his business.

[8] In 2018, he allegedly received a series of threats over the telephone from the FARC, which stated that they knew where he was living and that they were going to find him and kill him. Fearing for his life, he left Bucaramanga in September 2018 to claim refugee protection in Canada.

II. Impugned decision

[9] Although the RPD raised a number of questions regarding the applicant's credibility, the RAD was of the view that the determinative issue was a lack of forward-looking risk. Therefore, it did not deem it appropriate to comment on the applicant's credibility.

[10] The RAD also considered some fresh evidence not at issue in this application.

[11] For the purposes of its analysis, the RAD accepted as fact the applicant's account of events in 2011 and 2012 while he was a hospital manager in Nariño province, the attacks and threats received in 2016 while he was operating his ambulance company, and the threats received by telephone in 2018.

[12] Like the RPD, the RAD concluded that, when the applicant ceased operating his business and moved to Bucaramanga, he had nothing left to offer 48th Front members, who lost interest in him.

[13] In the RAD's view, the fact that the applicant was told that he was considered a military target because of his refusal to cooperate was not sufficient to objectively justify a forward-looking fear. After shutting down his business in 2016, the applicant had no contact with members of the 48th Front until February 2018. Since then, no one has approached him, nor has anyone approached his parents or his daughter, who still live in Colombia. The RAD therefore found that, on a balance of probabilities, the applicant was not considered a military target.

[14] Furthermore, the documentary evidence did not show that groups of ex-FARC members have a significant presence in Bucaramanga or would have the ability to organize a search to find the applicant there. Also, it did not show that FARC cooperates with dissident or criminal groups in that region. This was confirmed by the fact that the applicant and his family were never approached or attacked in Bucaramanga.

[15] The RAD therefore dismissed the applicant's appeal.

III. Issues and standard of review

[16] The applicant claims that the RAD erred in concluding that he had an internal flight alternative in Bucaramanga.

[17] In my view, the RAD did not analyze the applicant's claim in this light. The question is not whether the applicant can relocate to Bucaramanga, since he had been living there for at least two years before leaving Colombia. Therefore, the RAD did not have to analyze whether it was reasonable for the applicant to settle there, as he and his family chose this location on their own. Instead, the question was whether the applicant would face a forward-looking risk if he returned to where he lived prior to his departure.

[18] The applicant also argues that sending him back to his country would violate sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* as well as Canada's international obligations, including Article 3 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Can TS 1987, No 36.

[19] Again, that is not the issue.

[20] In my view, this application for judicial review raises the sole issue of whether the RAD erred in finding that the evidence did not show that the applicant would face a forward-looking risk if he returned to Colombia.

[21] There is no dispute that the reasonableness standard applies to the analysis of this question.

IV. Analysis

[22] First, it is not true to state, as the applicant does, that the RAD found his testimony to be credible. Instead, it concluded that it did not need to review the RPD's findings in this regard given its own conclusion on forward-looking risk. The RAD simply accepted the facts to be true.

[23] Since the facts for the purposes of this application for judicial review are also accepted to be true, the question is therefore whether the RAD's conclusion as to forward-looking risk has the qualities of intelligibility and reasonableness or whether, instead, the Court finds in the RAD's conclusion an error justifying its intervention.

[24] The RAD concluded that, since the applicant no longer works in a hospital and has not operated an ambulance service since 2016, he is no longer a target for the FARC, who has lost interest in him.

[25] The problem here is that the RAD does not explain how the many threats received over the telephone in 2018 when the applicant had been inactive for two years are not a sign that the agent of persecution is still interested in him.

[26] Here, in my view, is where the decision's rationality breaks down. If the RAD believed that the FARC did contact the applicant in 2018 and told him that they knew where he was, it is unclear what would lead it to conclude that they had lost interest in the applicant when he abandoned his business.

[27] However, a reasonable decision is one that is justified in light of the facts (*Canada [Minister of Citizenship and Immigration] v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 126) and must be based on an internally coherent and rational analysis (*Vavilov* at para 85).

[28] I therefore find that the intervention of this Court is warranted in this case.

V. Conclusion

[29] Since the decision does not have the qualities of reasonableness, the application for judicial review is allowed.

[30] The parties have not submitted any question of general importance for certification, and this matter does not raise any.

JUDGMENT in IMM-8662-21

THIS COURT’S ORDER is as follows:

1. The applicant’s application for judicial review is allowed.
2. The decision of the Refugee Appeal Division dated October 19, 2021, is set aside and the file returned to it for redetermination by another member.
3. No question of general importance is certified.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8662-21

STYLE OF CAUSE: JAVIER ORLANDO HERNANDEZ ARIZA v
MINISTER OF IMMIGRATION, REFUGEES AND
CITIZENSHIP

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 5, 2022

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: DECEMBER 5, 2012

APPEARANCES:

Stewart Istvanffy FOR THE APPLICANT

Suzon Létourneau FOR THE RESPONDENT

COUNSEL OF RECORD:

Stewart Istvanffy FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec