

Federal Court



Cour fédérale

Date: 20230315

Docket: IMM-2620-22

Citation: 2023 FC 350

Ottawa, Ontario, March 15, 2023

PRESENT: Madam Justice Walker

BETWEEN:

**EDGAR JOVANY GALVIS BONILLA,
ALIX PAOLA MUNROZ RODRIGUEZ,
DAVID SANTIAGO GALVIS MUNOZ, AND
SARA NICOLE GALVIS MUNOZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are citizens of Colombia. They seek judicial review of a decision of the Refugee Protection Division (RPD) dated March 1, 2022, refusing their refugee claim. The RPD found that the Applicants' claims have no nexus to a Convention ground and analyzed their claims under subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27

(IRPA). The determinative issue for the RPD was the availability to the Applicants of a viable internal flight alternative (IFA) in Sincelejo, Colombia.

[2] For the reasons that follow, I will grant this application for judicial review.

I. Background

[3] The Applicants are a family of four: the Principal Applicant, Mr. Galvis Bonilla, his spouse and their two children. The adult Applicants owned and operated a water bottling and distribution company in Barbosa, Colombia.

[4] The events precipitating the Applicants' departure from Colombia began in 2018 when the adult Applicants were victims of extortion by the National Liberation Army (ELN). The adult Applicants made payments to the ELN of two million pesos each month from January 2018 to March 2020. Early in 2020, their business encountered financial difficulties when they encountered problems with their water supply. The adult Applicants followed their water source into the mountains where they discovered that the ELN were building a gold mine and had diverted the water. ELN members at the site threatened the adult Applicants.

[5] By April 2020, the adult Applicants were unable to make the required extortion payments. On June 14, 2020, the Principal Applicant was taken to meet a Commander of the ELN. The Commander demanded the Principal Applicant pay the remaining amount owing for the year by December 2020, failing which the ELN would kill him, his spouse and his children. Following this meeting, the adult Applicants closed the business. They left Colombia with their

children on November 26, 2020. On January 14, 2021, the Applicants travelled to Canada from the United States and claimed refugee protection.

II. Decision under review

[6] The RPD found the Applicants to be credible and accepted that they had been extorted and threatened by the ELN as alleged. The RPD also found that they had established a personalized risk under subsection 97(1)(b) of the *IRPA* but refused the Applicants' refugee claims on the basis that they have a viable IFA in Sincelejo, Colombia.

[7] The RPD's IFA findings regarding the two elements of the IFA test were:

1. Prior to leaving Colombia, the Applicants lived in Barbosa, Santander, a distance of 705 km from Sincelejo.
2. The Applicants have not been a focus for the ELN since June 2020, when the Principal Applicant was threatened at the meeting with the ELN Commander. The Principal Applicant testified that this was last threat he received and that no one he knew has been threatened by the ELN since the Applicants' departure from Colombia.
3. The Principal Applicant's testimony that the ELN has connections to other criminal groups did not directly reference Sincelejo, was general in nature and, therefore, speculative in the face of the objective documentation.
4. According to the National Documentation Package (NDP) for Colombia, the ELN does not have an active presence, nor do they operate, in Sincelejo. Further, the Applicants provided no evidence of any such activity.
5. The ELN targeted the adult Applicants because they were business owners who relied on the water source. They closed the business in 2018 with the result that they no longer run a business that is reliant on the supply of water in the Barbosa area, nor are they otherwise tied to the local economy. The Applicants have effectively removed the key factor in the ELN's interest or motivation to track them.
6. While the Principal Applicant testified that the ELN would remain motivated to find him because he did not pay the remaining 2020 extortion amount, his

testimony is not supported given the last known threat occurred more than 18 months previously and no one has been threatened by the ELN as far as the Principal Applicant is aware.

7. The Applicants' National ID cards would not enable the ELN to track and locate them throughout Colombia. The objective evidence does not indicate that National ID cards contain a home address or other identifying information.
8. While the NDP indicates that the ELN may have the means to find the Applicants, it will not be motivated to do so. The ELN has exhibited no recent interest and its prior interest in the Principal Applicant was tied to his former employment.
9. The Applicants' relocation to Sincelejo would not be unreasonable in light of the Principal Applicant's profile as a well-educated, university graduate and successful business owner. Sincelejo is the capital and largest city of the Colombian department of Sucre and the children would have adequate access to health and education services. There are no other concerns, aside from perceived safety, that would prevent the Applicants from relocating and settling in Sincelejo.

III. Analysis

[8] The RPD's reasons and conclusions regarding the availability of an IFA in Colombia for the Applicants are subject to review for 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 Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the 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).

[9] In determining whether a viable IFA exists for a refugee claimant, the RPD must be satisfied that (1) the claimant will not be subject to a serious possibility of persecution or to a section 97 danger or risk in the proposed IFA; and (2) in all the circumstances, including the particular circumstances of the claimant, conditions in the IFA are such that it would not be

unreasonable for the claimant to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 595–597).

[10] The Applicants submit that the RPD's inferences regarding the motivation of the ELN to pursue them are based on assumptions about what would motivate the group and how the ELN ought to have demonstrated its continued interest in the Applicants.

[11] I do not agree that the RPD based its decision on assumptions of how or why the ELN is or would be motivated to act. The Applicants bear the onus of establishing that they do not have a viable IFA (*Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1333 at para 16). In terms of the first prong of the IFA test, claimants are required to establish the objective basis of their fear of pursuit by their agents of persecution. They do so by providing sufficient evidence of both the means and motivation of the persecutors to track them to the IFA. The RPD's conclusion that the ELN is not motivated to find the Applicants in Sincelejo is based on its finding of insufficient evidence and reasonable inferences from the facts as established. It is not based on assumptions of the *modus operandi* of the ELN as a criminal organization.

[12] I nevertheless find three errors in the RPD's reasoning process that, considered cumulatively, significantly undermine the coherence and intelligibility of its ultimate conclusion

[13] First, the RPD found that the Principal Applicant was last threatened in June 2020 and that the Applicants provided no evidence of threats from the ELN thereafter. The Applicants

have not contested these findings. However, the RPD based its finding in part on the Principal Applicant's testimony that he knew of no one else who had been threatened by the ELN since he and his family had left Colombia. The RPD does not explain why the Principal Applicant's knowledge of any threats to other individuals or businesses is relevant to the ELN's motivation to pursue the Applicants. The panel provides no parameters or context for its line of questioning (e.g. threats to other local business owners, extortion targets who failed to pay, individuals who know of the ELN's illegal mine). I am unable to determine from the RPD's brief treatment of the question of ongoing threats the importance the panel placed on the absence of threats generally, as opposed to the absence of threats to the Principal Applicant over the intervening 18-month period.

[14] I note that the Applicants challenge the RPD's conclusion that the ELN have not made any attempts to find the Principal Applicant, stating that it was made without any evidentiary basis. This argument is surprising in light of the Principal Applicant's own testimony. Their corollary argument that the RPD cannot know what efforts the ELN has or has not made to find the Principal Applicant is not persuasive as it is an attempt to circumvent their obligation to provide evidence from which the ELN's motivation may be reasonably inferred.

[15] Second, the Applicants submit that the RPD erred in suggesting that the ELN threatened the Principal Applicant because his business relied on the same water source as the ELN's gold mining activity and I agree.

[16] The RPD accepted the allegation that the ELN's threats derived from the adult Applicants' profile as successful business owners. It was the demise of that business, and not the concurrent use of the water supply, that led to the ELN's payment ultimatum. The RPD recounted the adult Applicants' foray to discover the source of their business's water woes and their discovery that the ELN were diverting water. The RPD also noted that the adult Applicants were threatened at the site. The reliance of the Applicants' business on the same water source as the ELN then permeates the RPD's reasons for concluding that the closure of their business removed the ELN's motivation to enforce its extortion demands. The RPD stated:

[26] [...] In this instance, the ELN's basis for trying to hurt the claimants was because they were business owners who relied on the water source to maintain their business. In 2018, the claimants closed their business. They do not own or operate a business that is reliant to the supply of water in the Barbosa area nor are they tied to the local economy. The claimants have essentially removed the key factor which made them a target for the ELN in the first place.
[...]

[17] The RPD's description of the adult Applicants as the owners of a business reliant on the same water source as their agents of persecution bolsters its characterization of the Applicants' conflict with the ELN as local to Barbosa. In other words, the panel appears to conclude that the ELN's interest in and conflict with the Applicants derived from either the adult Applicants' knowledge of the ELN's illegal activity or the threat their business posed to its ability to operate the mine using the same water source. However, the RPD does not directly address the Applicants' more general claim that the ELN approached them as business owners and not as competitors for a water source.

[18] The RPD's conclusion that the closure of the water source and distribution business removed the basis of the ELN's interest in the Applicants is central to its conclusion on the first prong of the IFA test. Equally central is the reason for the ELN's interest in the business and whether that interest was prompted by its desire to safeguard its water source or by its general focus on prosperous business owners. If the latter, the Applicants' argument that the ELN is motivated to pursue them to recoup the missing extortion amounts and to send a message to other business owners is more persuasive. The RPD was required to explain the basis of its analysis of the business closure and I find that it failed to do so.

[19] Third and finally, the Applicants argue that the RPD's statement, "the ELN *may* have the means to find" [emphasis in original] them in Sincelejo is a "gross understatement". They refer to documentary evidence that criminal groups are able to track targeted individuals in Colombia through word of mouth or "urban collaborators".

[20] The RPD's statement is part of the concluding paragraphs of its assessment of whether the Applicants would face a danger of torture or risk to their lives or serious harm in Sincelejo. It does not form part of the panel's review of the objective evidence in the NDP regarding the scope of the ELN's operations and reach in Colombia. More importantly, the statement contradicts the RPD's conclusion earlier in the decision that the ELN does not operate in Sincelejo and has no active presence there. The panel provides no explanation for the statement, which is vague and which introduces significant and unreasonable uncertainty into its overarching logic and reasoning (*Vavilov* at para 102).

[21] I find that the three errors set out above combine to materially compromise the clarity and intelligibility of the RPD's decision.

IV. Conclusion

[22] In summary, the RPD's reasons explaining its analysis of the first prong of the IFA test are not reasonable in light of the evidence and applicable law. The errors in its assessment of the means and motivation of the ELN to locate the Applicants in Sincelejo undermine its findings and warrant the Court's intervention. As a result, the application for judicial review will be allowed.

[23] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-2620-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division (RPD) dated March 1, 2022 rejecting the Applicants' claim for refugee protection is set aside and the matter is remitted for redetermination by a different member of the RPD.
3. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2620-22

STYLE OF CAUSE: EDGAR JOVANY GALVIS BONILLA, ALIX PAOLA
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MUNOZ v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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