

Federal Court



Cour fédérale

**Date: 20230405**

**Docket: IMM-3223-22**

**Citation: 2023 FC 484**

**Ottawa, Ontario, April 5, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**MIGUEL ANGEL NUNEZ QUINTERO  
TANIA MARGARITA CASTRO  
PENALOZA  
GABRIEL ISAAC NUNEZ CASTRO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a Refugee Protection Division [RPD] decision dated March 9, 2022 [the Decision], whereby the RPD determined that the Applicants are neither Convention refugees nor persons in need of protection.

## II. **Background**

[2] The Principal Applicant (PA) is a 39-year-old citizen of Colombia. He fears a right wing neo-paramilitary group called the Black Eagles, who allegedly targeted him and his family based on his political opinion and associated volunteer activities.

[3] The threats began after March 2017, when the PA joined Colombia Humana in Barranquilla in support of a left-wing candidate who was campaigning for president.

[4] The PA claims he engaged in various volunteer political activities, which attracted a threat on May 4, 2018, and a second threat on December 2, 2019. During the second phone call, the caller identified themselves as a member of the Black Eagles and threatened the PA with death.

[5] The PA continued his political activities and participated in a protest on September 21, 2020. On October 2, 2020, he received another phone call from the Black Eagles.

[6] The PA reported the threats to the Public Attorney's Office in Barranquilla.

[7] In February 2021, the Applicants moved from Barranquilla to Bucaramanga.

[8] After several more threats and relocating once more to Bogota, on June 23, 2021, the Applicants left Colombia for the United States.

[9] The PA and his family arrived in Canada on July 20, 2021 seeking refugee protection.

[10] The RPD hearing was held on December 29, 2021.

### III. **Decision under Review**

[11] The RPD found that the Applicants' credibility was the determinative issue in their claim.

[12] The RPD found the PA embellished testimony regarding the extent of their political activities, other contradictions, and noted material inconsistencies in the PA's evidence.

[13] The RPD also found that the Applicants had tendered a fraudulent police report in support of their claim.

[14] The RPD summarized its conclusions on the Applicants' credibility as follows:

These credibility concerns uncovered at the hearing were central to the core of the claim and this has led the Panel to place on the [*sic*] doubt the veracity of the claimant's testimony and remaining evidence on file. The Panel therefore finds that the central allegations in this case i.e., the claimants were targeted by the Black Eagles because of the PC's political opinion, and they are at risk of future persecution— is not true, on a balance of probabilities.

### IV. **Issues and Standard of Review**

[15] The sole issue in this judicial review is whether the RPD's credibility analysis is reasonable.

[16] The parties agree, as do I, that the appropriate standard of review is reasonableness. This case does not engage one of the exceptions set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. Therefore, the presumption of reasonableness applies: *Vavilov* at paras 23-25, 53.

[17] A reasonableness review requires the Court to examine the decision for intelligibility, transparency, and justification. The reviewing court must look to both the outcome of the decision and the justification of the result: *Vavilov* at para 87. A reasonable decision must be “justified in relation to the relevant factual and legal constraints that bear on the decision”: *Vavilov* at para 99. However, a reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker: *Vavilov* at para 125.

## V. Analysis

[18] The Applicants have made numerous arguments to dispute the RPD’s findings. I do not find all of them persuasive.

[19] However, I do agree that the RPD’s conclusion on the police report tendered by the Applicants were based on minor typographical errors and minor formatting issues. In my view, this was unreasonable and tainted the overall credibility assessment.

[20] I also find the reasons provided by the RPD on this point do not contain sufficient justification or transparency as it is unclear what comparator the Member used in describing the

report as “atypical”. It is also unclear whether the RPD examined the security features contained on the face of the document.

[21] The RPD’s findings with respect to the police report are contained at para 27 of the Decision. It states:

The Panel noted a spelling error in the document. Barranquilla is spelled, “BARRNAQUILLA”. The Panel also noted other inconsistencies in the document, including, serif versus sans serif fonts, the different font size, and that “Atlantico” is spelled without an “a” while other words with accented letters are visible. When the inconsistencies were put to the claimant, the PC stated that this was how it was given to him. The Panel finds this explanation unreasonable as these errors and inconsistencies are atypical. As such, the Panel finds that this document is fraudulent, on a balance of probabilities, and gives it no weight. Accordingly, this finding significantly undermines the claimant’s testimony and the veracity of [sic] the claimants’ evidence of [sic] file.

[22] In sum, the RPD’s main concern appears to be the misspelling of the city Barranquilla, which is spelled in the document as “Barrnaquilla”. This, together with varying fonts and a missing accent above the A in the word “Atlantico”, led the RPD to reject the document in its entirety as fraudulent. This finding had significant consequences for the RPD’s assessment of the Applicants’ overall credibility.

[23] The Applicants submit that the issues identified by the RPD were minor typographical errors, that reverse order spelling and other such errors are not uncommon, and alone are insufficient to conclude that the document was fraudulent.

[24] In their written materials, the Applicants also submit that the RPD ignored the most critical security feature of the document, a unique 21-digit identifier, which is registered and posted on the Attorney General's Webpage.

[25] The Respondent did not directly address this issue, but contended that the Applicants' arguments amount to a mere disagreement with the RPD's weighing of the evidence.

[26] In oral and written submissions, the Respondent repeatedly referred to the report as fraudulent but did not address the Applicant's written submissions challenging the RPD's findings on this point.

[27] This Court has previously held that minor typographical errors or other clerical errors on their own, cannot reasonably ground a finding that a document is fraudulent: *Mohamud v Canada (Minister of Citizenship and Immigration)*, 2018 FC 170 at paras 6–8. If a document is suspected to be fraudulent, the decision-maker must ground that finding in the evidence, given the very serious implications tied to such an accusation. However, this Court has held that “a handful of spelling, grammar and typographical errors cannot suffice”: *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at paras 22–25.

[28] Further, while it may have been open to the RPD to find the police report was fraudulent, it was required to justify this finding. There are gaps in the chain of analysis that leave this Court questioning whether the RPD considered any of the substantive content or the other security features in the document. It is also unclear what the RPD means when it describes the errors as

“atypical”. It cited no comparison or evidence in the National Documentation Package to support this statement. Does the RPD mean that Colombian police reports never or rarely have typographical or clerical errors? Given the severe consequences of such a finding, it was incumbent on the RPD to transparently and intelligibly justify their conclusions on this point.

[29] The RPD made determinative findings based on font variations, and minor spelling errors, but did not consider the substantive content, or security features, which included the unique 21-digit identifier.

[30] While there were other credibility concerns in the Applicants’ testimony, this finding was central to the RPD’s overall conclusion that the Applicants were not in fact targeted by the Black Eagles because of the PA’s political opinion.

[31] I cannot assess if the Decision would have been the same absent this error and as such, the matter must be sent back for redetermination.

## VI. **Conclusion**

[32] For the reasons above, I find the RPD’s decision is unreasonable. This application for judicial review is therefore allowed and the matter will be returned for redetermination by a different member of the RPD.

[33] No questions for certification were raised, and I agree that none arise.

**JUDGMENT IN IMM-3223-22**

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

1. This application for judicial review is allowed and the matter will be returned for redetermination by a different member of the RPD.
2. There is no question for certification.

"E. Susan Elliott"

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Judge



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

**DOCKET:** IMM-3223-22

**STYLE OF CAUSE:** MIGUEL ANGEL NUNEZ QUINTERO, TANIA  
MARGARITA CASTRO PENALOZA, GABRIEL  
ISAAC NUNEZ CASTRO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 22, 2023

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** APRIL 5, 2023

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