

Federal Court



Cour fédérale

**Date: 20230424**

**Docket: IMM-457-22**

**Citation: 2023 FC 591**

**Ottawa, Ontario, April 24, 2023**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**OSCAR MAURICIO GUTIERREZ MEDINA  
CAROLINA VALENCIA GOMEZ  
MARIANA GUTIERREZ VALENCIA  
ANDRES MAURICIO GUTIERREZ**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The applicants, Mr. Gutierrez Medina, his spouse Ms. Valencia Gomez, and their two children, are a family from Colombia who seek judicial review of a December 30, 2021 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada. The

RAD dismissed the applicants' appeal and confirmed the Refugee Protection Division's (RPD) determination that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because the applicants have viable internal flight alternatives (IFAs) within Colombia.

[2] The applicants arrived in Canada on May 9, 2018 and claimed refugee protection on the basis that they would be at risk if returned to Colombia, as they had been the targets of repeated threats of death or violence by the Guerrilla Urbana ELN (ELN). The RAD found the applicants had not established that the agents of harm were members of the ELN, and they had not established that the agents of harm have the means and motivation to locate and harm them in any of the proposed IFA locations.

## II. **Background**

[3] According to the applicants' basis of claim (BOC) narrative, the events that gave rise to their claim began in October 2014 at Mr. Gutierrez Medina's restaurant in Bogota. Mr. Gutierrez Medina alleges he was confronted by an armed man who identified himself as Mono, claimed to be a member of the ELN, and demanded a "protection" fee to keep the restaurant safe. At first, Mr. Gutierrez Medina complied with the demands. However, after Mr. Gutierrez Medina opened a second Bogota restaurant the protection fee doubled, and thereafter the man continued to demand more money until Mr. Gutierrez Medina could no longer afford to pay. He was forced to sell the restaurants in November 2016, but this did not solve the problem as the man then demanded a share of the proceeds from the sale.

[4] Mr. Gutierrez Medina states he went to the Colombian authorities for help, but the man found out and the threats of violence escalated. The applicants tried unsuccessfully to evade the man and his accomplices by moving to different neighbourhoods in Bogota, and they decided to leave the country after Mr. Gutierrez Medina received a threatening call in July or August 2017.

[5] The applicants travelled to Spain, France and Italy to see if they should move there, but decided it would not be in the children's best interests and they should go to Canada instead. When the applicants returned to Colombia from Europe in February 2018, Mr. Gutierrez Medina was told by one of his brothers that he should leave the country as two men had been looking for him. The applicants applied for Canadian visas, which issued in March 2018. Mr. Gutierrez Medina filed a complaint about the threats and extortion with the Office of the Attorney General (*Fiscalía*) on April 11, 2018 and attended an interview in Bogota on April 24, 2018, at which time he was told the police would protect his family. He states the police checked on his residence over a period of two days and did not return after that. The applicants left Colombia for Canada on May 8, 2018.

[6] The RAD's December 30, 2021 decision is the second RAD decision related to the applicants' claims for refugee protection. An order of this Court, made on consent of the parties, set aside the first RAD decision and returned the applicants' claims for redetermination. It is the redetermination decision that is challenged on this application for judicial review.

[7] The RAD accepted that Mr. Gutierrez Medina was targeted for extortion, and that he and his family were threatened in Bogota. However, the RAD found that Mr. Gutierrez Medina was

not credible with respect to the identity of the agents of harm, and further, the applicants did not provide sufficient evidence to show that Mono and the ELN were involved in the threats or extortion.

[8] The applicants submit the RAD's flawed approach to the evidence rendered the IFA determination unreasonable. According to their further memorandum of argument:

(i) the RAD was overly focussed on the report Mr. Gutierrez Medina made to the *Fiscalía*, and relied on a single alleged inconsistency—that the *Fiscalía* report did not state the ELN or its agent Mono were behind the threats—to find that he was not credible with respect to the identity of the agents of harm, that a connection to Mono and the ELN was an embellishment of his narrative, and that the ELN was not behind the past threats and extortion;

(ii) the RAD erred by taking a selective and piecemeal approach to the evidence rather than considering the evidence in its totality and as a whole; it failed to address evidence that did not support its conclusion, failed to assess evidence independently of concerns about Mr. Gutierrez Medina's credibility, and rejected evidence that corroborated the applicants' narrative and testimony based on improper plausibility findings and negative inferences about what the evidence did not say, rather than what it did say;

(iii) the foregoing errors led the RAD to conclude that the applicants have viable IFAs based on an erroneous premise about the identity of the agents of harm; further, even if Mono and the ELN were not behind the threats (which the applicants dispute), the clear

evidence of unsuccessful efforts to evade the agents of harm showed that whoever is behind the threats is capable of tracking the applicants throughout Colombia;

(iv) the RAD's reasons do not indicate it considered the consequences of its decision and whether the consequences were justified in light of the facts and law; instead, the reasons indicate the RAD minimized the gravity of the applicants' claim, referring to their risk as "extortion" with only a brief mention of the death threats and harassment.

[9] The respondent submits that the applicants had not credibly established the identity of the agents of harm to be Mono or the ELN, and the RAD's determinative IFA finding reasonably flowed from its analysis of the evidence. The respondent argues that the applicants have not identified a sufficiently central flaw in the RAD's decision to warrant setting it aside.

### III. Issue and Standard of Review

[10] The issue on this application is whether the RAD unreasonably determined that the applicants have viable IFAs within Colombia.

[11] The applicants do not challenge other aspects of the RAD's decision. The applicants sought to introduce new evidence in the appeal and they do not challenge the RAD's findings on the admissibility of new evidence, nor do they challenge the finding that the conditions for holding an oral hearing were not met. Also, they do not challenge the RAD's findings that one of the children, a citizen of the United States of America, had not established a claim under sections 96 or 97 of the *IRPA*, and that the remaining applicants' claims should be assessed under section 97 as there was no nexus to a Convention ground of persecution.

[12] Whether the RAD's decision is unreasonable is reviewed according to the guiding principles set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court determines whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

#### IV. Analysis

[13] These reasons follow the framework of arguments used in the applicants' further memorandum of argument (the applicants did not frame the arguments in precisely the same way in oral argument). Where the applicants' further memorandum of argument repeats certain alleged errors under multiple headings, I have addressed the point under the heading where it first appears.

##### A. *Did the RAD err in its analysis of the Fiscalía report?*

[14] The RPD had determined that the applicants were unlikely to face risk if they relocated to one of three proposed IFA locations. The RPD had found that the agents of harm were more likely to be a local Bogota crime gang than the ELN, and Mr. Gutierrez Medina's assertion of an ELN connection was an embellishment of the claim.

[15] On appeal to the RAD, the applicants argued the RPD had incorrectly identified the agents of harm by focussing unreasonably on a single line of the *Fiscalía* report stating that, when Mr. Gutierrez Medina was asked if he suspected someone in particular, he answered, “No, I only think [it] is common crime”. They argued that the main agent of harm, a man named Mono, was one of the leaders of the ELN. The applicants also argued that the RPD’s finding that Mr. Gutierrez Medina had embellished his claim with an ELN connection fell short of an actual adverse credibility finding, and it was unclear how that finding impacted the RPD’s decision.

[16] The RAD found there was no merit to these arguments. The RAD held the RPD had clearly made an adverse credibility finding, and it agreed with the RPD that Mr. Gutierrez Medina’s explanation for his statement to the *Fiscalía* was not supported on the face of the report. The relevant testimony at the RPD hearing was as follows:

MEMBER: ...[T]here’s a question that they asked you, and it says: “Do you suspect of someone in particular responsible for these acts?[]” This is after you’ve given the chronology of all the demands and payments that you’ve made? You answered: “No, I only think it’s common crime”. Why didn’t you say it was the ELN?

INTERPRETER: Sorry, correct myself, that is interpret.

CLAIMANT: Well, at the time when they asked me if I suspected anybody, they were referring to any -- somebody who was close to me.

MEMBER: What do you mean by that?

CLAIMANT: Basically, if this -- if the extortion was done by a friend of mine who knew my businesses and that’s why I didn’t mention the -- the ELN. Basically, at that point, you’re just -- they’re just taking your statement and they’re just taking as it goes.

MEMBER: Why didn’t you when you started talking about what happened in the beginning, in October 2014, you said: “A man

comes to my restaurant”. Why didn’t you say his name was Mono and that he said he was the ELN?

CLAIMANT: I -- I name him. I named him at the Fiscalía Attorney General and at Goulah [*sic*].

MEMBER: Why isn’t it in this report?

CLAIMANT: Really, I don’t know.

[17] The RAD further found that if Mr. Gutierrez Medina had named Mono or the ELN to the police, this would have been included in the *Fiscalía* report.

[18] On this application for judicial review, the applicants submit that the RAD committed a number of errors in its analysis of the *Fiscalía* report. First, they submit the RAD committed the same error as the RPD by unreasonably focussing on a single line in the report, an approach that was microscopic and unjustified: *Attakora v Canada (Minister of Employment and Immigration)*, (1989), 99 NR 168 (FCA) [*Attakora*]. Furthermore, the basis for disputing the veracity of the applicants’ story—that the *Fiscalía* report does not include a reference to the ELN—lacks merit because the report does reference the ELN, although the reference was obscured by the *Fiscalía*’s stamp and erroneously omitted from the English translation of the document. Second, at the RPD hearing Mr. Gutierrez Medina testified he did tell the *Fiscalía* (as well as the *Grupos de Acción Unificada por la Libertad Personal*, or *GAULA*) that Mono and the ELN were responsible for the threats and extortion, and he did not know why this was not included in the report. The applicants say the RAD made an improper implausibility finding when it stated that if Mr. Gutierrez Medina had named Mono or the ELN at his police interview, it would have been in the report: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7 [*Valtchev*]. The applicants submit the RPD had made a similar error by inducing Mr.



Gutierrez Medina to speculate why the authorities left Mono's name out of the *Fiscalía* report, then impugning his credibility based on the perceived implausibility of such speculation: *Weng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1483 [Weng]. Third, the RAD made an unwarranted assumption that Mr. Gutierrez Medina's reference to "common crime" meant a crime committed by common criminals, without considering whether he meant a crime that occurs frequently.

[19] The applicants also submit the RAD ignored the fact that they had never wavered from their position, and on appeal, they submitted news articles to support what they had been saying all along. The articles showed that Mono, a high ranking member of the ELN, was arrested in August 2019. The applicants say the RAD was overzealous in its search for inconsistencies when it assigned no weight to the news articles based on a lack of connection to the applicants: *Attakora*. They submit the RAD imposed an excessive burden beyond the standard that is required by section 97 of the *IRPA*, including by expecting them to provide open-sourced articles connecting them to Mono's arrest.

[20] For the reasons below, the applicants have not established that the RAD erred in its assessment of the *Fiscalía* report or the news articles about Mono's arrest.

[21] As the respondent correctly states, assessments of credibility, while subject to reasonableness review, are part of the fact finding process and must be given deference on judicial review: *Azenabor v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1160 at para 6. Reviewing courts should not reweigh or reassess evidence: *Vavilov* at para 125. In

assessing credibility, a decision maker is not required to accept an applicant's explanation for a discrepancy in the evidence: *Moshood v Canada (Minister of Citizenship and Immigration)*, 2016 FC 504 at para 16, citing *Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87 at para 10. Also, the RAD is entitled to make implausibility findings based on common sense and rationality, if it articulates its reasons for doing so: *Jean v Canada (Minister of Citizenship and Immigration)*, 2020 FC 838 at para 17.

[22] The RAD found the RPD had correctly identified a significant difference between what Mr. Gutierrez Medina told the police in Colombia, and what he later swore to in his BOC narrative and testimony. This was not a microscopic assessment. The RAD did not latch on to insignificant or peripheral discrepancies as a basis for disbelieving an aspect of the applicants' narrative: *Attakora*. The discrepancy in question is clear and directly relevant to the identity of the agents of harm. The RAD's finding was not unjustified. The RAD considered Mr. Gutierrez Medina's explanation that he thought the police were asking about friends or people close to him and did not accept it, stating the explanation was "simply not supported on the face of the report". The RAD expressly identified the finding as a credibility finding. In other words, while the RAD accepted that Mr. Gutierrez Medina was threatened and extorted, it did not accept as credible Mr. Gutierrez Medina's evidence that the man who first confronted him in 2014 was Mono and that he was a member of the ELN. The applicants have not established that the RAD committed a reviewable error by identifying a discrepancy in the evidence and preferring the documentary evidence to find that the applicants' claim that they were targeted by Mono and the ELN was not credible, and an "embellishment" of what had occurred.

[23] The applicants do not assert that the RAD's reasoning up to this point involved any consideration of plausibility. However, the RAD went on state, "I also find, on a balance of probabilities, that if the Principal Appellant had named Mono or the ELN to the police, as he asserts, that this would have been included in the report". The applicants characterize this as an improper plausibility finding, contrary to *Valtchev*.

[24] I am not persuaded the RAD made a plausibility finding when it stated that if Mr. Gutierrez Medina had told the police that the perpetrators were Mono and the ELN, their report likely would have said so. The RAD identified its implausibility findings in its reasons and it did not identify this finding as such. In my view, when read in context, this was not an implausibility finding but rather a factor the RAD weighed to find that Mr. Gutierrez Medina was not credible with respect to the identity of the agents of harm. The factors included that when the police asked Mr. Gutierrez Medina if he knew who was responsible for the threats and extortion he answered no, that the language of the report did not support Mr. Gutierrez Medina's explanation for why he answered no, and if Mr. Gutierrez Medina had "named him at the Fiscalía Attorney General" as he testified, the information likely would have been noted in the report.

[25] There is no merit to the applicants' allegation that the RPD induced Mr. Gutierrez Medina to speculate about why the authorities left Mono's name out of the report. Mr. Gutierrez Medina testified that he named Mono to the authorities, the RPD reasonably asked why this was not in the report, Mr. Gutierrez Medina answered, "Really, I don't know", and the RPD did not press for a different answer. Mr. Gutierrez Medina did not speculate and the principle in *Weng* is

inapplicable. As previously noted, the basis for the RAD's negative credibility finding was a discrepancy in Mr. Gutierrez Medina's accounts of events that was not reasonably explained. The RAD had a reasonable basis for preferring the documentary evidence over Mr. Gutierrez Medina's testimony, and I am not persuaded of an error in this regard: *Cardenas Gil v Canada (Minister of Citizenship and Immigration)*, 2019 FC 111 at para 8, citing *Zhou v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1087 (FCA) at para 1.

[26] The applicants also allege the RAD (and the RPD) was mistaken about the content of the *Fiscalía* report because it does reference the ELN, although the reference was obscured by the *Fiscalía*'s stamp and erroneously omitted from the English translation of the document. The applicants submit that mistakes have grave consequences for refugee claimants, and the RAD, which is tasked with catching the RPD's mistakes, should have been attuned to the translation error. Alternatively, they state the RAD should have requested the original of such a crucial document.

[27] I am not persuaded by the applicants' submissions in this regard. The applicants' further memorandum of argument includes an image that shows Spanish text faintly visible through a *Fiscalía* stamp, and they have circled "ELN". However, there is no evidence identifying the image or establishing it was taken from a document that was before the RPD and the RAD. It is not possible to discern words or letters through the stamp on the Spanish *Fiscalía* report that is in the certified tribunal record and in the applicants' record in this proceeding, and the applicants do not dispute there was an issue with the quality of the documents. Furthermore, the applicants provide no authority in support of their position that the RAD should have been attuned to a

translation error in a document they submitted in support of their refugee claim. Parties appearing before the RPD or the RAD are responsible for providing certified translations of their own documents that are in a language other than English or French. I agree with the respondent that a translation error was not raised on appeal to the RAD, and the applicants have not otherwise established a reviewable error by the RAD in connection with an error in the translation of the *Fiscalía* report they submitted in support of their refugee claim.

[28] Moreover, the applicants have not established that the alleged translation error would give rise to a sufficiently central or significant shortcoming to render the RAD's decision unreasonable: *Vavilov* at para 100. They have not established that a reference to ELN, and the context in which the reference occurs, calls the RAD's key findings into question.

[29] I do not agree with the applicants that the RAD erred by failing to consider whether Mr. Gutierrez Medina's reference to "common crime" meant a frequently occurring crime or a crime committed by common criminals. I note that the applicants raise this argument for the first time on judicial review. On appeal to the RAD they did not argue the RPD had misunderstood what Mr. Gutierrez Medina meant by "common crime", or provide evidence of what he meant. In any event, it is not apparent that the RAD made an assumption about what Mr. Gutierrez Medina meant by common crime, as neither meaning casts doubt on the adverse credibility finding. The RAD's (and the RPD's) concern was simply that when the police in Colombia asked Mr. Gutierrez Medina if he suspected someone in particular, he answered "no" instead of saying Mono.

[30] The applicants have not established the RAD imposed an excessive burden beyond what is required by section 97 of the *IRPA*, or that it expected the applicants to provide open-sourced news articles establishing a connection between them and Mono's arrest. The RAD assessed the evidence the applicants did provide. In considering the news articles reporting Mono's arrest, the RAD gave them no weight to establish Mono's or the ELN's involvement in the threats and extortion targeting the applicants because none of them provided any connection to the applicants. This was an assessment of the probative value of the articles to establish the identity of the applicants' agents of harm, as part of the RAD's role of weighing the evidence to decide the applicants' claim for refugee protection on the merits. The RAD's reasons for assigning no weight to the articles as evidence to establish the identity of the applicants' agents of harm were intelligible, transparent and justified, and the applicants have not established a reviewable error.

B. *Did the RAD err by taking a selective and piecemeal approach to the evidence?*

[31] The applicants submit the RAD erred by choosing to focus on one point, above all other evidence, and failing to consider the evidence in its totality and as a whole. The RAD's statement that it "reviewed the Appellant's new evidence to determine if it overcomes the credibility issues with respect to the identity of the agents of harm" indicates the RAD erred by failing to examine the evidence independently of concerns about the applicants' credibility before rejecting it: *He v Canada (Minister of Citizenship and Immigration)*, 2019 FC 2 at para 25 [*He*]; *Lu v Canada (Minister of Citizenship and Immigration)*, 2016 FC 846 at paras 33-35 [*Lu*]; *Sterling v Canada (Minister of Citizenship and Immigration)*, 2016 FC 329 at para 12 [*Sterling*].

[32] The applicants submit the RAD also erred by failing to consider significant evidence contradicting its findings, including that Mr. Gutierrez Medina's brother was shot in the leg by people who said "you must pay what your brother owes us", and statements by Mr. Gutierrez Medina's brother, eldest son (who remained in Colombia), and brother-in-law about the identity of the agents of harm and continued threats against the family: *Goman v Canada (Minister of Citizenship and Immigration)*, 2012 FC 643 at para 13; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 157 FTR 35 at para 17 [*Cepeda-Gutierrez*].

[33] The applicants argue that where the RAD did consider the evidence, it was given no weight for reasons that are not transparent, intelligible or justified in light of the record. The RAD dismissed first-hand accounts of threats and violence against the applicants' family members because it found the timing of the evidence to be questionable or "so coincidental as to be implausible", when implausibility findings should be reserved for the clearest of cases: *Valtchev* at para 7. The applicants say the RAD's implausibility finding was not based on the content of their documentary evidence: *Fok v Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 800 (FCA). As the family members' evidence related to a series of events stemming from a continuing threat, the events themselves were not suspiciously timed, which distinguishes *Jiang v Canada (Minister of Citizenship and Immigration)*, 2021 FC 572 [*Jiang*] relied on by the respondent. Furthermore, the applicants contend that, unlike *Jiang*, the credibility of the family members' evidence was not impugned apart from its timing.

[34] Lastly, the applicants submit the RAD discounted evidence based on what it did not say instead of what it did say: *Arslan v Canada (Minister of Citizenship and Immigration)*, 2013 FC

252 at paras 87-88 [*Arslan*]; *Pantas v Canada (Minister of Citizenship and Immigration)*, 2005 FC 64 at para 102 [*Pantas*]. The RAD gave no weight to evidence such as a letter from Mr. Gutierrez Medina's eldest son and a threatening ELN note from the brother-in-law because of information that was not included.

[35] The applicants have not established that the RAD erred in its approach to the evidence. As noted above, the RAD accepted that the applicants had been extorted and threatened by criminals. The key question is whether the RAD unreasonably assessed the evidence and its weight insofar as it could establish the identity of the agents of harm.

[36] I am not persuaded that the RAD's statement that it "reviewed the Appellant's new evidence to determine if it overcomes the credibility issues with respect to the identity of the agents of harm" indicates an improper approach to the evidence. The RAD did not reason in a way that begs the issue (i.e. that the corroborative evidence is not believed simply because the claimant is not believed) (*He* at para 25), or with logic tantamount to, "I do not believe you, therefore I do not believe anything that explains why I might be wrong" (*Sterling* at para 12). The RAD did not reject documents based on concerns with Mr. Gutierrez Medina's credibility without subjecting them to an independent assessment: *Lu* at paras 33-35. The RAD's reasons show that it examined the evidence with a view to determining whether the applicants had established that Mono and the ELN were the agents of harm.

[37] I agree with the respondent that the applicants have not established the RAD failed to address clearly contradictory evidence on the issue of identity that warranted specific mention:



*Cepeda-Gutierrez* at para 17. On appeal to the RAD, the applicants did not challenge the RPD's findings that there was no evidence the ELN was involved in the shooting attack on the brother and that Mr. Gutierrez Medina's belief that he was attacked by ELN members was "sheer speculation". Contrary to the applicants' submissions, the RAD did address the statements by Mr. Gutierrez Medina's brother, eldest son, and brother-in-law about the identity of the agents of harm, which I turn to below.

[38] The applicants state the RAD erred by failing to give weight to family members' evidence for reasons that were not transparent, justified or intelligible in light of the record.

[39] I disagree that the RAD erred in considering "suspicious timing". The respondent correctly notes that the RAD is entitled to consider coincidental timing when assessing the evidence: *Jiang* at para 44, citing *Meng v Canada (Minister of Citizenship and Immigration)*, 2015 FC 365 at para 22.

[40] Furthermore, the applicants are incorrect that the events themselves were not found to be "suspiciously timed", or that timing was the RAD's only reason for impugning the evidence. The RAD found the timing of the brother's declaration and the threatening note from the ELN to be "so coincidental as to be implausible" because they purported to establish events that occurred days before the applicants filed their appeal record, and addressed the "very same issue" the RPD identified as not having been established. The RAD considered the timing of these documents along with the fact that the ELN note was undated, it was not directed at the applicants, and it made no reference to their difficulties with Mono or the events surrounding the extortion, to

conclude that the declaration could not be given any weight to establish that Mono or the ELN are the applicants' agents of harm. The RAD found the brother-in-law's May 2021 request for protection from the *Fiscalía* to be questionable in its timing, noting that his May 2019 letter did not mention the ELN, and his delay in seeking protection for threats that had started three years earlier diminished the credibility of his assertion that the threats were from the ELN. With respect to the statements from Mr. Gutierrez Medina's son, the RAD found they were questionable in their timing and did not explain how he knew that the ELN was involved. Finally, the RAD found the documents did not support that Mono was involved, stating, "none of these documents mention Mono—the person the Appellant says was the main extortionist and agent of harm in his case".

[41] The RAD specifically addressed the evidence and explained why it did not assign it weight for the purpose of establishing that Mono and the ELN were the agents of harm. The applicants have not established that the RAD's approach to the evidence was selective or piecemeal, or that the RAD committed the same logical error described in *Arslan* and *Pantas*. The RAD did not fall into error when it noted that the evidence did not mention Mono, and therefore it did not support the allegation that he was the main extortionist and agent of harm. In my view, the RAD assessed the family members' documents for what they did say, but determined that they did not prove on a balance of probabilities that the applicants were targeted by Mono and the ELN.

C. *Did the RAD err in finding the agents of harm do not have the means or motivation to track and harm the applicants if they relocate to the proposed IFA locations?*

[42] In addition to the alleged errors regarding the identity of the agents of harm, the applicants submit the RAD's IFA finding is unreasonable because it presumed there is a clear distinction between common criminals and the ELN. They submit the documentary evidence establishes that extortion by armed groups and common criminal groups is common. The applicants submit the RAD erred in assessing the evidence of risk to the applicants throughout Colombia. The ELN are established or active in Colombia's main cities and armed group networks can trace and target individuals in rural areas and urban centres. Furthermore, regardless of the ELN's involvement, the applicants state the agents of harm have tracked them despite repeated relocations and changing contact information, and are capable of locating them and their family members throughout Colombia.

[43] The respondent submits that the applicants did not meet their onus to demonstrate risk in the proposed IFAs. The respondent submits it is speculative for the applicants to say that regardless of who the agents of persecution are, they are capable of tracking people throughout Colombia.

[44] For the reasons stated above, I am not persuaded the RAD erred in finding the applicants had not established that Mono and the ELN are the agents of harm. The applicants did not argue before the RAD that they would face a serious risk of harm throughout Colombia regardless of the agents' identity, and I agree with the respondent that it was open to the RAD to find the

applicants failed to demonstrate on a balance of probabilities that the agents of harm have the means and motivation to locate them and harm them in any of the proposed IFAs.

D. *Was the decision justified in view of the consequences?*

[45] The applicants submit the RAD's reasons do not demonstrate that it considered whether the consequences of its decision were justified in light of the facts and the law. Reasons must reflect the stakes, and a decision maker must explain why its decision best reflects the legislative intention: *Vavilov* at para 135. The applicants submit that the RAD's decision indicates it minimized the gravity of their claim, referring to their risk as "extortion" with only a brief mention of the death threats and harassment.

[46] I disagree. The RAD's reasons were responsive to the applicants' arguments and provided justification for the result. There is no basis for concluding that the RAD minimized the gravity of the applicants' claim. The RAD accepted that Mr. Gutierrez Medina had been targeted for extortion, and that he and his family had been threatened in Bogota. The RAD concluded, however, that this was insufficient to grant the appeal because the applicants had not established they would be at risk if they relocate to one of the proposed IFAs.

V. **Conclusion**

[47] The applicants have not established that the RAD's decision is unreasonable, and this application for judicial review is dismissed.

[48] Neither party proposed a question for certification. In my view there is no question to certify.

**JUDGMENT in IMM-457-22**

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

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

"Christine M. Pallotta"

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Judge

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

**DOCKET:** IMM-457-22

**STYLE OF CAUSE:** OSCAR MAURICIO GUTIERREZ MEDINA,  
CAROLINA VALENCIA GOMEZ, MARIANA  
GUTIERREZ VALENCIA, ANDRES MAURICIO  
GUTIERREZ v MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 5, 2022

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** APRIL 24, 2023

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