

Federal Court



Cour fédérale

Date: 20250211

Docket: IMM-1291-24

Citation: 2025 FC 263

Ottawa, Ontario, February 11, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ALEJANDRO LUGO CORDOBA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dated December 22, 2023 [the Decision], finding the Applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] In the Decision, the RPD rejected the Applicant's refugee claim due to the availability of a viable internal flight alternative [IFA] within Colombia.

[3] As explained in further detail below, this application for judicial review is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. **Background**

[4] The Applicant is a Colombian citizen who fears persecution in Colombia based on his sexual orientation, as well as harm by the father of one of his previous partners.

[5] The Applicant is a bisexual man and was threatened and assaulted in the summer of 2021 due to his relationship with his former same-sex partner [referred to in the Decision as DPO], with whom he had a secret relationship in 2021. In September 2021, the Applicant moved to Spain where he applied for refugee protection. He returned to Colombia after nine months and claims he was threatened by DPO's father in 2022.

[6] The Applicant arrived in Canada in 2022 via the USA and applied for refugee protection. After arriving in Canada, he learned that DPO's father had made inquiries of a former co-worker of the Applicant about his whereabouts.

[7] The RPD conducted a hearing with the Applicant on December 11, 2023, and on December 22, 2023, issued the Decision that is the subject of this application for judicial review.

III. **Decision under Review**

[8] In the Decision, the RPD rejected the Applicant's refugee claim due to the availability of a viable IFA within Colombia.

[9] The RPD noted specific credibility issues with the Applicant, including a lack of credible evidence that he was threatened by DPO's father on return to Colombia from Spain in 2022. However, the RPD found the Applicant generally credible, accepting the majority of his core allegations and not finding the presumption of truthfulness to be rebutted. In particular, the RPD accepted that the Applicant is bisexual, had a relationship with DPO, and was threatened and assaulted in 2021.

[10] To determine the viability of the IFA, the RPD analyzed whether (a) there was a serious possibility the Applicant would be persecuted, or on a balance of probabilities face a risk of serious harm, in the IFA; or (b) it would be unreasonable for the Applicant to relocate to the IFA.

[11] Turning to the first prong of the IFA analysis, the RPD found the Applicant would not be at risk of harm in the IFA. While finding that DPO's father appeared motivated to harm the Applicant, the RPD found that the Applicant had not established that DPO's father and his associates would have the means to locate and harm him in the IFA. The RPD further found that any potential criminal victimization in the IFA is a risk experienced by the general population and therefore excluded under paragraph 97(1)(b) of the IRPA. In this application for judicial review, the Applicant is not challenging these particular findings.

[12] The RPD also found that the Applicant would not face a serious possibility of persecution in the IFA based on his sexual orientation. After canvassing information within the National Documentation Package [NDP], the RPD found that the Applicant would face a serious possibility of verbal harassment in the IFA, which in itself did not amount to persecution. The RPD also found that the Applicant would face a mere possibility of discrimination related to housing and employment, a mere possibility of mistreatment by state authorities, and a mere possibility of being killed or experiencing other violence due to his sexual orientation.

[13] In summary, the RPD found that the Applicant had not established that he faced a serious possibility of persecution in the IFA due to his sexual orientation. The RPD accepted that he faced a serious possibility of verbal harassment, which the RPD described as treatment that represented discrimination that did not amount to persecution.

[14] Regarding the second prong of the IFA analysis, the RPD found it would not be unreasonable for the Applicant to relocate to the IFA. The RPD acknowledged the presence of armed groups operating in the IFA and relatively high crime rates, but it did not find the generalized crime situation in the IFA such that it would jeopardize the Applicant's life and safety.

[15] The RPD also acknowledged the Applicant's submission that living away from his daughter, who resides in Canada, would significantly affect his mental health. The Applicant testified about previous mental health struggles when he was separated from his daughter. The RPD found that mental health services would be available to the Applicant in the IFA and that he

had not established that his mental health would be impacted in the IFA such that his life and safety would be jeopardized.

[16] As such, the RPD found the Applicant had a viable IFA within Colombia and concluded that the Applicant is neither a Convention refugee nor a person in need of protection under the IRPA.

IV. **Issues and Standard of Review**

[17] The Applicant's arguments raise the following issues for the Court's determination:

- A. Whether the RPD erred in failing to accurately assess whether systemic discrimination was present that could cumulatively amount to persecution; and
- B. Whether the RPD erred in selectively interpreting the documentary evidence within the NDP.

[18] In considering these issues, the Court will apply the reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17).

V. **Analysis**

- A. *Whether the RPD erred in failing to accurately assess whether systemic discrimination was present that could cumulatively amount to persecution*

[19] The Applicant's first argument challenging the reasonableness of the Decision is based on the principle that refugee claimants may face instances of harassment or discrimination that cumulatively give rise to a well-founded fear of persecution. As the Applicant notes, this principle is reflected in the IRB's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics [Guideline 9]. A decision-maker's failure to conduct a cumulative assessment, where warranted by the evidence or submissions in a particular case, can represent a reviewable error (*Egeresi v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1133 at para 6).

[20] The Applicant submits that the Decision demonstrates that, based on the NDP, the RPD independently assessed the circumstances in the proposed IFA surrounding discrimination, including in relation to verbal harassment, employment, housing, mistreatment by state authorities, and risk of violence, without assessing whether those circumstances cumulatively amounted to persecution.

[21] By way of example, the Applicant refers to the RPD's consideration of the Applicant's exposure to discrimination in efforts to secure employment or housing. After reviewing relevant portions of the NDP, the RPD concluded that the Applicant faced a mere possibility of discrimination in relation to employment and housing and that he was not systemically barred from employment or finding a place to live in the proposed IFA. The Applicant argues that this analysis demonstrates the RPD improperly considering whether discrimination in relation to employment and housing alone was sufficient to amount to persecution.

[22] The Applicant also emphasizes the RPD's conclusion that he would face a serious possibility of verbal harassment and minor forms of discrimination if he relocated to the IFA. Guideline 9 refers to various instances of discrimination that may cumulatively amount to persecution, including repeated acts of intimidation. Noting that this guidance in Guideline 9 was expressly acknowledged by the RPD, the Applicant submits that the RPD nevertheless failed to analyse this risk of verbal harassment in combination with his risk of other instances of discrimination, so as to assess whether systemic discrimination amounting to persecution existed within the IFA.

[23] The Respondent does not contest the analytical principles upon which the Applicant relies, but emphasizes that the RPD merely failing to include the word "cumulative" in its analysis does not establish a reviewable error. Rather, based on a holistic review of the reasons in the Decision, the Respondent submits that it is apparent that the RPD did not consider the various discrimination factors in isolation.

[24] Indeed, as both parties note, the Decision expressly references the explanation in Guideline 9 that various instances of discrimination may cumulatively amount to persecution. The RPD also references the explanation by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), that for discrimination to amount to persecution, the harm suffered must generally involve sustained or systemic violation of basic human rights. The RPD also identifies that, in some cases, even a single transgression of an individual's human rights, if severe enough, may amount to persecution (*Muthuthevar v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 207, 1996 CarswellNat 211 (FCTD)).

[25] These elements of the Decision suggest that the RPD understood the assessment it was required to perform. However, this is not determinative, as what matters is not whether the RPD states that it is examining various forms of discrimination cumulatively, but rather whether its reasons demonstrate that such an assessment has been performed (*Mohammed v Canada (Citizenship and Immigration)*, 2009 FC 768 at paras 66-67).

[26] As explained below, examining the Decision as a whole, the Applicant has not satisfied me that the RPD failed to conduct an intelligible and cumulative assessment.

[27] As previously noted, the only area in which the RPD identified the Applicant facing a serious possibility of discrimination was in relation to verbal harassment and minor forms of discrimination, based on evidence in the NDP surrounding prejudice against the LGBTIQ2 community and bullying and verbal harassment of bisexual men. Significantly, the RPD found that the serious possibility of verbal harassment in the IFA did not “in itself” amount to persecution. Consistent with its earlier articulation of the nature of the assessment it was required to perform, this language suggests an understanding that such assessment required more than examining each area of potential discrimination in isolation.

[28] After canvassing evidence in the NDP on other factors (employment, housing, mistreatment by state authorities, and risk of violence), each of which the RPD found to present only a mere possibility, the RPD concluded with the following finding:

In summary, the claimant has not established that he faces a serious possibility of persecution in [the IFA] due to his sexual orientation. The claimant faces a serious possibility of verbal

harassment. This type of treatment is discrimination which does not amount to persecution.

[29] As I interpret the RPD's reasoning, it concluded that the Applicant faced little risk of discrimination in areas other than verbal harassment. As such, the effect of the required cumulative assessment turned on that factor, which the RPD had found based on its review of the country condition evidence did not amount to persecution.

[30] The Respondent refers the Court to authority supporting its position that an analysis of this sort represents a reasonable approach to the required cumulative assessment. In *Agudo v Canada (Citizenship and Immigration)*, 2021 FC 320 [Agudo] at paragraph 31, Justice Andrew Little considered as follows an argument similar to that advanced by the Applicant in the case at hand:

In the present case, I am satisfied that although the RPD Member did not expressly state that he was conducting a cumulative analysis, he in fact did so. At the beginning of the analysis, the Member stated that he was unable to find that "the problems that the [applicant] encountered in her home country amounted to persecution" under IRPA s. 96. He then went through each of the applicant's arguments and made findings on each, concluding that none on their own constituted persecution. The Member then concluded that the applicant's "allegations show[ed] discrimination only and they do not rise to the level of persecution". Thus, while not using the word "cumulative" itself or a synonym, the Member's analysis was in substance both itemized and cumulative.

[31] Justice Little further explained that, as the RPD had concluded that the claimant's itemized claims of persecution lacked merit, it was evident why it did not find that the grounds raised, considered cumulatively, amounted to persecution (at para 32). The Applicant seeks to distinguish *Agudo* on this basis.

[32] In *Agudo*, the individual factors identified by the claimant and analysed by the RPD principally involved incidents that she had personally experienced. In contrast, in the case at hand, the relevant analysis by the RPD involved country condition evidence related to various areas of discrimination. However, I agree with the Respondent that the analytical frameworks evidenced by *Agudo* and the Decision in the case at hand are comparable. In each analysis, the RPD considered the individual items potentially relevant to a cumulative analysis, identified why they were not compelling, and ultimately concluded that the applicant had not established a serious possibility of persecution.

[33] In my view, this aspect of the Decision is intelligible and withstands reasonableness review.

[34] In connection with his argument that the RPD failed to conduct the required cumulative analysis, the Applicant also raises arguments that the RPD erred in assessing the documentary evidence in the NDP that was relevant to that analysis.

[35] First, the Applicant submits that the RPD unreasonably assessed the risk of violence he would face in the IFA. He notes the RPD's consideration of the percentage of bisexual male respondents to a study who reported being verbally assaulted, threatened with violence, physically assaulted, or sexually assaulted, as well as statistics surrounding homicides within the LGBTIQ2 community. The RPD also referenced an increase in violence against that community since the beginning of the COVID-19 pandemic. Against that backdrop, the Applicant challenges the RPD's finding that he faced a serious possibility of only verbal harassment and discrimination.

[36] The Applicant's argument amounts to a request for the Court to reweigh the evidence, which is not its role in judicial review. Clearly the evidence referenced by the Applicant was not overlooked by the RPD, as it is canvassed in the Decision. Moreover, the Decision is intelligible, in that the percentage of respondents reporting verbal assaults significantly exceeded those reporting physical violence. In relation to the evidence of increasing violence since the beginning of the pandemic, the RPD noted that it was transgender individuals, transwomen sex workers, migrants, and LGBTIQ2 persons living with HIV who had been more likely to experience violence.

[37] The Applicant also argues that, in connection with the RPD's consideration of discrimination related to housing and employment, the RPD erred by relying on legislative and structural measures intended to prevent discrimination against the LGBTIQ2 community, given the evidence that the legislation is not always adequately enforced. However, again, it is not possible to infer that the RPD overlooked this evidence. The RPD expressly acknowledged the inadequacies in enforcement. Its analysis related to housing and employment is intelligible, as it is based principally on studies identifying that discrimination in those areas was not widespread.

B. *Whether the RPD erred in selectively interpreting the documentary evidence within the NDP*

[38] The Applicant also raises several arguments to the effect that the RPD erred in its interpretation of the country condition evidence in the NDP.

[39] First, the Applicant argues that the RPD unreasonably discounted evidence in the NDP as to risk to members of the LGBTIQ2 community, because of a lack of specificity in the evidence.

In considering discrimination related to employment and housing, the RPD considered a study identifying small percentages of bisexual male respondents who reported discrimination. The RPD also noted that the survey did not identify the reasons these respondents were denied work or housing, *i.e.*, whether the denial related to their sexual orientation.

[40] The RPD also considered an earlier study, identifying the percentage of LGBTIQ2 respondents who felt like they were treated fairly at work. The RPD noted that the study did not distinguish between different identities within the LGBTIQ2 community or whether any mistreatment was due to the respondents' sexual orientation or gender identity.

[41] I find no merit to the Applicant's argument that the RPD unreasonably discounted this evidence based on the limitations identified in the Decision. Such analysis is within the RPD's purview, and it is not the Court's role to interfere with the administrative decision-maker's weighing of the evidence.

[42] The Applicant also takes issue with the Decision's reference to 45% of the population of Bogotá being in favour of same-sex marriage and LGBTIQ2 individuals being more accepted in urban areas of Colombia. In contrast, the Applicant refers the Court to an NDP item stating that only 31% of Colombia's population is supportive of same-sex marriage.

[43] However, the RPD expressly references that latter statistic. I also note that, in the paragraph in which the RPD reviewed this evidence, it referred to a significant portion of the Colombian population being prejudiced against the LGBTIQ2 community. There is no basis for

the Court to conclude that the RPD overlooked the evidence referenced by the Applicant or to interfere with the RPD's weighing of the relevant evidence.

[44] The Applicant notes a reference in the NDP to LGBTIQ2 individuals facing difficulty in accessing the formal labour market, being disqualified during the hiring process, and experiencing difficulty providing legal evidence of this exclusion. The Applicant argues that, in concluding that he faced a mere possibility of discrimination when he tries to secure employment or housing, the RPD selectively ignored this evidence. However, the evidence cited by the Applicant does not so clearly contradict the RPD's finding such that it could be inferred the RPD overlooked the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 [*Cepeda-Gutierrez*] at paras 16–17 (FC)).

[45] Finally, the Applicant argues that the RPD ignored evidence (in item 6.4 of the NDP) of a high murder rate within the LGBTIQ2 community in the IFA location. This item states that most of the deaths in the LGBTIQ2 community reported in 2017 occurred in metropolitan areas of certain departments of Colombia, including the proposed IFA location. The RPD did not cite this particular statement but referenced evidence that identified other departments and cities as having the most violence and murders of LGBTIQ2 individuals in 2018. The Applicant argues that, notwithstanding that the RPD relied on item 6.4 of the NDP elsewhere in its decision, it failed to consider the evidence from that item referenced above and unreasonably found that the Applicant faced a mere possibility of being killed in the IFA due to his sexual orientation.

[46] In this portion of the Decision, the RPD relied on the 2018 evidence that identified that in Bogotá, which had the third most murders in 2018, 11 LGBTIQ2 individuals were killed. The RPD inferred from that evidence that the number of murders in the proposed IFA was lower than 11 and that these numbers were for all categories of LGBTIQ2 individuals, not specifically for bisexual men. Again, the *Cepeda-Gutierrez* analysis applies. The evidence the Applicant references in item 6.4 does not sufficiently contradict the RPD's conclusion such that the Court can infer it was overlooked. The RPD's reasoning is intelligible and therefore withstands reasonableness review.

VI. **Conclusions**

[47] As I have found that the Applicant's arguments do not undermine the reasonableness of the Decision, this application for judicial review must be dismissed.

[48] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-1291-24

THIS COURT'S JUDGMENT is that this application is dismissed. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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