

Federal Court



Cour fédérale

Date: 20250206

Docket: IMM-14929-23

Citation: 2025 FC 241

Toronto, Ontario, February 6, 2025

PRESENT: Madam Justice Go

BETWEEN:

Gerson Mauricio CESPEDES AGUIRRE

Applicant

and

**Minister of Immigration, Refugees and
Citizenship**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Gerson Mauricio Cespedes Aguirre, is a citizen of Colombia, where he worked as an electrical engineer and led efforts to help minority groups in remote areas establish telecommunication connections to the rest of the country. The Applicant alleges that as a result of his work, he began to receive threats from the Black Eagles, a paramilitary group.

[2] The Refugee Protection Division [RPD] refused his claim. The Refugee Appeal Division [RAD] dismissed the Applicant's appeal of the RPD decision [Decision]. The RAD determined the Applicant had a viable Internal Flight Alternative [IFA], as the agents of persecution lacked motivation to pursue the Applicant. The RAD also found that the Applicant failed to establish that his profile would expose him to a serious possibility of persecution if he relocated.

[3] The Applicant seeks a judicial review of the Decision. I dismiss the application as the Applicant fails to discharge his burden of demonstrating that the Decision was unreasonable.

II. Issues and Standard of Review

[4] The Applicant raises the following issues to challenge the RAD's findings on the IFA:

- a. The RAD misapprehended the information on the record in its assessment of the agent of persecution's motivation to locate the Applicant in the proposed IFA; and
- b. The RAD's findings are internally inconsistent.

[5] The standard of review in this case is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[6] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, considering both its rationale and outcome, is transparent, intelligible, and justified: *Vavilov* at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85.

III. Analysis

[7] The two-pronged test for assessing an IFA was set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA), 140 NR 138 [*Rasaratnam*]. With respect to the first prong, the RAD must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA exists: *Rasaratnam* at para 6. The RAD must consider both the motivation and means of the agents of persecution.

A. *The RAD did not misapprehend evidence in its assessment of motivation*

[8] The Applicant submits that the RAD misapprehended the information on the record when it found there was insufficient evidence to establish that the Black Eagles continued to threaten him after he stopped his work in remote communities, and therefore concluded that they were not motivated to pursue him in the proposed IFA.

[9] The Applicant argues the record demonstrates the opposite is true, pointing to the Applicant's refugee claim application where he stated he ceased work on June 30, 2022, but that he received threats in July 2022, as stated in his July 2022 complaint to the authorities. The Applicant also points out that he explicitly testified at the RPD hearing that July 19, 2022, was the last day on which he had complication with the Black Eagles. The Applicant submits the RAD made an erroneous finding about the insufficiency of evidence to establish the Black Eagles continued to threaten him after he stopped work, and that this finding was determinative of the application.

[10] I disagree.

[11] The RAD acknowledged the Applicant's work made him a target by members of an illegal armed group under the name of Black Eagles. The RAD also acknowledged the Applicant's allegations that each time he moved for his work he was again found and threatened. However, the RAD concluded at paragraph 30 of the Decision that the Applicant "has not sufficiently established that he would return to his previous work, nor has he articulated any political opinion or connection to this job that would sufficiently establish that he would be prevented from expressing a genuine political opinion in this regard."

[12] Similarly, the RAD noted at paragraph 31 of the Decision that "the [Applicant] ceased his involvement in the work activity that angered the illegal armed group after receiving threats and he did not return to doing that work."

[13] These reasons suggest that the Decision did not hinge on *when* the Applicant stopped work and the threats began. Rather, the RAD concluded that the illegal armed group lacked motivation to locate the Applicant in the proposed IFA, in part because the Applicant has not sufficiently established that he would return to his previous employment.

[14] The Applicant further submitted that the RAD failed to reconcile its finding of a lack of motivation with its finding that the Applicant's parents received calls since the Applicant left Colombia, despite being prepared to accept that these calls came from the same group that originally threatened the Applicant.

[15] I reject this argument. The RAD found that the nature and extent of the calls did not establish the Applicant is still a person of interest to the agents of persecution. The RAD additionally noted that there is no evidence of any continued attempts to locate the Applicant since his parents moved to another location. These findings, in my view, were reasonably supported by the evidence.

B. *The RAD did not err in its assessment of the risk arising from the Applicant's imputed political opinion*

[16] The Applicant argues that the RAD's findings are internally inconsistent because, although it determined that the Applicant's risks originate in his political opinion, it also found that the Applicant would not be at risk if he ceased working for remote towns and minority groups, and relocated.

[17] The Applicant contends that a political opinion is an immutable characteristic that does not depend on transitory circumstances such as a career change. He cites paragraph 21 of the Decision to suggest that the RAD accepted that he was targeted for his political opinion. This paragraph reads:

I am prepared to accept that the [Applicant's] work in connecting remote areas of Colombia inhabited by minority groups to the rest of Colombia may be seen by the members of illegal armed groups in those remote areas as a challenge, or opposition, to their control in that area. I am prepared to accept that the [Applicant] was targeted by members of an illegal armed group in his local area in response to this perceived opposition to their control, **and that the [Applicant] may have been imputed to have a political opinion opposed to illegal armed groups in Colombia.....**

[Emphasis added]

[18] The Applicant also submits that the RAD did not address his argument that he provided evidence that the political opinion was not imputed, but was subjective and inherent in the Applicant's character. The Applicant references an excerpt from the RPD transcript where he told the RPD about his intentional risk-taking, such as continuing to visit remote towns that had been through some kind of combat, with walls covered in bullet holes. He also stated before the RPD that he felt he was personally targeted by the Black Eagles, as opposed to others in his organization, because he was in a leadership position that he was able to obtain because a lot of people had quit.

[19] Finally, the Applicant relies on the Supreme Court of Canada's decision in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1 [*Ward*] to argue that the political opinion ascribed to him permanently stains his persona, noting the evidence about the agents of persecution targeting the Applicant and his family after he ceased his employment.

[20] I reject all of the Applicant's arguments.

[21] From the paragraph the Applicant cites, it is clear that the RAD did not find the Applicant's risk arises from his political opinion. Rather, the RAD determined that such a risk arises from an imputed political opinion due to the work in which the Applicant was engaged. Indeed, the RAD specifically made note of the Applicant's position with respect to his political opinion and stated at paragraph 31 of the Decision that he "was clear in his testimony that **he does not hold a political opinion but submits that a political opinion is attributed to him** due

to the nature and extent of his previous employment and the leadership role that came with it”
[emphasis added].

[22] Citing this Court’s decision in *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99, the RAD elaborated that “[p]ersons claiming to be in need of protection solely because of the nature of their occupation or business in which they engage in their own country generally will not be found to be in need of protection unless they can establish that there is no alternative occupation or business open to them in their own country that would eliminate the risk of harm.”

[23] The RAD went on to consider that the Applicant’s inability to continue in the specific endeavour which caught the Black Eagles’ attention is not a denial of his core human rights or ability to earn a living.

[24] Thus, contrary to the Applicant’s submission, there is no inherent inconsistency in the RAD’s conclusion that the Applicant was facing risk due to impugned political opinion by virtue of his previous employment, and that the Applicant would not be at risk if he ceased to work in the same field.

[25] Further, the RAD did consider the Applicant’s testimony and found that the political opinion that was ascribed to him was not “a true ideological connection to his previous work, such that it would be considered his inherent political opinion.” The Applicant may disagree with the RAD’s assessment of the testimony, but his disagreement does not amount to any reviewable error.

[26] I also find the Applicant's reliance on *Ward* and submission on his political opinion being "immutable" misplaced. As the Supreme Court of Canada explained in *Ward*, an "immutable characteristic" refers to "membership in a particular social group" and is about "a characteristic that either is beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed." *Ward* at para 67. *Ward* also speaks to the possibility of persecution due to an imputed political opinion, but it does not address the connection between having an immutable or imputed political opinion on the one hand, and the viability of an IFA on the other.

[27] At the hearing, counsel for the Applicant argued that his political opinion is "immutable" because it was imputed by the agent of persecution and is thus beyond his power to change.

[28] With respect, counsel appears to be conflating different legal concepts and overlooks the issue at play. The RAD accepted the Applicant has a nexus to the Convention grounds because the Applicant "may have been imputed to have a political opinion opposed to illegal armed groups in Colombia." However, the issue before the RAD was whether, notwithstanding the existence of the nexus, the illegal armed groups have the motivation to track him down in the IFA.

[29] The Applicant also appears to be suggesting that by virtue of having an "immutable" political opinion, he establishes that there is no viable IFA. The Applicant's argument, if accepted, would render the analysis of IFA nugatory once a nexus is found under section 96 of

the *Immigration and Refugee Protection Act*, SC 2001, c. 27 on the basis of immutability of the claimant's membership in a particular social group.

[30] If, on the other hand, the Applicant's argument is that the RAD failed to consider the risks of harm through the eyes of the persecutors, this argument is also without merit. The RAD did exactly that by examining whether the Applicant fits within the profile of individuals who may be targeted by the illegal armed groups in the IFA, while taking into account the Applicant's personal evidence as well as the country conditions evidence.

[31] Counsel for the Applicant made an additional argument at the hearing that the RAD should have turned its mind to whether the Black Eagles considered the Applicant a political opponent based on the National Documentation Package [NDP]. Counsel added that while the RAD cited the NDP to find that the Applicant did not fit the profile of someone who is a "military objective" or a human rights defender, the RAD failed to consider another group targeted by illegal armed groups, namely, public servants.

[32] With respect, the Applicant's new argument is equally unpersuasive. The RAD did consider the NDP. Further, as the Applicant argues, the RAD's assessment must be context-specific. In the context of this case, I find no reviewable errors arising from the RAD's finding that there are no further attempts to locate the Applicant, that the Applicant would not return to his previous employment, that the Applicant's imputed political opinion is not his inherent opinion, and that the Applicant does not have a profile that exposes him to a serious risk of persecution in the IFA.

IV. Conclusion

[33] The application for judicial review is dismissed.

[34] There is no question for certification.

JUDGMENT in IMM-14929-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-14929-23

STYLE OF CAUSE: GERSON MAURICIO CESPEDES AGUIRRE v
MINISTER OF IMMIGRATION, REFUGEES AND
CITIZENSHIP

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 3, 2025

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