

Federal Court



Cour fédérale

**Date: 20250227**

**Docket: IMM-4064-25**

**Citation: 2025 FC 381**

**Ottawa, Ontario, February 27, 2025**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**JHON ALEXANDER OTALORA RODRIGUEZ**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS**

**Respondent**

**ORDER AND REASONS**

[1] The Applicant seeks an Order staying his removal from Canada to Colombia on February 28, 2025. An enforcement officer denied the Applicant's request for a deferral of removal on February 17, 2025. The Applicant seeks to stay his removal pending the disposition of his application for leave and judicial review of the officer's decision.

[2] I have reviewed the materials before the Court and have considered the parties' representations delivered by videoconference on February 27, 2025. I am not persuaded that the

Applicant has met the test for a stay. In particular, he has not shown that a serious issue arises from the negative deferral decision.

[3] The Applicant submits the decision is unreasonable and was rendered in a procedurally unfair manner. The Applicant asserts that the officer misinterpreted the evidence, erred by attempting to conduct a full risk assessment, and made adverse credibility findings without granting the Applicant an opportunity to respond to their concerns.

[4] I disagree.

[5] As a preliminary matter, I agree with the Respondent that the Applicant's new evidence may be more accurately described as evidence that has been withheld. In his deferral request, the Applicant adduced a report from the Colombian Attorney General and a declaration from his mother. Despite both documents being available prior to the negative decision of the Refugee Appeal Division ("RAD"), the Applicant's own submission is that they were strategically withheld by his previous counsel. The Applicant has cited no authority for the proposition that withheld evidence of this kind may form the basis for allegations of new risk on a deferral request.

[6] Turning to the tripartite test for a stay, I find that the officer's assessment of the withheld evidence does not raise a serious issue with the deferral decision. Although the officer failed to identify the report of the Attorney General as a legitimate police report, this error does not "[undermine] the entire decision," as the Applicant contends. The officer provided several

reasons for assigning little weight to this document, including the timing of the alleged threats, the insufficient evidence of a link to the alleged agent of persecution, and the fact that the agent of persecution named in the report, the Autodefensas Unidas de Colombia (“AUC”), had not previously been “mentioned throughout [the Applicant’s] immigration applications.” Given the totality of the officer’s assessment, I do not find that a serious issue is raised with respect to the Attorney General’s report.

[7] The officer did not exceed their jurisdiction. The Applicant asserts that the officer “fault[ed]” him for “stating that the agents of persecution have changed throughout his protection application process.” I do not find this is the case. In his deferral request, the Applicant states that his refugee claim was rejected because “it could not be definitively determined which criminal organization was responsible for targeting the [A]pplicant and his family.” He claimed that his new evidence was “highly material,” as it demonstrated that “the agent of persecution self identified as the [AUC].” In the deferral decision, the officer found insufficient evidence of this link, noting “the unknown man and unknown callers did not identify themselves” and “there [was] insufficient information on [how the Applicant’s mother] knew that they were members of the AUC.” Although the officer noted and summarized the different agents of persecution identified in the Applicant’s refugee proceedings, the officer’s assessment was nonetheless focused on “whether there [was] insufficient evidence regarding the agents of persecution to demonstrate that [the Applicant] will face irreparable harm when returned to Colombia.” In my view, the officer properly assessed “the *bona fides* of the [deferral] application” (*Wang v Canada (Minister of Citizenship and Immigration)* (TD), 2001 FCT 148 (CanLII), [2001] 3 FC 682 at para 50). They did not conduct a full-blown assessment of risk.

[8] I also do not find the officer made adverse credibility determinations. Although the officer noted inconsistencies in the record, they did not disbelieve the Applicant with respect to his claims. For instance, the officer accepted the Applicant's varying evidence concerning his agents of persecution, noting that his submissions before the Refugee Appeal Division were focused on the Ejército de Liberación Nacional ("ELN") whereas his submissions on the deferral request were focused on the AUC. The officer was neutral toward this evidence, and even considered that both of these claims could be true, such that "2 groups on...opposite [sides of the] political spectrum (AUC as a far right paramilitary, and ELN as a far left communist group) would specifically target [the Applicant]."

[9] For these reasons, I do not find the Applicant has raised a serious issue with the negative deferral decision. It is unnecessary, therefore, to consider the other branches of the test for a stay (*Toth v Canada (Minister of Employment and Immigration)*, 1988 CanLII 1420 (FCA); *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 (CanLII), [2010] 2 FCR 311 at para 67).

**ORDER in IMM-4064-25**

**THIS COURT ORDERS** that this request for a stay is dismissed.

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"Shirzad A."

Judge

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

**DOCKET:** IMM-4064-25

**STYLE OF CAUSE:** JHON ALEXANDER OTALORA RODRIGUEZ v THE  
MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 27, 2025

**ORDER AND REASONS:** AHMED J.

**DATED:** FEBRUARY 27, 202

**APPEARANCES:**

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