Federal Court Cour fédérale

Date: 20250721

Docket: IMM-15739-24

Citation: 2025 FC 1290

Ottawa, Ontario, July 21, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JOHAN FREDY PEREZ BONILLA
LEONARDO PEREZ BONILLA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated August 2, 2024, by the Refugee Protection Division [RPD], allowing an application of the Minister of Citizenship and Immigration [the Minister] to cease the Applicants' refugee protection [the Decision].

[2] As explained in greater detail below, this application for judicial review is allowed, because the RPD conducted an unreasonable analysis under paragraph 108(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] as to whether the reasons for which the Applicants sought refugee protection had ceased to exist.

II. **Background**

[3] The Applicants are brothers and citizens of Columbia who claimed refugee protection in Canada based on fear of persecution by the Fuerzas Armandas Revolucionarias de Colombia organization [FARC] in Columbia. The FARC targeted the Applicants due to the efforts of the first-named Applicant [the Principal Applicant] to dissuade minors from joining the FARC. The Principal Applicant and his brother, the second-named Applicant, fled Columbia in 1998 and 2008, respectively, and were found to be Convention refugees on July 21, 2009. In 2011, the Applicants became permanent residents of Canada.

[4] The Applicants subsequently renewed their Columbian passports, which they received in August 2011. The Applicants used these passports to return to Columbia from December 6, 2015, to February 12, 2016, to assist their ailing grandparents. The Applicants further used their Columbian passports to travel to Cuba, and the second-named Applicant used his Columbian passport to obtain a visa and travel to the United States.

[5] On August 17, 2023, the Minister applied to cease the Applicants' refugee protection under section 108 of the IRPA and section 64 of the *Refugee Protection Division Rules*, SOR/2012-256. The Minister submitted that the cessation application should be allowed because

the Applicants re-availed themselves of Columbia's protection according to paragraph 108(1)(a) of the IRPA. The RPD held a hearing on June 13, 2024, with counsel for both parties providing subsequent written submissions.

[6] The Applicants disputed the Minister's submission that they had re-availed themselves of Columbia's protection under paragraph 108(1)(a) of the IRPA. The Applicants also argued that, either prior to the Applicants' return to Columbia or by the time of the RPD cessation hearing, their refugee status ceased under paragraph 108(1)(e) of the IRPA because the reason for which they sought refugee protection had ceased to exist. The Applicants testified that they considered FARC to no longer be a threat due to substantial political change in Columbia, including the Columbian authorities conducting peace talks with the FARC that subsequently resulted in FARC disbanding as a paramilitary organization in 2016. The Applicants argued that, even if the RPD found that conditions hadn't changed prior to the Applicants' return to Columbia, paragraph 108(1)(e) still applied, as such change had occurred by the time of the hearing.

[7] On August 2, 2024, the RPD issued the Decision that is the subject of this application for judicial review, allowing the Minister's application under paragraph 108(1)(a) of the IRPA to cease the Applicants' refugee protection in Canada.

III. **Decision under Review**

[8] In the Decision, the RPD allowed the Minister's application, concluding that paragraph 108(1)(e) of the IRPA did not apply and that the Applicants voluntarily re-availed themselves of Columbia's protection as contemplated by paragraph 108(1)(a) of the IRPA.

[9] The RPD determined that paragraph 108(1)(e) of the IRPA did not apply because the circumstances in Columbia for persons such as the Applicants, who fear guerillas and paramilitary organizations including FARC dissidents, had not substantially changed. The RPD reviewed country condition evidence [CCE] which detailed criminal and armed group activity in Columbia following the disbandment of the FARC as a paramilitary organization and concluded that the changes argued by the Applicants did not amount to substantial, effective, and durable change in Columbia, either at the time of the hearing or previously in 2015 and 2016 when they had returned to Columbia.

[10] The RPD then assessed the three requirements for voluntary re-availment under paragraph 108(1)(a) of the IRPA, specifically, whether: (a) the Applicants acted voluntarily; (b) the Applicants intended to re-avail themselves of Columbia's protection; and (c) the Applicants obtained this protection.

[11] The RPD first concluded that the Applicants had acted voluntarily, finding no evidence to suggest the Applicants were forced to renew their Columbian passports and return to Columbia. The RPD determined that the Applicants' reason for travelling to Columbia, to care for their grandparents, did not alter the voluntariness of their actions.

[12] The RPD then found that the Applicants failed to rebut the presumption that they intended to re-avail themselves of Columbia's protection, which presumption arose when the Applicants renewed and travelled with their Columbian passports to Columbia. The RPD accepted that the Applicants lacked actual knowledge of the immigration consequences of

returning to Columbia on their Columbian passports. However, it also found that the Applicants' trip was planned and voluntary, that it was unnecessary for the Applicants to travel to Columbia to care for their grandparents, and that the Applicants' numerous public activities in Columbia indicated a lack of subjective fear.

[13] Finally, the RPD concluded that the Applicants obtained diplomatic protection from Columbia when they renewed and travelled on their Columbian passports.

[14] Given the foregoing, the RPD allowed the Minister's application to cease the Applicants' refugee status, and their refugee claims were deemed to be rejected.

IV. **Issues and Standard of Review**

[15] The sole substantive issue for the Court's determination in this application for judicial review is whether the Decision is reasonable. As contemplated by this articulation of the issue, the standard of reasonableness applies to this analysis, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[16] The Respondent also raises a preliminary issue, submitting that the Minister of Citizenship and Immigration should be named as the Respondent in this application, rather than the Minister. The Applicants agree with the Respondent's submission. I concur with the parties, and my Judgment will so provide.

V. **Law**

[17] Upon application by the Minister, the RPD may determine that refugee protection conferred under the IRPA has ceased for any of the reasons listed under subsection 108(1) of the IRPA (IRPA, s 108(2)). If the Minister's application for cessation is allowed, the refugee claim at issue is deemed rejected (IRPA, s 108(3)). Subsection 108(1) states:

Rejection	**Rejet**
108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	**108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
(a) the person has voluntarily reavailed themself of the protection of their country of nationality;	**a)** il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
(b) the person has voluntarily reacquired their nationality;	**b)** il recouvre volontairement sa nationalité;
(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	**c)** il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or	**d)** il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;
(e) the reasons for which the person sought refugee protection have ceased to exist.	**e)** les raisons qui lui ont fait demander l'asile n'existent plus.

[18] In determining whether cessation of refugee status occurred under paragraph 108(1)(a) of the IRPA, three elements must be met: (a) voluntariness, in that the refugee must not be coerced; (b) intention, meaning the refugee must intend by their actions to re-avail themselves of the

protection of the country of their nationality; and (c) re-availment, in the sense that the refugee must actually obtain such protection (*Chowdhury v Canada (Citizenship and Immigration)*, 2021 FC 312 at para 8; *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at paras 18, 79).

[19] In contrast, paragraph 108(1)(e) considers whether there has been a substantial, effective, and durable change in the conditions of the refugee's country of nationality or in the personal circumstances of the refugee, and whether this change supports a continuation of a risk to the refugee (*Karasu v Canada (Citizenship and Immigration)*, 2023 FC 654 at para 67).

[20] Where the RPD finds that refugee protection has ceased pursuant to paragraph 108(1)(e) of the IRPA, the claimant loses refugee status only and does not lose permanent resident status and become inadmissible to Canada. In contrast, a finding of cessation by the RPD pursuant to paragraphs 108(1)(a) to (d) does result in the loss of permanent resident status by operation of paragraph 46(1)(c.1) of the IRPA:

Permanent resident	**Résident permanent**
46 (1) A person loses permanent resident status	**46 (1) Emportent** perte du statut de résident permanent les faits suivants :
(c.1) on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d);	**c.1)** la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile;

VI. **Analysis**

[21] In support of their position that the Decision is unreasonable, the Applicants raise arguments in relation to the RPD's analyses under both paragraphs 108(1)(a) and (e) of the IRPA. My decision to allow this application for judicial review turns on the RPD's analysis under paragraph 108(1)(e) as to whether the reasons for which the Applicants sought refugee protection had ceased to exist.

[22] As noted above, paragraph 108(1)(e) requires consideration whether there has been a substantial, effective, and durable change in the conditions of the applicant's country of nationality or in the personal circumstances of the applicant, and whether this change supports a continuation of a risk to the applicant. In conducting that analysis, the RPD identified from relevant CCE that a peace agreement with the FARC was signed in November 2016 and that the FARC had subsequently disbanded and become a political party. However, the CCE also identified that the demobilization of the FARC had resulted in various rival armed actors taking their place, including FARC dissidents.

[23] The RPD concluded that the circumstances for persons who fear guerrillas and cartels in Colombia including FARC dissidents had not changed. As such, the RPD found that, taking into account the Applicants' personal circumstances, there remained a risk when they travelled to Colombia in 2015 to 2016 and a risk should they return today (which I understand to mean the time of the hearing). The RPD therefore the found that paragraph 108(1)(e) of the IRPA did not apply.

[24] The Applicants argue that this analysis is flawed because, while it referenced the Applicants' personal circumstances, it failed to engage with the particular basis for the Applicants' persecution and fear. That is, they had been targeted by the FARC as a result of the Principal Applicant's activism (prior to his departure from Colombia in 1998) in opposing the FARC's child recruitment efforts. The Applicants submit that the RPD's identification of ongoing risk to the Applicants based on the activities of other armed groups (including FARC dissidents) is unintelligible, because the RPD does not explain why the Applicants had any reason to fear any of these groups.

[25] The Respondent argues that the RPD's analysis is reasonable in that, while the RPD recognizes that large segments of the FARC as an organization made peace with the Colombian government, its analysis relies on CCE indicating that a sizable segment of the FARC membership (i.e., FARC dissidents) refused to demobilize and continued to engage in the sorts of activities in which the FARC had engaged prior to the peace initiative. The Respondent notes the RPD's reference to CCE indicating that armed groups were significant perpetrators of abuses including recruitment and use of child soldiers and threats of violence against human rights defenders.

[26] The Respondent also notes that the personal evidence before the RPD included an affidavit from the Applicants' parents which stated that the parents "… provided them with lodging and protection of their security as their situation with respect to the armed groups from before persisted" [the Parents' Affidavit].

[27] I agree with the Applicants' position that the difficulty with the RPD's analysis is that it appears to be premised on an unexamined assumption that the FARC dissidents would be motivated to further the persecution of the Applicants that the Applicants had suffered at the hands of the FARC prior to their departure from Colombia.

[28] As noted earlier in these Reasons, the Applicants' persecution by the FARC was motivated by the Principal Applicant's activism in interfering with the FARC's child recruitment efforts. I am conscious of the Respondent's point that the RPD identified CCE to the effect that armed groups in Columbia continue to recruit and use child soldiers and continue to threaten human rights defenders. However, as expressed by the Applicants' counsel at the hearing, this evidence does not in itself lead to a conclusion that armed groups currently involved in such activities (even if they include former members of the FARC) would have an "axe to grind" with the Applicants as a result of the Principal Applicant's activism against the FARC prior to his departure from Colombia in 1998.

[29] In other words, although the RPD referenced CCE that could be relevant to the analysis it was required to conduct, the Decision fails to meaningfully assess whether the armed groups currently operating in Columbia (including FARC dissidents) would have an interest in pursuing the Applicants. I agree with the Applicants' argument that the RPD's analysis reads as a conclusion that paragraph 108(1)(e) of the IRPA does not apply because Columbia remains a dangerous place due to the continued operation of armed groups. As the Applicants submit, such an analysis relates to generalized risk, not the personalized risk that represents the reason for which the Applicants sought refugee protection, which the RPD was required to assess under paragraph 108(1)(e).

[30] I note that I have considered the Respondent's argument surrounding the Parents' Affidavit. However, while the RPD references the Parents' Affidavit in canvassing the Minister's submissions, the Decision does not demonstrate that that evidence figures materially in the RPD's subsequent analysis.

[31] For the reasons explained above, I find that the RPD's assessment under paragraph 108(1)(e) of the IRPA is unreasonable. My Judgment will therefore set the Decision aside and return this matter to a differently constituted panel of the RPD for redetermination.

[32] Before concluding my analysis, I note that the RPD's finding under paragraph 108(1)(e) that FARC dissidents remained a risk to the Applicants (which finding stemmed from the reviewable error identified above) also appears to have figured in the RPD's analysis under paragraph 108(1)(a). In considering the precautionary measures taken by the Applicants when analysing their intention to re-avail under paragraph 108(1)(a), the RPD treated the risk from FARC dissidents as undermining the Applicants' testimony as to a lack of subjective fear during their visit to Columbia in 2015–2016.

[33] In any event, the redetermination resulting from the Applicants' success in this application will necessarily extend to the analysis required under paragraph 108(1)(a) because my Judgment will set aside the Decision in its entirety. As such, the Court need not address the Applicants' arguments challenging that component of the Decision.

[34] At the hearing of this application, the Respondent's counsel raised the possibility of the Court certifying a question related to whether the RPD was required to consider the nature of the

agents of persecution in conducting the analysis required under paragraph 108(1)(a) of IRPA. The Court discussed with the parties the possibility of seeking post-hearing written submissions on such a question, if it appeared that the question could be determinative of the outcome of this application. Given that the Court's decision in this matter does not turn on the issue in relation to which the Respondent raised the possibility of a certified question, the Court does not require any further submissions, and no question will be certified.

JUDGMENT IN IMM-15739-24

THIS COURT'S JUDGMENT is that:

1. The style of cause is changed to name The Minister of Citizenship and Immigration as the Respondent.
2. This application is allowed, the Decision is set aside, and the matter is returned to a differently constituted panel of the RPD for redetermination.
3. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-15739-24
STYLE OF CAUSE:	JOHAN FREDY PEREZ BONILLA, LEONARDO PEREZ BONILLA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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