

Federal Court



Cour fédérale

Date: 20250723

Docket: IMM-18801-24

Citation: 2025 FC 1317

Toronto, Ontario, July 23, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

**IVON ROMERO GARZON
MARTINA SOFIA MARTINEZ ROMERO,
MANUELA ALEJANDRA MARTINEZ HERNANDEZ,
BENEDICTO HERNANDEZ BERNAL,
LILIANA YESENIA HERNANDEZ MOLINA,
MARIO ALEXANDER MARTINEZ ROJAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants are members of a family from Colombia who seek judicial review of a decision [Decision] of the Refugee Protection Division [RPD] dated September 4, 2024. The

RPD rejected the Applicants' refugee claims on the basis that they had a viable internal flight alternative [IFA] where the agents of persecution would not be motivated to pursue them.

[2] The Applicants submit that the RPD's finding that some, but not all, of the Applicants are at risk of persecution in Colombia was unreasonable and unjustified on the record. The Applicants also allege that the RPD's finding that it is safe and reasonable for the Applicants to relocate to an IFA is also unreasonable by reason that the RPD failed to account for certain evidence including mental health evidence. I agree, and for the reasons that follow, I find that the Decision is unreasonable in respect of all of the Applicants. Accordingly, this application is granted.

II. FACTS

[3] The Applicants are a family of nine whose refugee claims were based on their fear of persecution by two sets of incidents involving members of criminal and paramilitary organizations.

(a) *The events involving Nery*

[4] The claims of Nery Alexandra Martinez Hernandez [Nery], her husband Duvan Felipe Vargas Arciniegas [Duvan] and their daughter Zoe Mariana Vargas Martinez [Zoe] were based on Nery's claim stemming from a history of persecution by a man who the RPD accepted was a senior member [Commander] of the militant guerilla organization, Ejército de Liberación Nacional [ELN]. Nery alleged that the ELN Commander assaulted and threatened her and her

family after she refused his sexual advances on two occasions. Nery's husband, Duvan, as well as her daughter, Zoe, and Nery's sister, Manuela Alejandra Martinez Hernandez [Manuela], claimed protection together with Nery, based on their shared fear of the Commander and other members of the ELN, after they were attacked in their home on two occasions by armed men. Nery's parents, Liliana Yesenia Hernandez Molina [Liliana] and Mario Alexander Martinez Rojas [Mario], and her grandfather, Benedicto Hernandez Bernal [Benedicto], [collectively, the Extended Family] also made a claim based on an incident where the ELN came to the home of Nery's grandmother looking for Nery.

(b) *The events involving Estiven*

[5] The second set of events upon which the Applicants' claims are based involves Nery and Manuela's brother, Estiven Alejandro Martinez Hernandez [Estiven]. Estiven's refugee claim was heard separately and he is not a named applicant in this proceeding; however, his wife, Ivon Romero Garzon [Ivon], and their daughter, Martina Sofia Martinez Romero [Martina], are named Applicants. Their claims are based on events described by Estiven in his narrative and affidavit, which were admitted at the RPD hearing.

[6] Estiven worked as a water treatment technician in Colombia for Global Ambiental [Company]. In July 2021, Estiven began receiving threats from a co-worker named Juan, who he learned is a member of a national paramilitary organization [Paramilitary Group] operating in Magdalena Medio. Juan sought to recruit Estiven to help Juan and the Paramilitary Group steal chemicals which Estiven had access to. When Estiven refused, Juan threatened his life and that of his family. Estiven reported the threats to his supervisor and was transferred to another plant.

[7] On October 26, 2021, Estiven was told by a co-worker that Juan and others had come looking for him at the new plant. They had his identity documents and knew his address and place of work. Estiven was also told that Juan made further threats to Estiven and his family.

[8] On the night of October 27, 2021, an armed man on a bicycle identified Estiven and his wife Ivon on the street and yelled at them to stop. Estiven and his wife ran and hid in a store and waited until the police arrived. Despite the incident, the police refused to file a complaint. Fearing for their lives, Estiven and Ivon fled the country with their daughter Martina on November 9, 2021.

[9] Two years after Estiven fled Colombia, members of the Paramilitary Group went to the home of Estiven's parents, Liliana and Mario, and his grandfather, Benedicto, looking for him. Mario and Liliana received threats which they reported to the police, and when the police did nothing to protect them, the Extended Family fled the country and travelled to Canada where they too made refugee claims based on the events involving Nery and Estiven.

(c) *The RPD's Decision*

[10] The RPD accepted the refugee claims of Nery, Duvan and Zoe on the basis that there exists a serious possibility of persecution should they return to Colombia. The RPD found that they had rebutted the same presumption of state protection and that a viable IFA did not exist based on Nery's credible testimony that the Commander had shown "enduring efforts" to locate Nery in multiple locations throughout Colombia. Nery, Duvan and Zoe do not challenge the RPD's Decision and are not named as applicants in this proceeding.

[11] The RPD rejected the claim of Nery's sister Manuela, finding that her presence at the family home was "coincidental" and that she could reasonably be expected to seek an IFA in Colombia.

[12] The RPD also dismissed the claims of Nery's parents and Benedicto, finding their fears of persecution by the ELN by reason of their connection to Nery to be speculative.

[13] The RPD accepted objective country evidence showing that no region in Colombia is beyond the reach of any armed group if a target is considered to be of "high value," "high risk" or a traitor. However, in considering the motivation of the agents of harm to locate Estiven, his wife, his daughter and his Extended Family in an IFA, the RPD noted that there is no evidence that the agents of harm have the motivation to seek them out as their interest in Estiven was transactional (as opposed to personal) and was in facilitation of criminal activity which Estiven could no longer assist them with.

[14] The RPD concluded that the Applicants could all find safety in Paso, Colombia [the proposed IFA] and that it was not objectively unreasonable in all the circumstances for them to relocate there. When asked by the RPD whether there was anything preventing the family from establishing their lives in the proposed IFA, Ivon mentioned that Estiven would not be able to perform his specialized work there. Mario also responded, stating that he saw no reason, assuming they had no continuing problems with the Paramilitary Group.

III. ISSUES AND STANDARD OF REVIEW

[15] The Respondent concedes on this application that the RPD's Decision in respect of Manuela is unreasonable as she was a minor child present at most of the key events upon which the claims of Nery, Duvan and Zoe were based. Accordingly, Manuela's claim will be remitted back to a different decision maker for redetermination.

[16] The Applicants raised a number of issues which go to the reasonableness of the Decision as it relates to the other Applicants, but I find the following two issues to be determinative:

- A. Did the RPD fail to account for the mental health evidence of Ivon in assessing whether it was safe and reasonable for her to relocate to the proposed IFA?
- B. Was the RPD's finding that Estiven, his family and Extended Family are not at risk in the proposed IFA unreasonable?

[17] The applicable standard of review of the merits of a decision of the RPD is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. A reasonable decision bears the hallmarks of justification, transparency and intelligibility with the burden resting on the challenging party to show that the decision is unreasonable (Vavilov at paras 99-100).

IV. ANALYSIS

A. *The RPD failed to account for significant evidence*

[18] The Applicants submit that in determining that it would not be objectively unreasonable or unduly harsh for the Applicants to relocate to the proposed IFA, the RPD failed to acknowledge the mental health evidence submitted in respect of Ivon, which consists of a letter from her psychologist. The Applicants submit that this failure to account for significant evidence renders the Decision unreasonable.

[19] The Respondent suggests that the RPD's omission is justified since the psychologist's letter is brief and does not address the very issue the RPD was tasked to consider relating to the reasonableness of Ivon's relocation to the proposed IFA. Even if I were to agree, these reasons were not given by the RPD, who was duty-bound to address the evidence and explain why it was either not relevant or insufficient to refute the reasonableness of Ivon's relocation to the proposed IFA (*Kauhonina v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1300 at para 21 and *Cartagena v Canada (Citizenship and Immigration)*, 2008 FC 289 at para 11). The concern raised in *Vavilov* – that an officer's silence suggests that the evidence was missed – is particularly acute in this case given that the RPD expressly states that consideration had been given to the psychological reports of Nery and Manuela, with no mention being made of the report relating to Ivon (*Vavilov* at paras 97, 128).

[20] Accordingly, the RPD's Decision in respect of Ivon and her minor daughter, Martina, shall be remitted back for redetermination by a different decision maker.

B. *The RPD's finding that Estiven's Extended Family is not at risk is unreasonable*

[21] The Applicants submit that the RPD's finding that the Paramilitary Group is no longer interested in Estiven, his wife, his daughter and his Extended Family is unreasonable and contrary to the evidence that two years after Estiven left the country, members of the organization tracked down Estiven's Extended Family at their new location. The Applicants emphasize that the Extended Family were located in a city where the Company was not located, which undermines the RPD's analysis suggesting that the Paramilitary Group was likely only able to locate the Applicants by virtue of Juan's access to Company records. I agree.

[22] The Respondent submits that the RPD provided a reasoned and rational analysis of why the agents of harm had a transactional (as opposed to a personal) interest in Estiven such that it was more likely than not that the Paramilitary Group would have turned their attention to someone else at the Company with the same access and skill set as Estiven. While the Respondent submits that the Applicants have not pointed to any evidence that suggests the Paramilitary Group's interest in Estiven was personal, the RPD's theory that their interest in Estiven was purely transactional suffers from a fatal flaw. The RPD did not reconcile its suggestion that the Paramilitary Group would find someone to replace Estiven's skill set with the fact that the Paramilitary Group continued to threaten Estiven's Extended Family two years after Estiven left the Company and the country, and after Mario himself had resigned from the Company. This gap in the RPD's analysis renders the Decision unintelligible and unjustified on the record (*Vavilov* at paras 101-102).

V. CONCLUSION

[23] The RPD's Decision is unreasonable and the matter shall therefore be remitted back for reconsideration in respect of all the Applicants.

JUDGMENT in IMM-18801-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted in respect of all the Applicants such that the decision dated September 4, 2024, shall be quashed and the matter shall be remitted back to a different decision maker for redetermination; and
2. There is no question for certification.

“Allyson Whyte Nowak”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-18801-24

STYLE OF CAUSE: IVON ROMERO GARZON, MARTINA SOFIA
MARTINEZ ROMERO, MANUELA ALEJANDRA
MARTINEZ HERNANDEZ, BENEDICTO
HERNANDEZ BERNAL, LILIANA YESENIA
HERNANDEZ MOLIANA, MARIO ALEXANDER
MARTINEZ ROJAS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 14, 2025

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: JULY 23, 2025

APPEARANCES:

Charles Steven	FOR THE APPLICANTS
Charles J. Jubenville	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT