

Federal Court



Cour fédérale

Date: 20250801

Docket: IMM-10380-23

Citation: 2025 FC 1349

Ottawa, Ontario, August 1, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**WILMAR GARCES VALENZUELA
YAMILEE BANDUERA ZAMORA
YANNY SALOMON GARCES BANGUERA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Protection Division (the “RPD”) denying the Applicants’ claim for refugee status pursuant to sections 96 and 97 the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”) on the basis that the claims have no credible basis under subsection 107(2) of the Act.

II. Background

[2] The Applicants, Wilmar Garces Valenzuela (the “Principal Applicant”), his wife Yamilee Banduera Zamora, and their son, Yanny Salomon Garces Banguera, are an Afro-Colombian family from Buenaventura. They state they fear persecution at the hands of the Bustamante family and Los Urabenos in Colombia due to their complaints to the police against the Bustamante family for taking over the Applicants’ residential property.

[3] In his Basis of Claim (“BOC”) form, the Principal Applicant states that in October 2018, armed men stormed the Applicants’ house and told them to leave, threatening them at gunpoint. The Applicants moved to the Principal Applicant’s parents’ house in Buenaventura and then to Cali in February 2019. In July 2019, the Principal Applicant returned to the house to take pictures of it and file a police report. The Principal Applicant continued to receive threats by phone call. In 2021, the Applicants left Colombia for Panama and claimed refugee status. They claim they were spotted by the Bustamante family while in Panama, and went to Mexico, where they were deported back to Colombia. In August 2022, they came to Canada.

III. The Decision

[4] On July 24, 2023, the RPD found that the Applicants had not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, they would be personally subjected to risk of life or a risk of cruel and unusual punishment or a danger of torture upon return to their country.

[5] The RPD found that the Principal Applicant was not credible on the identity of the agent(s) of harm, the police report and ensuing threats, the explanation for delay in leaving Colombia, the events in Panama and Deportation from Mexico, the pictures of the house, or the news article.

[6] The RPD based their credibility findings on the inconsistencies between the Principal Applicant's testimony and the documents submitted, including:

- A. The Principal Applicant was not credible on the identity of the agents of harm. He testified that he did not know the men who stormed into their house in October 2018, but in his BOC, he identified them as belonging to the Bustamante family. He changed his story only after being confronted with this contradiction.
- B. The Principal Applicant embellished his testimony regarding the police report and ensuing threats. He testified that he named the Bustamante family as the agent of harm in his police report, but the police report showed that he did not identify any perpetrators, but "some armed criminals". The RPD found this raised questions about whether the police actually arrested any of the agents of harm, which would have instigated the ensuing threats.
- C. The Applicants' actions did not reflect the fear of risk of harm faced. Despite claiming that he tried to flee the Bustamante aggressors, he did not change his phone number through which he was receiving threats, continued to work for his same

employer, and was evasive in providing a reason for the delay in leaving Cali, only stating after being pressed that it was because he and his wife had high blood pressure.

- D. The RPD found on a balance of probabilities the Principal Applicant was not spotted and accosted in Panama. The Principal Applicant testified that he was only approached once in Panama in a marketplace, in which he ran away, but he could not identify how he knew the men belonged to the Los Urabenos group, and why he delayed leaving Panama for a month after being spotted. He also stated that Mexican authorities did not give him a reason for why he was being deported, and that he did not make such an inquiry.
- E. No weight was given to the pictures of the house provided as corroborative evidence. The Principal Applicant was unable to provide an explanation why, if he feared for his life, he would sneak back into the house to take photos, and he was unable to provide a time of day when he entered the house until pressed further.
- F. No weight was given to the news article which allegedly shows the Applicants' photograph and states that the claimants were displaced due to unknown criminals. The RPD found that it would be unreasonable for claimants attempting to hide from the alleged agents of persecution to identify themselves through a publication.

IV. Issues

[7] The only issue is whether the Decision is reasonable.

V. Analysis

[8] The standard of review with respect to the RPD's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 25).

[9] Under subsection 107(2) of the Act, the RPD may reject a claim for refugee protection on the basis that there is no credible or trustworthy evidence on which it could have made a favourable decision. The determination of whether there exists any credible or trustworthy evidence is left to the opinion of the RPD. The bar is high for the RPD to determine a claim has no credible basis (*AB v Canada (Citizenship and Immigration)*, 2020 FC 562 [AB] at para 30).

[10] The Applicants raise three main arguments on judicial review. First, they assert that the RPD erred by failing to consider the positive decision of the Principal Applicant's daughter and granddaughter, who they say were approved for refugee status on the same evidence. Second, they disagree with many of the RPD's credibility findings and assert the RPD erred by not placing any weight on the police report. Lastly, they assert that a finding of a lack of credibility does not prevent a person from being a refugee if other evidence establishes both the subjective and objective branches of the test for refugee status (citing to *Sido v Canada (Citizenship and Immigration)*, 2013 FC 1187 [Sido] at para 16).

[11] The RPD was not bound by the decisions of the Principal Applicant's daughter and granddaughter, and there is no legal requirement for a board member to follow another member's factual findings (*Gutierrez v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 4 at paras 53-58). The RPD's finding with respect to the Applicants of no credible basis was reasonably based on the evidence and testimony before them (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 19).

[12] The RPD did not misapprehend or misconstrue the evidence. The Applicants refer to the police report identifying the persons who stormed his house, where the Principal Applicant wrote "I don't know their names or their aliases but the little I have found out, they tell me that they belong to a criminal group that is commanded by some guy with the alias 'El Viejo'". The Applicants point to the mention of "El Viejo" but fail to explain the relevance to the agents of harm. This does not overcome the RPD's finding that the police report does not identify the agents of harm, the Bustamante family.

[13] Although the Applicants correctly note that a finding of a lack of credibility does not prevent a person from being a refugee, there must be some evidence capable of supporting a positive determination of the Applicants' claim (*AB* at para 33; *Sido* at para 16). Here, other than disagreeing with the RPD's credibility findings, the Applicants do not point to any evidence that could support a positive determination on the Applicants' claim, and I do not find any such evidence exists.

[14] The Applicants have failed to establish that the RPD's Decision was unreasonable.

JUDGMENT in IMM-10380-23

THIS COURT'S JUDGMENT is that:

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

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10380-23

STYLE OF CAUSE: WILMAR GARCES VALENZUELA, YAMILEE
BANDUERA ZAMORA, AND YANNY SALOMON
GARCES BANGUERA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JULY 21, 2025

JUDGMENT AND REASONS: MANSON J.

DATED: AUGUST 1, 2025

APPEARANCES:

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