

Federal Court



Cour fédérale

**Date: 20150624**

**Docket: IMM-5292-14**

**Citation: 2015 FC 782**

**Ottawa, Ontario, June 24, 2015**

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

**BETWEEN:**

**BLANCA INES ALDANA CARDENAS  
YOFREDY ANTONIO HERNANDEZ LONDONO  
JOHN FREDDY HERNANDEZ ALDANA  
LUD YERETH LOPEZ  
SOFIA HERNANDEZ LOPEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants are an extended family from Colombia who alleged a fear of persecution from the Fuerzas Armadas Revolucionarias de Colombia [FARC]. The only issue in the RPD decision was state protection.

[2] The principal applicant, Blanca Cardenas, is a 49 year-old woman. Her claim was joined with that of her husband, Yofredy Londono, their son, Freddy Aldana, his wife, Lud Lopez, and their six year-old daughter Sofia Lopez. They fled with another son, Cristian Hernandez Aldana, whose claim for protection was severed from the rest of his family. He made a claim for protection, which was successful, on essentially the same facts as alleged by these applicants, whose claim was not successful.

[3] The applicants have been attacked three times. First, they were attacked at their residence in Anapoima. Second, Yofredy was attacked in a rural area between work venues. Third, they were attacked in Bogota. After the third attack, the applicants fled Colombia to Canada and made refugee claims.

[4] The RPD rejected the applicants' claims for protection as it found that there was adequate state protection for them in Colombia.

[5] I agree with the respondent, that while it is no doubt puzzling to this family that the RPD found there was no adequate state protection for one son and found there was adequate state protection for the remainder of the family, on the same facts, these disparate findings do not mean that the decision under review is unreasonable. These anomalous results point to the perils of separating the claims of family members, and it is noted that the separation was opposed by the family but insisted on by the RPD.

[6] Nevertheless, the state protection finding and analysis in this decision was unreasonable and the decision must be set aside.

[7] The applicants submit, and I agree, that the state protection analysis in this case is similar to that recently decided by Justice LeBlanc in *Montoya v Canada (Minister of Citizenship and Immigration)*, 2014 FC 808 [*Montoya*] where at paras 38 to 58, he reviewed the country conditions documents (the same as those before this panel), and concluded that they did not support the state protection finding and that the RPD failed to engage with substantial evidence in the record that was directly contrary to the conclusion it reached. I adopt and apply his reasoning to the present decision.

[8] The respondent urges the court to focus on the finding of the RPD that the applicants did not give Colombia a chance to protect them because, although they reported the incidents to the police, they moved after each incident and did not follow up with police.

[9] This ignores that after each incident, there was a subsequent attack. These subsequent attacks establish, in my view, that there was no adequate protection coming from the authorities as a consequence of reporting the incidents. There is nothing in the record to suggest that providing further time or following up with the police would have changed that fact. Persons claiming protection do not need to put their lives at risk to test the adequacy of state protection by following up or giving the authorities additional time, when the protection efforts have proved inadequate. Moreover, as the applicants note, each report was recorded and the police could find them wherever they resided in Colombia if they wished to follow up with them.

[10] The applicants also submit that that procedural fairness was breached in that the RPD did not tell them that credibility was at issue, but it does then make a few negative credibility inferences. There is no merit in this submission because the basis for the RPD's decision is its state protection analysis which does not turn on the various small negative credibility inferences that were made.

[11] Neither party proposed a question for certification nor is there one on these facts.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is allowed, the applicants' claims for protection is to be determined by a differently constituted panel of the Refugee Protection Division, and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-5292-14

**STYLE OF CAUSE:** BLANCA INES ALDANA CARDENAS ET AL v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 17, 2015

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** JUNE 24, 2015

**APPEARANCES:**

Daniel M. Fine FOR THE APPLICANTS

Christopher Crighton FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Daniel M. Fine FOR THE APPLICANTS  
Barrister and Solicitor  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario