

Federal Court



Cour fédérale

**Date: 20160614**

**Docket: IMM-5417-15**

**Citation: 2016 FC 656**

**Ottawa, Ontario, June 14, 2016**

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

**BETWEEN:**

**JEAN ALEAXANDER ELEJALDE ALVAREZ  
CAMILA LOPEZ BETANCOURT  
GABRIELA ELEJALDE BETANCOURT  
JUANITA ELEJALDE BETANCOURT**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the RPD] dated November 3, 2015, wherein it was determined that the Applicants are not Convention Refugees or persons in need of protection under section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this application is dismissed.

I. Background

[3] The Applicants are Mr. Jean Alexander Elejalde Alvarez [the Principal Applicant], his spouse, Camila Lopez Betancourt, and their two minor children, Gabriela Elejalde Betancourt and Juanita Elejalde Betancourt. They are all citizens of Colombia. The allegations giving rise to their claim for refugee protection relate to fear of persons who were seeking access to the estate of a relative of the Principal Applicant. In its decision, the RPD recited these allegations as follows.

[4] On August 19, 2008, Mr. Ricardo Leon was murdered in Mexico. He was the father of Estefanye Leon Alvarez [Estefanye] who is the cousin of the Principal Applicant. On October 7, 2008, Estefanye granted a power of attorney to her grandmother and her aunt in Mexico to represent her interests in the estate of her deceased father. However, on April 3, 2009, she revoked the power of attorney, following which she began receiving telephone threats, from unknown persons, that her grandmother and her half-brothers would be harmed if she continued to claim her inheritance in her father's estate. Estefanye and her family moved on April 21, 2009, and she acted to file a complaint at the State prosecutor's office.

[5] On May 4, 2009, the Applicants received an unsigned condolence letter which they understood to be a threat, as no one had died recently in their family. The Principal Applicant also claims to have received a phone call on May 15, 2009, in which he was told that, if Estefanye did not withdraw her claim to her father's estate, he and his family would be killed.

On May 16, 2009, the Principal Applicant and his wife went to file a complaint with the police, and on May 18, 2009, they went to the State prosecutor's office.

[6] On May 20, 2009, the Principal Applicant received a threat against his daughters which made reference to their school. As this gave the Applicants reason to believe that the children would no longer be safe at school, the Principal Applicant sent his wife and children to live at his mother-in-law's house. On June 2, 2009, the Principal Applicant had an interview at the State prosecutor's office. During this interview, he learned that Mr. Leon had links with the drug cartels in Mexico and the guerilla in Colombia. However, the Applicants were unable to provide the investigators with the names of the people making the threats and, without the names of the people harassing the family, little could be done to protect them.

[7] In June 2009, the Principal Applicant made an asylum claim at the Canadian High Commission in Colombia.

[8] Having then received no threats for approximately one year, the family moved back to the grandmother's house. However, as the telephone threats resumed twenty days later, the Applicants moved again in July 2010. The landlord at the new location advised the Principal Applicant that people had come looking for him. As a result, the Applicants moved back to the Principal Applicant's mother-in-law's house. Seven months later, the Applicants moved again, but the telephone threats continued.

[9] On January 7, 2015, the Applicants received a letter from the State prosecutor's office indicating that the investigation into their complaint had been closed in October 2014. A few days later, the Applicants received a pamphlet with the logo of a paramilitary group, Las Aguilas Negras Bloque Capital. The pamphlet indicated that the Applicants had twenty days to leave the area, after which the paramilitary group would make them disappear. The Applicants moved back to the mother-in-law's house, and the Principal Applicant called his own mother in Canada and asked her to purchase plane tickets for the whole family. On February 15, 2015, the Applicants fled to the United States, and on March 4, 2015 they arrived at the Canadian border and made a claim for refugee protection.

## II. Impugned Decision

[10] The RPD made various adverse findings as to the Applicants' credibility. Specifically, the RPD found the Applicants were not credible because of inconsistencies in their evidence and certain actions which were held to be incompatible with their alleged fear. These findings included:

- A. Inconsistencies in the evidence as to the dates and chronology of events that were central to the claim, including inconsistencies in the locations and chronology of the Applicants' residences;
- B. Inconsistencies between the Applicants' own evidence and Estefanye's evidence emanating from the State prosecutor's office that was submitted in support of the Applicants' claim;

- C. Failure of the Applicants to provide a satisfactory explanation as to why they continued to send their children to school following the threats received against them;
- D. Failure of the Applicants to leave Colombia until 2015, despite seeking asylum in 2009; and
- E. The Applicants' decision to remain in Colombia and plan in 2014 to travel to the United States for tourism purposes rather than for refuge.

[11] The RPD also considered the documents provided by the Applicants to corroborate their claim and held that the documents did not have sufficient probative value to restore their credibility. The RPD made the following findings with respect to these documents:

- A. Letters containing written threats bore no signatures and did not bear sufficient security features to be deemed reliable. Also, courier slips provided to the RPD could not be linked to these documents;
- B. An email sent by Estefanye warning that the Applicants were in danger did not include her email address, an omission that the Applicants could not explain; and
- C. Documents from the State prosecutor, while perhaps genuine, did not confirm the veracity of the allegations and contained too little information to substantiate these allegations. There were no details as to the

circumstances of the phone threats and no specific mention of the written threats received by the Applicants just days earlier.

[12] The RPD rejected the Applicants' claim after concluding they had not established there exists a serious possibility of persecution on a Convention ground or that, on a balance of probabilities, they would be personally subjected to a danger of torture or face a risk to their lives or a risk of cruel and unusual treatment or punishment upon return to Colombia.

### III. Issues and Standard of Review

[13] The Applicant raises the following issues for the Court's consideration:

- A. Did the RPD err by making a finding that the written threats bear no signatures and do not bear sufficient security features to be deemed reliable when the RPD had no evidence to prove that a reliable threat must have those two features?
- B. Did the RPD err by elevating the standard of proof to conclusive proof or proof on the balance of probabilities, as opposed to proof of the serious possibility of persecution or harm?
- C. Did the RPD err by failing to provide adequate reasons for its findings?
- D. Did the RPD err by making unreasonable findings?

[14] The parties agree that the standard of review applicable to the issues raised by the Applicant is reasonableness, the Applicants citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47. I agree that this is the applicable standard.

IV. Analysis

[15] I will consider the issues identified by the Applicants as raised in the arguments in their Memorandum of Fact and Law, which the Applicants followed very closely in oral argument at the hearing of this application.

A. *Discrepancy in Date of Mr. Leon's Death and Date of Threats*

[16] In the Principal Applicant's Port of Entry declaration, he stated that his cousin Estefanye's father (Mr. Leon) died in 2007 and that he started receiving threats since that year. However, he stated in his Basis of Claim [BOC] form that his cousin's father died in August 2008 and that he started receiving threats since May 2009, the following year. To explain the discrepancy in the dates, the Principal Applicant stated that he did not know the man at the border, that he was nervous and scared, and that he was bad with dates.

[17] The Applicants' position is that the RPD made a reviewable error by failing to consider the Principal Applicant's explanation properly. It did not examine the issues that the Principal Applicant was scared and nervous and that he was bad with dates. Rather, the RPD simply concluded that the explanation did not explain why the Principal Applicant declared that the

threats started the same year as the murder, especially when one considers that he is a university educated man.

[18] The Applicants also submit that it was improper for the RPD to consider the fact that the Principal Applicant was a university educated man in making its finding on credibility. They argue the RPD failed to provide adequate reasons to support its finding that the Principal Applicant's explanation did not suffice to justify making contradictory statements at the border. The RPD also did not explain why, on the one hand, it accepted the Principal Applicant's explanation that he was bad with dates as the cause of a contradiction in remembering the exact duration of his stay at his mother-in-law's house but, on the other hand, it rejected the same explanation for making mistakes in his statement at the port of entry.

[19] The Respondent's position, in relation to all the Applicants' arguments challenging the RPD's credibility findings, is that such findings should be afforded significant deference (see *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 42-43). Relying on *Toma v Canada (Citizenship and Immigration)*, 2014 FC 121 at paras 9-10, the Respondent refers to findings of credibility as being at the "heartland of the Board's jurisdiction" and submits that the RPD is best suited to assess the evidence and determine credibility based on its expertise and because it hears claimants first hand.

[20] The Respondent submits that, in this case, the RPD found inconsistencies in the Applicants' evidence (and, as discussed below, acts that were inconsistent with the Applicants' alleged fear) and that, while the RPD reasonably gave the Applicants an opportunity to explain



these inconsistencies, they were unable to give a satisfactory explanation. The Respondent argues these inconsistencies were significant both in their number and importance to the claim, and the RPD reasonably found that they were sufficient to undermine the Applicants' credibility.

[21] Returning to the inconsistencies in the Applicants' evidence as to the date of Mr. Leon's death and when the threats began, I find nothing unreasonable in the RPD's finding. While the Principal Applicant offered the explanation that he was nervous, scared and bad with dates, the RPD's reasons indicate that it considered this explanation but was not satisfied with it. This was because the inconsistency in the Principal Applicant's evidence related not only to the date of Mr. Leon's death and when the threats began, but whether those two events were even in the same year.

[22] The reasons indicate that this finding was enhanced by the fact that the Principal Applicant is a university educated man. While I would not consider the Principal Applicant's level of education to be of significant relevance to his skill in remembering dates, I cannot conclude it to be irrelevant. Moreover, the RPD's finding did not turn on this fact alone. I do not consider the reference to the Principal Applicant's education to undermine the reasonableness of this finding.

[23] The RPD's reasoning, that the Principal Applicant's credibility was undermined because of the inconsistencies as to whether Mr. Leon's death and the beginning of the threats were even in the same year, also distinguishes this finding from the RPD's willingness to overlook the contradictions in his evidence as to how long the family had stayed at his mother-in-law's house.

B. *Discrepancy in Residences*

[24] At the hearing, the Principal Applicant was asked to list all the places where he moved with his family in order to protect themselves. In doing so, he changed the order of locations which he previously listed in another document, the IMM 5669 form. When asked to explain the inconsistency, the Principal Applicant answered that this was confusing to him because these were all places that belonged to relatives that they would visit from time to time. The RPD stated that it was not satisfied with these answers and noted that the adult Applicants are both university educated people who took time to fill in the IMM 5669 forms together in the United States prior to arriving at the Canadian border.

[25] The Applicants argue that a reasonable explanation was given when the Principal Applicant said this was his mistake. Their position is that the RPD provided no reasons for not accepting his explanation and that its reasoning that the adult Applicants are both university educated people and, therefore, should not have made this mistake is unreasonable and indefensible. They take the same position with respect to the RPD's finding that the Applicants took time to fill in the IMM 5669 forms together and, therefore, should not have made mistakes. The Applicants also contend the RPD failed to consider the relevant fact that the Applicants were fleeing from persecution, were not in a normal state of mind and were relying on their memory when completing the forms.

[26] I find no basis for concluding that this finding is unreasonable. The RPD referred to the Principal Applicant's explanation for the inconsistency in his evidence as to the order in which

his family moved to various locations and was not satisfied with that explanation. I interpret the RPD's reasoning, relating to the Applicants' completion of the IMM 5669 forms together while in the United States, to be that they had the time to complete these forms accurately. I find neither that reason, nor the reference to the Applicants' level of education, to take the RPD's credibility finding outside the range of acceptable outcomes.

C. *Act of Entitlement to Victims*

[27] In the RPD's decision, it was pointed out that the Applicants filed a document titled "Act of Entitlement to Victims" which emanated from the State prosecutor's office. The document was written by Estefanye who declared that it was on July 7, 2008 that she gave a power of attorney to her aunt in relation to her interest in her father's estate. The RPD observed that the power of attorney was given before Mr. Leon's death and pointed out that the recipients of the power of attorney were different from those alleged by the Principal Applicant in his BOC, which referred to the power of attorney being given to both her aunt and her grandmother. On this basis, the RPD found that the document failed to corroborate the Applicants' allegations.

[28] The Applicants submit that the Act of Entitlement to Victims should not affect the Principal Applicant's credibility because he is not the author of the document and it does not have any direct link to his fear of persecution.

[29] Again, I find no error in the RPD's decision on this point. The RPD did not find the Principal Applicant's credibility to be undermined as a result of this document. Rather, it recognized that the declaration to the State prosecutor's office was not authored by the Principal

Applicant but concluded that, because of the discrepancies with his evidence, it did not corroborate the existence of threats against the Applicants. Moreover, the evidence surrounding the power of attorney was not peripheral, as the Applicants' allegations are derived from events that relate directly to the power of attorney related to Mr. Leon's estate.

D. *Acts Incompatible with Alleged Fear*

[30] The Applicants also take issue with the RPD's findings on actions which it viewed to be incompatible with their alleged fear, including: the minor Applicants continuing to attend school when the people who threatened them knew the location of the school; the Applicants waiting from 2009 to 2015 to leave Colombia; and the Applicants asking for passports and American visas in 2014 with a view to travelling for tourism purposes.

[31] The Applicants refer to the explanations they provided to the RPD in relation to the above findings. The RPD acknowledged the fact that they moved four times to protect themselves, that the children missed school because of the threats, and that the last school they attended had extensive security measures in place. The children finally stopped going to school three months prior to their departure from Colombia. In relation to the fact that they did not leave Colombia until 2015, the Applicants note that it was explained they did not have much money to move prior to 2015 and left once they found out the paramilitary was involved. They also refer to the fact that they asked for protection from the Canadian High Commission in 2009. Finally, as to why they asked for American visas in 2014 if they had no money to travel, the Applicants state that it was explained they wanted to take advantage of the American government's decision to issue ten year visas.

[32] The reasons indicate that the RPD considered these explanations but was not satisfied with them. The RPD rejected the explanation concerning the attendance at school, as it concluded it was incompatible with their alleged fear for the Applicants to move several times to avoid their assailants but continue to drive their children each day to a school that the assailants had identified. It rejected the explanation that the Applicants did not have money to leave Columbia prior to 2015, given that they eventually left using money provided by the Principal Applicant's mother, which they did not request earlier. The RPD also did not consider the decision to obtain tourist visas but remain in their country to be consistent with their alleged fear. Given the deference to be afforded to the RPD, I find no basis to interfere with any of this reasoning.

E. *Documentary Evidence*

[33] Turning to the documentary evidence, the Applicants submit that the RPD assumed, without any justification and evidence, that threat letters must bear the signature of the person who is extending the threat. They argue that the RPD erred by finding that the threat letters should bear "sufficient security features to be deemed reliable". They also contend that the RPD unreasonably raised the bar for them to prove that the Principal Applicant and his cousin received telephone threats. They refer to the RPD finding that the documents from the State prosecutor's office saying that Estefanye and the Principal Applicant filed complaints for telephone threats and that the file was closed in 2014, while perhaps genuine, in no way confirm the veracity of the allegations that these threats were actually made. The Applicants argue there was no valid reason for the RPD not to believe that the telephone threats were made. Instead, the RPD relied on suspicion to reach its conclusion.

[34] Similarly, the Applicants submit the RPD erred in concluding, without explanation, that the declaration of the grandmother would not suffice to outweigh the adverse credibility issues. They also refer to the courier slip accompanying the letter that threatened the Principal Applicant's daughters as including a signature in the box for the sender's name, which they argue is evidence that was not analyzed in the decision.

[35] The Applicants rely on *Leal Alvarez v Canada (Citizenship and Immigration)*, 2011 FC 154 [*Leal Alvarez*] at para 5, as follows:

[5] With respect to the second error, the applicant testified that she had been kidnapped and beaten by the FARC. The RPD insisted on "conclusive proof" of this allegation. The RPD also rejected Ms. Alvarez' claim as it was not satisfied "on a balance of probabilities, she was not or is not a target of the FARC." Neither of these findings are predicated on the appropriate legal standard. The principal applicant did not have the burden of providing either conclusive proof or proof on a balance of probabilities. The test is whether there was a serious possibility of persecution or harm. As O'Reilly J. noted in *Alam v Canada (Minister of Citizenship and Immigration)* 2005 FC 4, where the Board has incorrectly elevated the standard of proof, or the court cannot determine what standard of proof was actually applied, a new hearing can be ordered; see also *Yip v Canada (Minister of Employment and Immigration)* [1993] FCJ No 1285. This too is, therefore, a reviewable error.

[36] The decision in *Leal Alvarez* appears to refer to the RPD having used the language of "conclusive proof" and proof "on a balance of probabilities" in articulating the standard of proof applicable to establishing persecution on a Convention ground. The Applicants in the case at hand are arguing, instead, that the manner in which the RPD approached the evidence demonstrates the application of an elevated standard. However, I find nothing in the RPD's reasoning which supports this argument. As submitted by the Respondent, the RPD's approach to the documents provided by the Applicants in support of their claim is consistent with that

described in *Al-Shaibie v Canada (Minister of Citizenship and Immigration)*, 2005 FC 887 at para 21:

[21] ... In support, I rely on the statement of Mr. Justice Nadon in *Hamid v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1293 (F.C.T.D.), at para. 21:

Once a Board, as the present Board did, comes to the conclusion that an applicant is not credible, in most cases, it will necessarily follow that the Board will not give that applicant's documents much probative value, unless the applicant has been able to prove satisfactorily that the documents in question are truly genuine. In the present case, the Board was not satisfied with the applicant's proof and refused to give the documents at issue any probative value. Put another way, where the Board is of the view, like here, that the applicant is not credible, it will not be sufficient for the applicant to file a document and affirm that it is genuine and that the information contained therein is true. Some form of corroboration or independent proof will be required to "offset" the Board's negative conclusion on credibility.

[37] The RPD did not require conclusive proof of the Applicants' allegations. Rather, it found that the Principal Applicant was not credible and concluded the Applicants' documents were of little probative value and therefore did not bolster their claim. I find no error in the RPD's approach. In relation to the courier slip, which the Applicants argue was not analyzed in the decision, I note that the RPD's reasons do find that the courier slips provided with the written threats cannot be clearly linked to the threatening documents.

[38] Finally, while noting that the adequacy of reasons is not regarded as a stand-alone basis for judicial review (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14), I find no such inadequacy in the case at hand. The

RPD's reasons are sufficient to afford an understanding of why the Applicants' claim was rejected.

[39] Neither party has proposed any question of general importance for certification for appeal.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed. No question of general importance is certified for appeal.

“Richard F. Southcott”

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Judge

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

**DOCKET:** IMM-5417-15

**STYLE OF CAUSE:** JEAN ALEAXANDER ELEJALDE ALVAREZ ET AL v  
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