

Federal Court



Cour fédérale

**Date: 20161110**

**Docket: IMM-2268-16**

**Citation: 2016 FC 1258**

**Toronto, Ontario, November 10, 2016**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**ALEXANDER CORREA URBANO  
JUAN ESTEBAN CORREA RENGIFO  
MARIA FERNANDA RENGIFO VELASCO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants, Alexander Correa Urbano and Maria Fernanda Rengifo Velasco, and their young son, Juan Esteban, are citizens of Colombia, who claim refugee protection in Canada based upon a fear of persecution by the Revolutionary Armed Forces of Columbia [FARC].

[2] This is a judicial review application of a Refugee Appeal Division [RAD] decision of May 13, 2016, which upheld the decision of the Refugee Protection Division [RPD], finding that the Applicants are not Convention Refugees, or persons in need of protection, under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. This was the second RAD decision for these Applicants. The earlier RAD decision was set aside by this Court. For the reasons that follow, this application is granted. The RAD's finding that the Applicants had to provide evidence as to the identity of their agents of persecution is not reasonable.

I. Standard of Review

[3] RAD decisions are reviewed on the reasonableness standard (see *Canada (Citizenship and Immigration) v Huruglica* [Huruglica], 2016 FCA 93 at para 35 and *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 48 and 47).

II. Issues

[4] The determinative issue is whether the RAD acted reasonably in its approach to the evidentiary burden imposed on the Applicants with respect to the identification of their agents of persecution.

III. Analysis

[5] Refugee claimants need only prove that there is a "reasonable chance" or "more than a mere possibility" or "good grounds for believing" that they will face persecution (See *Alam v*

*Canada (Minister of Citizenship and Immigration) [Alam]*, 2005 FC 4 at para 5, and *Adjei v Canada (Minister of Employment & Immigration) [Adjei]*, [1989] 2 F.C. 680 at para 8).

[6] The evidence before the RAD was that while living in Colombia, the adult Applicants were active members of a human rights organization (*Fundeci* or *Funddeci*) and worked in rural communities with internally displaced and marginalized persons, most of who had been displaced by the guerilla organization FARC. Their activities included distribution of humanitarian aid and informing people of their legal rights and participating in marches and actions for peace. The RAD accepted this evidence.

[7] The RAD also had evidence of violence and threats against the Applicants as follows:

- In 2011, the male Applicant was attacked and robbed;
- In February 2014, the male Applicant was verbally threatened;
- On May 1, 2014, the tires of the male Applicant's vehicle were slashed;
- On May 19, 2014, the Applicants received an envelope at their home with a threat and a picture of them participating in a demonstration; and
- On May 22, 2014, while traveling to another city, the Applicants received a threatening telephone call.

[8] The Applicants left Colombia in June 2014 and claim to have been targeted with these threats and acts of violence by the FARC or agents of FARC, because of their involvement with *Funddeci*.

[9] On review from the RPD, the RAD was required to carry out its own analysis of the evidence (*Huruglica* para 103). Here, the RAD concludes at paragraph 19 "...they present no evidence that the individuals who threatened them or caused damage to their property even identified themselves as members of the FARC." The Applicants' testimony and documentary evidence is in contrast to the conclusion of the RAD that there is "no" evidence. The RAD does not explain why the Applicants' evidence is not accepted or why it is not sufficient to show that they have "more than a mere possibility" or "good grounds for believing" that they will face persecution by FARC (See: *Alam and Adjei*).

[10] In finding that there was "no" evidence, the RAD imposed a heightened evidentiary burden upon the Applicants. This renders the RAD's decision unreasonable.

[11] Further, the RAD's conclusion that the Applicants have an internal flight alternative is also unreasonable, as it is premised on the finding that FARC are not the agents of persecution.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted. The decision of RAD is set aside and the matter is remitted for redetermination by a different decision maker; and
2. No question of general importance is proposed by the parties and none arises.

“Ann Marie McDonald”

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Judge

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

**DOCKET:** IMM-2268-16

**STYLE OF CAUSE:** ALEXANDER CORREA URBANO ET AL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 9, 2016

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** NOVEMBER 10, 2016

**APPEARANCES:**

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