

Federal Court



Cour fédérale

Date: 20220106

Docket: IMM-7266-19

Citation: 2022 FC 9

Ottawa, Ontario, January 6, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

RAMON ALEJANDRO BARROS BARROS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Barros, seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated July 16, 2019, which determined that he was neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] Mr. Barros, a citizen of Colombia, believes he is at risk at the hands of a paramilitary group known as Los Urabeños. The RPD found that Mr. Barros had an internal flight alternative [IFA] and that he had not established that the IFA was unreasonable.

[3] For the reasons that follow, the Application is dismissed. The RPD reasonably found that Mr. Barros had not established that he faced a forward-looking risk if he returned to Colombia or that the proposed IFA was unreasonable.

I. Background

[4] Mr. Barros resided and practised as a lawyer in the district of Santa Marta, in the department of Magdalena, Colombia.

[5] Mr. Barros had an interest in local politics and served briefly as a local councillor in 2000. He states that, due to this experience, he provided political advice to his brother, who intended to run for local councillor in 2015.

[6] Mr. Barros recounts that on March 4, 2014, he attended a party with his brother. Mr. Barros left early and his brother remained. The following day, he learned that armed members of Los Urabeños had killed five people at that party, including Mr. Barros' brother. Mr. Barros states that he accompanied his brother's wife to the police station; however, the police did not ask him any questions.

[7] Mr. Barros recounts that on March 14, 2014, two men identifying themselves as associated with Los Urabeños approached him, noted his luck in leaving the party early, and threatened that if Mr. Barros did not leave Santa Marta they would harm him and his family.

[8] Mr. Barros states that he sought assistance from the authorities for his protection and in order to seek information about his brother's death. In late March 2014, he filed a denunciation at the office of the Attorney General to open an investigation.

[9] Mr. Barros recounts that on March 31, 2014 he received a phone call from a man allegedly from Los Urabeños, who threatened to harm Mr. Barros if he did not retract the denunciation.

[10] Mr. Barros states that he left Santa Marta and remained on the move throughout 2014, returning periodically to visit his family. He recounts that each time he returned to Santa Marta, he received threatening phone calls from Los Urabeños.

[11] In November 2014, Mr. Barros filed a complaint at the office of the Ombudsman.

[12] Mr. Barros notes that in December 2014, agents from the Santa Marta Metropolitan Police provided him with information about self-defence and protection measures. Mr. Barros explains that he regarded this as an indication that the police would not be able to adequately protect him. Mr. Barros recounts that he then filed denunciations at the Human Rights District Office and again with the Attorney General.

[13] Mr. Barros states that he decided to flee Colombia because he had no response from the authorities. He travelled with his partner and son via the United States, arrived in Canada on January 2, 2015, and made a claim for refugee protection.

[14] The RPD rejected Mr. Barros' claim on March 11, 2015, finding that he had not rebutted the presumption of state protection. On November 3, 2015, his application for judicial review, which at that time included his son, was granted on consent and was remitted for redetermination. There is no information before the Court regarding the reason for the consent for redetermination. The claim with respect to Mr. Barros' partner had been severed previously and the claim with respect to his son was severed subsequently. Mr. Barros' claim was not redetermined until 2019.

II. The Decision of the RPD Under Review

[15] The RPD rejected Mr. Barros' claim, finding that he is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act. The RPD identified the issues as credibility and the availability of an IFA.

[16] The RPD noted that there were no glaring contradictions or inconsistencies in Mr. Barros' testimony. However, the RPD found that there was a lack of evidence of an ongoing, forward-looking threat to Mr. Barros should he return to Colombia. The RPD explained that, due to the passage of time, it had considered whether Mr. Barros faced a forward-looking risk as of the date of the RPD hearing.

[17] The RPD reviewed the news reports submitted by Mr. Barros and accepted that they established that his brother had been killed. The RPD acknowledged that Mr. Barros claimed that he was now a target because he had filed denunciations in an effort to ascertain who killed his brother and why, and that Mr. Barros did not believe that the police had followed up. The RPD noted that Mr. Barros had not provided any other evidence regarding the police response. The RPD noted that the newspaper reports were “mixed” regarding whether those responsible for the March 2014 attack had been apprehended and whether Mr. Barros’ brother had in fact been a target. The RPD further noted that the reports suggested, contrary to Mr. Barros’ testimony that there had not been any outcome in response to his request for an investigation, that the police were investigating.

[18] The RPD found that Mr. Barros had not provided any persuasive evidence that he has been pursued since his arrival in Canada. The RPD noted that the only evidence of any ongoing interest or pursuit of Mr. Barros by his alleged persecutors, Los Urabeños, was his own testimony that his sister and friends in Colombia had warned him.

[19] The RPD stated, “[g]iving the benefit of the doubt to the claimant that he would continue to be at risk in Santa Marta, and there is no persuasive evidence to suggest this, the panel examined the viability of an IFA.”

[20] The RPD applied the two-part test to determine the viability of the proposed IFA. The RPD found that Mr. Barros did not face a serious possibility of persecution or risk to his life in the proposed IFA. The RPD noted that despite Mr. Barros’ testimony that Los Urabeños have a

nationwide presence, the National Documentation Package [NDP] suggests that Los Urabeños are not active in the proposed IFA, nor in the department in which it is located. The RPD found that, in the absence of sufficient credible or corroborative evidence that the proposed IFA is unsafe for him, the NDP evidence outweighed Mr. Barros' testimony.

[21] The RPD also noted the lack of evidence that Los Urabeños continued to be interested in Mr. Barros and would pursue him to the proposed IFA if he returned.

[22] With respect to the second prong of the test, the RPD found that it would not be unreasonable for Mr. Barros to relocate to the proposed IFA. The RPD acknowledged Mr. Barros' concern that he would be unable to practise law in the proposed IFA, but noted that he could not practise law in Canada either. The RPD found that Mr. Barros had not established that he would face serious social, economic, or other barriers in relocating to the proposed IFA.

[23] The RPD acknowledged that in returning to Colombia, and more specifically to the proposed IFA, Mr. Barros might have to land at the international airport located in Urabeños-controlled territory. The RPD cited the lack of evidence that Los Urabeños continues to have any interest in Mr. Barros or would pursue him and concluded that it would not be unreasonable for Mr. Barros to travel, if necessary, through Urabeños territory *en route* to the proposed IFA.

III. The Applicant's Submissions

[24] Mr. Barros submits that the RPD impugned his credibility but never made any clear credibility findings. He argues that although the RPD stated that it had given him the “benefit of the doubt” regarding his risk, it did not really do so.

[25] Mr. Barros challenges any credibility inferences arising from the RPD’s finding that his testimony regarding the lack of a police investigation was contradicted by news reports. He notes that the news reports in evidence were dated March 6, 2014, immediately after the attack, and before his denunciations and requests to the authorities to investigate his brother’s killing and to protect him from the threats made against him. He contends that the police did not respond to his requests, noting that he made denunciations in late March 2014 and again in December 2014, and also complained to the Ombudsman in November 2014 and that no further information was provided to him about that investigation.

[26] Mr. Barros also submits that the RPD erred by impugning his credibility based on finding that there was no corroborative evidence that Los Urabeños were still pursuing him. Mr. Barros acknowledges that the only evidence of ongoing pursuit—his testimony about the warnings from his sister—was hearsay, but submits that the RPD erred by rejecting this evidence. He argues that the presumption of truthfulness applies and was not rebutted because there was no other evidence to contradict his sworn testimony.

[27] Mr. Barros further argues that the RPD's assessment of an IFA is illogical. He submits that if the RPD had clearly found that he was not credible or that he was not at risk, the RPD would have refused his claim without proceeding to consider an IFA. He submits that by considering the IFA, the RPD must have accepted that he was at risk, noting that the RPD stated that it gave him the "benefit of the doubt." He adds that given that Los Urabeños is a powerful national and international drug cartel, his risk from Los Urabeños would extend throughout Colombia.

[28] Mr. Barros submits that the RPD imported its vague credibility findings into its assessment of the first prong of the IFA test because the RPD did not believe that Los Urabeños would pursue him, despite his sworn testimony about his sister's warning.

[29] Mr. Barros argues that the RPD erroneously conflated the issue of whether Los Urabeños had an active and permanent presence in the proposed IFA with the issue of whether Los Urabeños had the ability to reach and harm him there. He submits that Los Urabeños' use of networks of smaller, local gangs, as noted in the NDP, gives them national reach throughout Colombia.

IV. The Respondent's Submissions

[30] The Respondent submits that the RPD did not make vague negative credibility inferences. Rather, the RPD found that Mr. Barros had not presented sufficient credible evidence of an ongoing, forward-looking risk. The Respondent submits that the RPD can assess the

sufficiency of evidence without making specific or general credibility findings regarding Mr. Barros.

[31] The Respondent points to the RPD's findings that the news reports did not corroborate—and sometimes contradicted—Mr. Barros' testimony regarding the target of the attack, the investigation conducted, and the capture of those responsible.

[32] The Respondent also notes that Mr. Barros did not submit any documentary evidence to support his testimony that Los Urabeños remain interested in him.

[33] With respect to the proposed IFA, the Respondent argues that Mr. Barros has mischaracterized the RPD's decision. The Respondent submits that the RPD did not accept that Mr. Barros had established he would be at risk throughout Colombia; the RPD gave him the benefit of the doubt only with respect to risk in Santa Marta. The Respondent also notes that Mr. Barros claimed that Los Urabeños threatened to harm him if he did not leave Santa Marta.

[34] The Respondent submits that the RPD did not conflate the presence (or absence) of Los Urabeños in the proposed IFA with their ability to reach Mr. Barros there. The RPD found that Mr. Barros had not presented sufficient evidence of any ongoing interest to pursue him outside of Santa Marta. The Respondent further submits that the RPD reasonably considered that Mr. Barros would have to transit through Urabeños-controlled territory but concluded that the proposed IFA remained viable because of the lack of evidence of continued interest in Mr. Barros.

V. Issue and Standard of Review

[35] The issue is whether the RPD's determinative finding that Mr. Barros had a viable IFA in the proposed location is reasonable.

[36] The reasonableness standard of review applies: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

[37] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–107). Courts are not to assess the reasons against a standard of perfection and should not set a decision aside unless satisfied that it is tainted by sufficiently serious and central shortcomings that it does not meet the requisite degree of transparency, intelligibility, and justification (*Vavilov* at paras 91, 100).

VI. The Decision Is Reasonable

A. *The RPD Did Not Make Unreasonable Credibility Findings*

[38] The RPD accepted that Mr. Barros' brother was killed, that Mr. Barros made complaints to the police and the Ombudsman in an effort to gain information and protection, and that Mr. Barros claimed that this made him a target of Los Urabeños. The RPD noted at the outset of its decision that there was a lack of evidence about what had transpired since Mr. Barros arrived

in Canada. The RPD clearly signalled that it was concerned about the sufficiency of the evidence to establish a forward-looking risk, which is a key element of Mr. Barros' claim.

[39] Contrary to Mr. Barros' submission, the RPD did not cast a "nebulous cloud" of doubt over Mr. Barros' testimony, without explaining its concerns. The RPD noted the parts of Mr. Barros' testimony that were inconsistent with the documentary evidence. Mr. Barros testified that he believed that his brother was targeted in the attack in March 2014 because of his brother's denunciation of the infiltration of the authorities by criminal groups. He also testified that the authorities "have not been able to find anyone" responsible for his brother's murder. The RPD noted that this was inconsistent with the news reports that Mr. Barros provided, which stated that the police believed that another person, involved in drug trafficking, was the target of the attack, and reported that a top member of Los Urabeños, known as La Vaca, thought to have led the attack, had been arrested.

[40] The news reports, although dated March 6, 2014 and before Mr. Barros filed his denunciations and requests to the police for follow up and protection from the threats to him, remain the only documentary evidence available to the RPD about the police investigation. Mr. Barros did not provide any other evidence regarding the investigation (or lack of an investigation, as he implies) or to support his belief that his brother was the target, which is a key element of his claim to be at risk from Los Urabeños.

[41] The RPD also found that Mr. Barros' testimony about his phone calls with his sister, who allegedly warned him that Los Urabeños remained interested in him, was insufficient evidence of

an ongoing risk. The transcript of the hearing reveals that Mr. Barros stated that in telephone calls with his sister “she mentioned to me what is happening actually,” referring to the situation of criminal organizations infiltrating the police and judiciary in his “home city.” The RPD alerted Mr. Barros that the onus was on him to provide evidence and that there was nothing in the evidence to suggest that Los Urabeños was still pursuing him. Mr. Barros responded that he did not consider “for them to send [him] a letter” as he believed what his sister was telling him. Given that his account of his sister’s warning was about a more general situation in Santa Marta and not about any pursuit of Mr. Barros, the RPD’s finding is clearly justified.

B. *The RPD’s Analysis of the IFA Was Reasonable*

[42] The RPD’s IFA findings are not contradictory or illogical. The RPD reasonably found and clearly stated that there was no persuasive evidence to suggest that Mr. Barros would be at continuing risk in Santa Marta. Nevertheless, it gave the “benefit of the doubt” that Mr. Barros would continue to be at risk in Santa Marta—not in the whole of Colombia. The RPD then moved on to consider whether Mr. Barros would be at risk in a location other than Santa Marta.

[43] As explained in the jurisprudence regarding the notion of an IFA, a refugee claimant is a refugee from their country as a whole, not from a city or region of their country. A refugee claimant cannot seek the protection of another country while there is a place within their own country—even if it may not be their choice of location—that can offer safety from the risk they claim and that is not unreasonable in all the circumstances.

[44] The RPD applied the well-established two-part test to determine whether the proposed IFA for Mr. Barros was viable.

[45] The test requires that, first, the decision-maker be satisfied, on a balance of probabilities, that there is no serious possibility of the refugee claimant being persecuted in the proposed IFA. Second, the conditions in the proposed IFA must be such that it would not be unreasonable for the refugee claimant to seek refuge there, upon consideration of all the circumstances, including their personal circumstances (*Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), [1992] 1 FC 706, 1991 CarswellNat 162 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), [1994] 1 FC 589 at paras 2, 12, 1993 CanLII 3011 (FCA)).

[46] The onus is on the refugee claimant to demonstrate that a proposed IFA is unreasonable and the threshold is “very high” (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15, 2000 CanLII 16789 (FCA)).

[47] Mr. Barros submits that he faces a serious possibility of persecution or risk to his life from Los Urabeños anywhere in Colombia. However, as noted, the only evidence of ongoing risk—which the RPD found to be insufficient—was Mr. Barros’ own testimony about what his sister told him.

[48] Mr. Barros submits that his sworn testimony benefits from the presumption of truthfulness (relying on *Maldonado v Canada (Minister of Employment and Immigration)*)

(1979), [1980] 2 FC 302, [1979] FCJ No 248 at para 5 (QL) (CA) [*Maldonado*]) and that the presumption has not been rebutted because there is no evidence that contradicts his sworn testimony. Mr. Barros also points to *Pooya v Canada (Citizenship and Immigration)*, 2018 FC 1019, at paras 26–27, in support of his argument that the RPD erred in finding that his sworn testimony required corroboration. Mr. Barros’ argument—which suggests that the *Maldonado* principle trumps the requirement that a refugee claimant establish their claim with sufficient and credible evidence—cannot succeed.

[49] Mr. Barros overlooks that even if his sworn testimony—which is only that he believes what his sister told him over the phone—is presumed true, it is not sufficient to establish his claim that Los Urabeños continues to have an interest in him and would pursue him in Santa Marta over five years later. Mr. Barros’ testimony relayed his sister’s account of what was generally happening in his “home city.” Mr. Barros did not provide any information—either via his sister or otherwise—that describes any particular risk to him from Los Urabeños or other criminal organizations. The RPD cautioned Mr. Barros that he was required to provide evidence to support his claim, and reasonably found that he failed to do so.

[50] Relying on the presumption of truthfulness of a sworn statement does not avoid the need to provide sufficient evidence to support the key elements of a claim for protection. The RPD did not need to doubt the truthfulness of Mr. Barros’ testimony to conclude that this testimony was insufficient to establish his claim that he continued to be pursued by Los Urabeños. As noted in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 34, “[d]eciding whether the evidence is sufficient is a practical judgment made on a case-by-case basis.” In

addition, evidence may be found insufficient if it has little probative value, is uncorroborated, or lacks detail (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paras 26–28; *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549 at para 33).

[51] The RPD's conclusion that Mr. Barros had a viable IFA was based on finding both that Los Urabeños did not have a presence in the proposed IFA and that Mr. Barros did not establish with sufficient evidence that Los Urabeños remained interested in and motivated to find him, over five years after the killing of his brother. Given that Mr. Barros did not establish any ongoing risk from Los Urabeños, its national or international influence or potential capacity to reach him is not a reason to discount the IFA.

[52] In conclusion, the RPD reasonably found that Mr. Barros did not meet the onus on him to demonstrate that the proposed IFA was unreasonable.

JUDGMENT in file IMM-7266-19

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7266-19

STYLE OF CAUSE: RAMON ALEJANDRO BARROS BARROS v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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