Federal Court  Cour fédérale

Date: 20220323

Docket: IMM-4026-19

Citation: 2022 FC 395

Ottawa, Ontario, March 23, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SANDRA HAYDE MONTANO ALARCON
RENE AYALA LOPEZ
JUAN DAVID AYALA MONTANO
BRYAN THOMAS AYALA MONTANO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada finding that the Applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

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

Background

[3] Rene Ayala Lopez [Principal Applicant], his wife Sandra Hayde Montano Alarcon and their two adult sons [together, the Applicants] are citizens of Columbia. The following description of the Applicants' claim is extracted from the Principal Applicant's Basis of Claim [BOC] narrative.

[4] The Applicants claim that in 2015 the Principal Applicant began volunteering with two non-profit organizations *Fundacion Escalando por tu Futuro* (Climbing for Your Future Foundation) and *Fundacion Semillas de Benedición* (Seeds of Blessing Foundation) in Bogota as well as in Cali and Barranquilla.

[5] On September 28, 2017, the Principal Applicant received a threatening phone call from someone who said they were calling him because his sister-in-law, Luz Francy Montano Alarcon, was not answering her phone. She was being threatened for not agreeing to work with Clan Usuga (also known as Clan del Golfo, Los Urabeños, and Autodefensas Gaitanistas de Colombia (AGC)), a criminal gang. On October 5, 2017 the Principal Applicant received another call, again referring to his sister-in-law. On October 6, 2017, the Principal Applicant received a further call, this time threatening him with death and demanding that he work with Clan Usuga and, if failed to do so, they would enrol the Principal Applicant's sons into their ranks, take them to the mountains to fight, to cultivate cocaine or to be killed. The caller demanded that the Principal Applicant was to provide 20 youth per month to work with Clan Usuga. When the

Principal Applicant refused, the caller threatened him and his family with death. The Applicant went directly to the police and attempted to make a denunciation. He was redirected a number of times and was only able to make a report to the Fiscalía General de la Nación [Fiscalia] in Kennedy on October 9, 2017.

[6] The Principal Applicant claims that the Fiscalia sent a request for protection of the family to the metropolitan police on October 17, 2017, but that he did not receive a copy of the request at that time.

[7] On October 23, 2017, the Principal Applicant was intercepted by three men in a truck. Two men with firearms assaulted him, told him they were from Clan Golfo and that they were the same people who had been calling him. They demanded that he deliver at least five youth to work with the gang on October 28, 2017 and threatened that if he failed to do so he and his family would be killed. The Principal Applicant made a denunciation at the Fiscalia of Paloquemao on the same day.

[8] On October 30, 2017, the Principal Applicant's son was leaving university when he was grabbled by two men who told him that they knew everything about his family and to tell the Principal Applicant he had to comply with the recruitment demand in order to not get himself killed. The Principal Applicant met his son at the Fiscalia to make a denunciation of events but they would not take his denunciation that night. The next morning, October 31, 2017, his son went to the Fiscalia in Paloquemao, who sent him to the adjoining building, Fiscalia 99. There he was given a copy of the request for protection dated October 17, 2017. In an amended BOC

narrative the Principal Applicant states he is not sure if his son's denunciation was received or not and that on October 31, 2017, he and his son also went to the Kennedy police station which was not responsive to their concerns. That night the family fled to the home of the Principal Applicant's sister.

[9] On November 1, 2017, the Principal Applicant attempted to make his last denunciation before the Defensoria del Pueblo (Ombudsman) but he was told that no one was available to take his statement and to return on November 3, 2017. He did so and waited several hours but the complaint was not taken. Having decided to flee the country, the Principal Applicant gave the complaint to his sister who delivered it to the Ombudsman on November 7, 2017.

[10] The family departed Bogota on November 7, 2027 and flew to the United States. They crossed into Canada and sought refugee protection the following day.

Decision under review

[11] The RPD noted that the United Nations High Commission for Refugees eligibility guidelines for Columbia [UNHCR Guidelines] identify 12 groups or risk profiles that may merit international protection, one of which is human rights defenders. The RPD found that the Principal Applicant did not fall within that risk profile and had embellished his role in human rights organizations. Nor did he fit the same risk profile as his sister, a trained therapist, who worked for the same foundations and who had successfully claimed refugee protection in Canada.

[12] In the alternative, the RPD found that the Applicants had not rebutted the presumption of state protection. The Applicants had approached the state for the first time on October 9, 2017, and within a few days, the Fiscalia had asked the Metropolitan Police to protect them. The Applicants also left the country before filing the complaint with the Ombudsman. The RPD concluded that the Applicants were in no position to say that the police did not respond to their call for help. And, based on the country condition evidence, the RPD found that while the government is not able to provide perfect protection, it provides adequate protection.

[13] In the further alternative, the RPD found that the Applicants had not refuted a viable Internal Flight Alternative [IFA] in Barranquilla. The Applicants' subjective belief that the Clan Usuga could locate them anywhere in the country was not supported by an objective basis and, even if the Applicants were threatened by a member of Clan Usuga, that group does not have a chain of command or logistics to share information and target a person who failed to show up for an alleged meeting with gang members. Moreover, Clan Usuga would be unlikely to pursue the Applicants in Barranquilla because the Principal Applicant does not have the profile of someone who would be of interest to gangs. The RPD also stated that Clan Usuga would be unlikely to harm the Applicants in Barranquilla because the group "is trying to convince the government to negotiate with them for a peace treaty and is in a weak situation even though it is the largest single gang in Colombia now".

Issues and standard of review

[14] In my view, all of the matters raised by the Applicants fall within the overarching question of whether the RPD's decision was reasonable.

[15] The parties submit and I agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23 and 25). On judicial review, the Court "asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

i. Principal Applicant's Profile

[16] The Applicants submit that the RPD failed to observe the principle of judicial comity, particularly when reviewing the country conditions in its state protection analysis and IFA, and failed to provide cogent reasons for why it did not adopt the reasons of the RPD member who decided the sister-in-law's successful refugee claim – despite the similarities and connections between the two claims. The Applicants submit that the RPD's finding that the Principal Applicant's profile as a human rights leader was not established was based on the absurd premise and unfounded generalization that he had not received professional training and was a volunteer. Further, the RPD's concerns with the Principal Applicant's profile are irrelevant to the ultimate question of whether he was a member of the foundations and whether that could put him in danger in Colombia.

[17] The Respondent submits that the RPD reasonably found that the Principal Applicant embellished his role as a volunteer to be the equivalent to a community or human rights leader because the RPD identified significant contradictions and inconsistencies in the Principal Applicant's testimony. Further, the RPD decision demonstrated a coherent reasoning process when the RPD determined that the Principal Applicant did not have the profile of someone at

risk in Colombia as defined by the UNHCR Guidelines. The Respondent submits that the RPD was entitled to distinguish between the Applicants' claim and that of the sister-in-law because each refugee claim is determined on its own merits and the RPD provided a basis upon which the Applicants' claim was factually distinct from her claim.

Analysis

[18] The focus of the RPD's analysis was whether the Principal Applicant fell within the UNHCR Guidelines profile of a human rights defender and should therefore be afforded refugee protection.

[19] The RPD's finding that the Principal Applicant does not fit this profile is based on the RPD's finding that the Principal Applicant worked full time (48 hours a week) and was an unpaid volunteer with the foundations. Further, that he had no training in the areas of his described volunteer work and had limited knowledge about the foundations and their activities, giving confusing testimony about the number of officers or volunteers and whether any of these people were threatened. The RPD found that the foundations continue to operate without anyone else being threatened or harmed and distinguished the sister-in-law's circumstance on the basis that the root cause of her problem was her intervention in altercations in a different city.

[20] As a starting point, I note that the RPD did not directly challenge the Principal Applicant's claim to have worked as a volunteer with the foundations. Rather, the RPD made an implicit finding that because the Principal Applicant worked only on a volunteer basis outside his regular employment and because he had no formal training to support that volunteer work, he

could not have the profile of a human rights defender. It is difficult to see how these two factors, and without any analysis of the evidence, could serve to exclude a claimant from the profile.

[21] In this regard, the RPD refers to a letter from the Seeds of Blessing Foundation. This letter describes the Principal Applicant as providing "professional services" by giving lectures and training on topics related to domestic violence, unwanted pregnancies, prevention of drug uses targeted at vulnerable youth and adults displaced by violence. The letter states that the Principal Applicant has proven to be a committed person dedicated to guiding and listening to vulnerable young people. The RPD notes only that the letter states that the Principal Applicant provides "professional services" and then states that the Principal Applicant confirmed that he has absolutely no training in those fields in which he alleges he helps vulnerable people.

[22] The RPD is, of course, entitled to make implausibility findings "where the applicant's testimony is outside of the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have taken place as alleged" (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 26). However, it is not inherently implausible that a volunteer cannot have the profile of a human rights defender. Volunteers are often the backbone of advocacy and change. And to the extent that the RPD was inferring that there was a contradiction arising from the foundation's reference to the provision by the Principal Applicant of professional services and the Principal Applicant's lack of training, the RPD points to no evidence where the Principal Applicant indicated he held any professional designation with respect to his volunteer work. In fact, it notes that he confirmed that he had no such training. There is, therefore, no contradiction within his testimony.

[23] The RPD also states that the Applicant had limited knowledge about the foundations, such as the number of volunteers and officers and if any of them had been threatened. Regrettably, a transcript of the hearing was not provided so the Court is unable to assess that testimony with respect to this finding. However, a lack of knowledge of the number of officers and volunteers is concerned with the structure of the organizations, not with the work that the Principal Applicant actually did with the organizations and his resultant profile. Being a leader of an organization can be different than being a leading human rights defender.

[24] Additionally, the RPD states that the Principal Applicant was asked whether he needed police clearance to work with vulnerable youth. According to the RPD, the Principal Applicant first stated that he was not required to do so and later said that he had a clearance. When asked if he had a copy of the clearance the Principal Applicant said that he had given it to a foundation. The RPD found that the Principal Applicant did not reasonably explain why he could not obtain a copy from the foundation or the police. However, the RPD then noted that the Principal Applicant did in fact provide a letter from one of the foundations, which was obtained between the two hearing dates. The RPD makes no specific finding on this point.

[25] It is unclear to me what the provision of the police clearance letter has to do with the issue of whether the Principal Applicant has a risk profile of a human rights defender. This seems more directed at whether the Principal Applicant's claim to be a volunteer was credible. Similarly, the RPD next notes that the Principal Applicant continues to own his house in Bogota, which has been rented "and they are benefitting from that". How this relates to the Principal Applicant's risk profile is also not apparent. Put otherwise, this reasoning is unintelligible.

[26] Viewed in whole, the RPD appears to conflate the risk profile analysis – do the Principal Applicant's volunteer activities suffice to meet the profile of a human rights defender – with a more broad but unstated RPD concern with the credibility of the Principal Applicant's claim to have worked with the foundations. However, the RPD did not challenge the Principal Applicant's credibility on the latter basis. Nor, based on its reasons, does it appear to have actually probed the depth of the Principal Applicant's work done as a volunteer for the foundations for the purpose of assessing whether his work would, or would not, cause him to have a profile of a human rights defender. While I appreciate that the areas in which the Principal Applicant claims to have provided volunteer support are extremely diverse – from drug use prevention to illegal detention and disappearance of people – based on its reasons, the RPD does not appear to have assessed the Principal Applicant's evidence as to his role or to have explored this with the Principal Applicant at the hearing.

[27] On this same point, I note that the Applicants' complaints to police describe threats and assaults by Clan Usuga claimed to have been experienced by the family as a result of the Principal Applicant's work with the foundations and his connection to his sister-in-law. In focusing exclusively on the Principal Applicant's profile, the RPD failed to engage with this evidence. It may be that the RPD reasoned that it did not need to do so because the Principal Applicant's profile would not make him a target, that is, the whole of the claim was not credible. However, the RPD made no clear finding in that regard. Further, along with the denunciations, the record before the RPD also contained the October 17, 2017 request for protection made by the Fiscalia to the local police. That is, there was evidence before the RPD appearing to indicate that the Fiscalia accepted the existence of the risk to the Applicants (there is also an unexplained

notice of its archiving the complaint on October 26, 2017). Yet the RPD does not assess whether the Applicants were personally targeted and, therefore, persons in need of protection under s 97.

[28] For these reasons, I find the RPD's risk profile analysis to be unreasonable.

ii. Similarly situated person

[29] The Principal Applicant relied heavily on the refugee claim of his sister-in-law as a similarly-situated person whose refugee claim was accepted. However, the RPD found that the Principal Applicant's claim was not similar to that of his sister-in-law because she is a trained therapist. Therefore, the Principal Applicant's profile was not similar to his sister-in-law's. The RPD also distinguished the sister-in-law's circumstance on the basis that the "root cause" of her problem was that she intervened in an altercation in a different city, thereby drawing the wrath and attention of Clan Usuga.

[30] With respect to the Applicants' "judicial comity" submissions, it is sufficient to say that this Court has previously held that the RPD is not bound by its prior decisions and every case must be decided on its own merits. However, the RPD must review the similarities and explain why a different result is being reached from earlier decisions based on the same or very similar circumstances and country condition documentation (*Rusznyak v Canada (Citizenship and Immigration)*, 2014 FC 255 at paras 50-53, 57; *Ruszo v Canada (Citizenship and Immigration)*, 2019 FC 296 at para 17-18*; Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at paras 24-26; *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 at para 67).

[31] Placing this in the context of *Vavilov*, Justice Gleeson held in *Faisal v Canada (Citizenship and Immigration)*, 2021 FC 412 that:

> [26] An administrative tribunal is expected to assess each claim that comes before it on a case-by-case basis (*Budai v Canada (Minister of Citizenship and Immigration)*, 2021 FC 313 at para 33). In doing so, the tribunal is properly constrained by its previous decisions, but importantly, it is not bound by its previous decisions (*Vavilov* at para 131; *Bakary v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1111 at para 10 [*Bakary*]). A tribunal may depart from one of its previous decisions where it reasonably justifies the departure.

[32] While the RPD was not bound by the prior decision that determined the sister-in-law's refugee claim, the Applicants asserted that she was a similarly situated family member, that there were connections and similarities between her circumstances and those of the Principal Applicant and, that the same National Documentation Package was before the member who decided her claim and the RPD member hearing the Applicants' claim. Therefore, the RPD was required to explain why its decision differed from the conclusions reached in her case.

[33] As discussed above, it is not implausible that the Principal Applicant could be a volunteer with the foundations and also be a human rights activist, despite a lack of formal training. In my view, this distinction is also not a sufficient or reasonable explanation of why the sister-in-law was not a similarly situated person. That is, why her claim was found to be well-founded whereas the Applicants' claim was not.

[34] And, with respect to her training, I note that the sister-in-law's BOC was provided to the RPD. It states that she studied business administration for two years and also "completed some courses in esthetics (manicure and pedicure), massage and alternative therapies such as

mediation, relaxation and energetic courses". She states that she used her education in her role as a community leader at the Climbing for Your Future Foundation and used the therapy that she was taught to assist vulnerable persons "with their difficult situations and their depression". It is worth pointing out that the sister-in-law's training as a therapist is limited and is not directly linked to her ability to provide the support that she describes, working with vulnerable communities including displaced families and combatants attempting to returning to society. Similarly, it is not apparent that the type of volunteer support work provided by the Principal Applicant required specific formal training as a therapist or otherwise.

[35] The RPD also distinguishes the threats to the sister-in-law on the basis that the root of her problems was her intervention in an altercation in a different city. However, while that was the root of her problems with Clan Usuga, it was not the end of them. They knew of her work as a community support worker and demanded a meeting with her. The threats and assaults against her came to a head and caused her to go into hiding on September 27, 2017. She and her family left Colombia on September 29, 2017. The evidence in the record before the RPD indicates that the sister-in-law worked with the Climbing for Your Future Foundation since 2015, one of the same foundations where the Principal Applicant volunteered.

[36] The Principal Applicant claims that he received the first threatening phone call on September 28, 2017, the day after his sister-in-law went into hiding. He states in his BOC narrative that this call seemed to be prompted by his connection to his sister-in-law. And: "according to the caller, they called me because my sister in law Francy Montano did not answer her cellphone", and stated that the caller said "if Francy does not show up, you will be

responsible for everything". A later threatening call on October 6, 2017 again asked about the Principal Applicant's connection to his sister-in-law and demanded that he send the gang recruits because – like his sister-in-law – he had access to vulnerable young people through his volunteer work.

[37] In short, although the sister-in-law may have initially come to the attention of Clan Usuga when she intervened in an altercation, it does not necessarily follow that the Principal Applicant's claim is implausible or not similar to hers because her claim initially arose under different circumstances. There was evidence suggesting a connection between the sister-in-law's' refusal to meet with Clan Usuga, as they demanded, and the gang's subsequent targeting of the Principal Applicant when they could not contact his sister-in-law. Both demands were concerned with the recruiting of vulnerable youth with whom the sister-in-law and the Principal Applicant worked. It is also not clear that the RPD actually considered the Principal Applicant's allegations that Clan Usuga essentially transferred the threats against the sister-in-law to threats against the Principal Applicant and his family when they could no longer contact her.

[38] In my view, the RPD has not reasonably justified why it distinguished the sister-in-law's claim from that of the Applicants.

iii. State protection

[39] Because the RPD's assessment of the Principal Applicant's profile as a community leader was unreasonable, this also renders unreasonable its assessment of his risk as such based on the country conditions documentation.

[40] However, I also agree with the Applicant that the RPD's state protection assessment was unreasonable as it misapprehended, ignored or failed to consider evidence with respect to the lack of operationally adequacy state protection.

[41] For example, the RPD expresses much concern about the fact that the Applicants' complaint to the Ombudsman was made after they left the country. It states that it was only on questioning about the names and dates on the denunciation did the Principal Applicant testify that this was done by one of his relatives after the family had left the country, explaining that they had tried to file the denunciation but could not. Again, the Court has not been provided with the transcript of the hearing. However the Principal Applicant's amended BOC, submitted on January 24, 2019, explained that the Principal Applicant attempted to give his denunciation to the Ombudsman on November 1, 2017 but was told to return on November 3 as the person responsible for taking statements was not there. On November 3, 2017, he re-attended but after waiting for several hours he was not seen. As the family made the decision to flee on November 5, 2017, he gave the letter to his sister who gave it to the Ombudsman on November 7, 2017. The RPD appears to have failed to appreciate that the Principal Applicant's testimony in fact reflected his amended BOC. To the extent that the RPD is implying an inconsistency in his evidence, this is not supported by the record.

[42] Further, the RPD states that the Principal Applicant approached the state for the first time on October 9, 2017 and a few days later the Fiscalia asked the metropolitan police to protect the family. The RPD states that the fact that the Principal Applicant did not receive a copy of the protection request does not mean that the state ignored or failed to protect them.

[43] However, the Principal Applicant's evidence was that he went directly to the police after receiving the threatening phone call on October 6, 2017 but that the police did not take his denunciation that day. Further unsuccessful efforts were made on October 7 and October 8, 2017. More significantly, while not receiving a copy of the October 17, 2017 Fiscalia request for protection may not – as the RPD states – mean that the state ignored or failed to protect the family, the Principal Applicant's evidence was that he was never contacted by local police in order to arrange protection. And, subsequent to the issuance of the October 17 request for protection, the Principal Applicant was assaulted and threatened on October 23, 2017. The assailants threatened that if the Principal Applicant did not comply and bring five youth to work with the gang by October 28, the gang would kill his sons and family. The further denunciation made on October 23, 2017 also did not result in protection being afforded to the family and, on October 30, 2017, the Principal Applicant's son was threatened and assaulted on his way home from university. The Principal Applicant's BOC states that he believed that his son had made a denunciation the following day. And, although not known to the Applicants at the time, their initial denunciation had been archived on October 26, 2017. The family fled after these events and after attempting to file a complaint with the Ombudsman.

[44] In my view, the RPD's finding that the Fiscalia responded to the Applicants' denunciation in "a very short period of time" through a request for protection fails to address the other circumstances of the Applicants. That is, the absence of any actual measures by the police to provide protection and to prevent or to address the threats made after that protection request was issued. As the Applicant submits, it is well established that an assessment of the adequacy of state protection requires an assessment of not only the efforts made by the state, but the actual

results. That is, its adequacy at the operational level (*Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30; Lakatos v Canada (Citizenship and Immigration), 2018 FC 367 at para 21; *Eros v Canada (Citizenship and Immigration*, 2017 FC 1094 at para 45; *Kovacs v Canada (Citizenship and Immigration)*, 2015 FC 337 at para 67).

[45] The RPD's finding that the Applicants are in no position to say that the police did not respond to their call for help is unreasonable because the RPD failed to assess the effort to assist, by way of the request for protection, against the evidence that no actual protection was afforded to the Applicants and their allegations of subsequent incidents of threats and assaults after the issuance of the request for protection. Nor did the RPD assess whether, in those circumstances, it was reasonable to expect the Applicants to continue to seek protection rather than fleeing the country (*Cardenas v Canada (Minister of Citizenship and Immigration)*, 2015 FC 782 at paras 8-9). In that regard, I note that the Response to Information Request COL105470.E dated April 6, 2016 includes a report quoting the Ombudsperson as saying that "it is normal at the UNP [National Protection Unit] to 'take a long time' to provide protection to threatened people".

[46] The RPD also states that it asked the Principal Applicant if he could provide a description to the authorities about his alleged agent of persecution. When he testified that he could, the RPD asked him to do so. It found that his description of "a tall dark man" would fit a huge number of people in Columbia as the documentary evidence shows that Afro-Columbians comprise almost 5 million people. Presumably, the point was that the Principal Applicant had not provided sufficient information to the authorities to permit them to locate the Principal Applicant's agent of persecution. However, the RPD does not point to anything in the record suggesting that this

was the reason the police failed to protect the Applicants. It also seems unlikely that the protection, which was requested prior to the assaults, would be with respect to one particular Clan Usuga member as opposed to protection more generally from the Clan Usuga.

[47] Given my findings above, I need not address the Applicants' further submission that the RPD was selective in its review of the country conditions documentation and failed to address documents that directly contradicted its conclusions. The RPD's unreasonable assessment of the evidence and the Applicants' personal circumstances in the context of the operational adequacy of the state protection is a sufficient basis upon which to find that the RPD's state protection finding was unreasonable.

iv. IFA

[48] As discussed above, the RPD found that Clan Usuga's motivation to pursue the Applicants would not be strong, as "the Claimant does not have the profile of someone who would be of interest to gangs" and that his sister-in-law was not a similarly situated person. However, the RPD's analysis of the Principal Applicant's profile was unreasonable. This also renders its related IFA finding unreasonable because the profile of a claimant, as well as the characteristics of the particular alleged agent of persecution including its ability and motivation to take action in the IFA are important factors in an IFA assessment (*Akinkunmi v Canada (Citizenship and Immigration)*, 2020 FC 742 at para 20; *Taqadees v Canada (Citizenship and Immigration)*, 2016 FC 1072 *at paras 26-27; Leon Jimenez v Canada (Citizenship and Immigration)*, 2014 FC 780 at paras 20, 25, 28). In its reasons, the PRD acknowledged the importance of the profile of a claimant to an IFA analysis.

[49] The RPD also failed to address the November 18, 2018 letter from a sister of the Principal Applicant who was at his home in Columbia on July 8, 2018 when two armed men claiming to be from the CTI (Technical Body of the Attorney General of the Nation) asked about the whereabouts of her brother and demanded to enter the house When she advised that she was going to call the police to make sure they were who they said they were, they swore at her, kicked the door and left. The Applicants assert that this is documentation of an ongoing risk to them in Columbia which was not assessed by the RPD.

[50] I also agree with the Applicants that the RPD's assessment failed to address country conditions materials that contradicted its findings (*Gonzalez v Canada (Citizenship and Immigration)*, 2014 FC 750 at para 56; *Ponniah v Canada (Citizenship and Immigration)*, 2014 FC 190 at paras 16-17; *Kulmiye v Canada (Citizenship and Immigration)*, 2014 FC 1198 at paras 27-29; *Mestre v Canada (Minister of Citizenship and Immigration)*, 2015 FC 375 at para 15; *Kulasekaram v Canada (Minister of Citizenship and Immigration)*, 2013 FC 388 at para 41).

[51] The RPD referred to the UNHCR Guidelines as indicating that an IFA will not be relevant in areas where a guerilla group has a "strong sphere of control" and that other documents indicated that this was not the case in Barranquilla. The RPD states that a simple presence of some members of the criminal gangs is not the same as having a "strong sphere of control". The RPD also referred to item 1.9 of the National Documentation Package [NDP] for Colombia, The Crisis Group, which reports about illegal armed groups' areas of influence and its statement that none of these groups are active in the entire national areas but generally cover specific territories considered strategic for coca cultivation, production and trafficking abroad.

The RPD found that even if the Principal Applicant were threatened by a Clan Usuga member the gang did not have a chain of command or logistics to share information and target him. It concluded that on a balance of probabilities it would be speculative that the Clan del Golfo would harm the Principal Applicant in Barranquilla and "As indicated above, this gang is trying to convince the government to negotiate with them for a peace treaty and is in a weak position even though it is the largest single gang in Columbia now".

[52] However, the UNHCR Guidelines state:

> In light of the available evidence of serious and widespread human rights abuses by NAGs and guerrilla groups in areas in Columbia where they operate and have a strong presence, as well as the inability of the Columbian government to provide protections against such abuses in these areas, **UNHCR considers IFA/IRA is not available in areas where NAGs, guerilla groups or other armed non-stated actors operate and have a strong presence….**
>
> … Where agents of persecution are non-State agents, consideration must be given to whether the persecutor is likely to pursue the claimant in the proposed area of relocation. Given the purported ability of some NAGs and guerrilla groups to operate country-wide, and indeed internationally as part of international criminal networks, a viable IFA/IRA may not be available to individuals at risk of being targeted by such actors. **It is particularly important to note the operational capacity of NAGs and the FARC, in particular, to carry out attacks in all parts of Colombia, irrespective of territorial control.**
>
> (emphasis added)

[53] The UNHCR Guidelines use the term NAGs (New Armed Groups) to refer to successor groups to the paramilitary forces that emerged in Columbia after 2006, including Clan Usuga, which the UNHCR Guidelines list as one of "the five most powerful NAGs as at late 2014". Nor did the Crisis Group Report say that the Columbian government had refused to negotiate because

Clan Usuga is weak as the RPD seems to suggest. Rather, the government had "rejected political negotiations with the group as it does not recognise it as a political organisation". The Crisis Group report also states that Clan Usuga "controls Colombia's main ports, which are crucial to trafficking, including Buenaventura in Chocó, Barranquilla in Atlántico, and Cartagena in Bolívar".

[54] The Applicant also points to other documents in the NDP which demonstrate Clan Usuga's strength and prevalence in Columbia, including in Barranquilla. For example, NDP Item 1.2 states that Clan Usuga "is Colombia's most powerful paramilitary group that controls most of the country's drug trade"; Clan Usuga has presence in 283 locations in Colombia including Bogotá and Barranquilla. NDP Item 7.4 states that Clan Usuga "are by far the largest and most powerful of drug trafficking organizations in Colombia, controlling much of the most profitable link in the drug trafficking chain, export"; "the group has violently taken control of both the Caribbean and Pacific coast lines of Colombia…This allows the group to control much of the naval export to consumption markets in North America and Europe, especially because of its control over Colombia's main ports; Buenaventura on the Pacific coast, and Barranquilla and Cartagena on the Caribbean coast"; "The AGC itself has claimed to have 8,000 members, 'including informants' presumably in civil society, the military and politics". The Applicants also point to NDP Item 7.15 which states that "Human Rights Watch representative indicated that there have been documented cases of people being tracked down by the Urabeños after fleeing to other parts of the country".

[55] The RPD's IFA analysis appears to be based on its view that Clan Usuga has only a few members in Barranquilla, but not a strong sphere of control. However, the RPD does not provide the source of that information and it appears to be contradicted by the above documentary evidence that was not addressed by the RPD and which indicates that gangs like Clan Usuga carry out attacks in all parts of Colombia, irrespective of territorial control. Accordingly, the PRD's IFA finding is unreasonable.

[56] In conclusion, for all of the reasons above, I find that the RPD's decision was unreasonable.

JUDGMENT IN IMM-4026-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;

2. The decision is set aside and the matter shall be remitted to another RPD member for redetermination;

3. There shall be no order as to costs; and

4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4026-19
STYLE OF CAUSE:	SANDRA HAYDE MONTANO ALARCON, RENE AYALA LOPEZ, JUAN DAVID AYALA MONTANO, BRYAN THOMAS AYALA MONTANO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
DATE OF HEARING:	MARCH 16, 2022
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	MARCH 23, 2022

APPEARANCES:

Keith MacMillan	FOR THE APPLICANTS
Rachel Beaupré	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor Refugee Law Office Hamilton, Ontario	FOR THE APPLICANTS
Department of Justice Canada Toronto, Ontario	FOR THE RESPONDENT