Federal Court Cour fédérale

Date: 20220714

Docket: IMM-5443-21

Citation: 2022 FC 1048

Ottawa, Ontario, July 14, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

CHRISTIAN FABIAN BUITRAGO SALAZAR
CRISTHIAN FERNANDO LOPEZ HENAO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Christian Fabian Buitrago Salazar ("Principal Applicant") and Cristhian Fernando Lopez Henao ("Associate Applicant"), seek judicial review of the decision of the Refugee Appeal Division ("RAD") dated July 22, 2021, confirming the decision of the Refugee Protection Division ("RPD") that the Applicants are neither Convention refugees nor persons in

need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”).

[2] The Applicants fear persecution in Colombia at the hands of the Colombian Revolutionary Armed Forces (“FARC”). They submit that the RAD erred by selectively reviewing the country condition evidence regarding the FARC in Colombia and by expecting the Applicants to produce evidence of recent attempts by the FARC to contact the Principal Applicant’s family. The Applicants also submit that the RAD reached an unreasonable conclusion in finding that the Principal Applicant is not designated as a military target.

[3] For the reasons that follow, I find that the RAD’s decision is unreasonable because the RAD failed to meaningfully engage with the evidence on the record of the FARC’s ongoing influence in Colombia. I therefore grant this application for judicial review.

II. **Facts**

A. *The Applicants*

[4] The Principal Applicant is a 30-year-old citizen of Colombia. His partner, the Associate Applicant, is a 32-year-old citizen of Colombia.

[5] The Applicants allege that for several years, the FARC has targeted the Principal Applicant’s family, who own several coffee plantations, cattle ranches and other businesses in

Colombia. From 1990 to 2008, the Principal Applicant's family experienced extortion, kidnappings and murders.

[6] The Principal Applicant alleges that in 2005, he was kidnapped by the FARC. Six months later, the FARC killed his friend who was kidnapped at the same time. In February 2008, the Principal Applicant received a text message informing him that he and his cousin had been designated "military targets". His cousin was killed in July 2008. Around the same time, the Principal Applicant states that his mother received a phone call asking her how much she was willing to pay to ensure her son was not killed.

[7] In December 2014, the FARC extorted the Principal Applicant's family. When they could not pay, the FARC took one thousand of their cattle.

[8] The Principal Applicant states that on September 22, 2018, someone fired a gun at a truck that he and his cousin were driving. He believes the shooter was a member of the FARC. Following this incident, the Applicants moved to Medellin on October 3, 2018.

[9] In January 2019, the Associate Applicant allegedly received a threatening phone call, during which he was told that he was in danger for being with and assisting the Principal Applicant. In March 2019, the Applicants applied for visas to Canada, which they received in September 2019. They travelled to Canada in November 2019.

B. *The RPD Decision*

[10] In a decision dated January 25, 2021, the RPD rejected the Applicants' refugee claims on the grounds that they lacked credibility and have a viable internal flight alternative ("IFA") in Bogota, Colombia.

[11] The RPD found that the Principal Applicant's family's history with the FARC was insufficient to corroborate his allegation that he is currently sought by the FARC as a "military target". The RPD doubted that the Principal Applicant had been designated a military target, since he had spent nine years in Colombia without incident and only experienced an alleged attempted assassination in 2018. The RPD also held that the Principal Applicant's belief that a member of the FARC shot his truck in September 2018 was speculative. The RPD dismissed the Principal Applicant's explanation that he believed the shooter to be a member of the FARC because of the type of clothing he wore.

[12] The RPD further held that while past experience is relevant to the assessment of future risk, this is less so when significant time has passed and the viability of the threat from the agents of persecution has changed, as with the change in the situation and strength of the FARC.

C. *Decision Under Review*

[13] The Applicants appealed the RPD's decision to the RAD. In a decision dated July 22, 2021, the RAD dismissed the Applicants' appeal, confirming the RPD's determination that the

Applicants are neither Convention refugees nor persons in need of protection. The determinative issue for the RAD was credibility.

[14] The RAD accepted that the FARC was responsible for the violence against the Principal Applicant's family members based on the location of the family's coffee farms and evidence that the FARC had exploited wealthy families to finance their operations. However, the key issue for the RAD was whether the Principal Applicant's family history with the FARC constituted a future risk for the Applicants. In considering the country condition evidence, the RAD found that after the 2016 Peace Agreement between the Colombian government and the FARC, the FARC's area of influence was considerably reduced and concentrated largely in the south of the country. Given these changes, the RAD found insufficient evidence of a future risk to the Applicants and that the risk in the proposed IFA of Bogota was also reduced.

[15] Furthermore, the RAD agreed with the RPD's finding that the Principal Applicant was not designated as a military target in 2008, as he had spent nine years without incident studying and working in the family business. The RAD found that if the Principal Applicant had been designated as a military target, there would have been some actions made against him, particularly given the violence towards members of his family during the same period. The RAD distinguished the Principal Applicant's circumstances from those of a journalist who was killed after police protection was removed, since the journalist had written about government corruption to a broad audience and had received multiple death threats. The RAD also found that the country condition evidence indicates that those usually designated as military targets are human rights defenders and politicians.

[16] Finally, the RAD agreed with the RPD that there is insufficient evidence to find that the individual who shot at the Principal Applicant in September 2018 was a member of the FARC. The Principal Applicant indicated that he spoke to the FARC in 2014 after his family had been extorted and he was not harmed. Since the most recent threats to the Principal Applicant from the FARC had been made in 2014, the RAD found that the manner of dress of the alleged shooter was insufficient evidence of his membership in the FARC. There was also no evidence that the FARC had contacted the Principal Applicant's family since 2018, which the RAD found to be another indication of reduced future risk to the Applicants.

III. **Issue and Standard of Review**

[17] The sole issue in this application for judicial review is whether the RAD's decision is reasonable.

[18] Both parties concur that the applicable standard of review in evaluating the RAD's decision is reasonableness. I agree (*Adelani v Canada (Citizenship and Immigration),* 2021 FC 23 at paras 13-15; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 10, 16-17).

[19] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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 para 85).

Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[20] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. **Analysis**

A. *Country Condition Evidence*

[21] The Applicants submit that the RAD erred by selectively reviewing the country condition evidence regarding the FARC and unreasonably preferred certain documents to others without providing an explanation for doing so. While the RAD acknowledged the Applicants' appeal submissions that the threat of the FARC has not disappeared and is in fact growing, the RAD failed to meaningfully consider these submissions. The RAD also overlooked significant information in the National Documentation Package ("NDP") that demonstrates that despite the 2016 Peace Agreement, the FARC has not disappeared and FARC dissident groups continue to grow and be active throughout Colombia. In doing so, the RAD failed to engage with evidence

that contradicts its conclusion and to explain why that evidence did not alter its conclusion, as it was required to do (*Cetinkaya v Canada (Citizenship and Immigration),* 2012 FC 8 ("*Cetinkaya*") at para 66*; Adeoye v Canada (Citizenship and Immigration),* 2012 FC 680 ("*Adeoye*") at para 13).

[22] The Respondent submits that the Applicants' arguments amount to a mere disagreement with the RAD's weighing of the evidence and show no reviewable error. The RAD expressly mentioned the Applicants' appeal submissions about country condition evidence and the evidence they cited from the NDP, noting: "The Appellants cite country conditions evidence which indicates that, post the 2016 peace accord, ex-FARC have remobilized and continued their activities of illicit drug production, illegal mining, human smuggling, to name a few." The RAD weighed the documentary evidence cited by the Applicants alongside other documentary evidence in the NDP. As such, it reasonably found that the FARC's area of influence was considerably reduced and concentrated largely in the south of Colombia.

[23] I accept the Respondent's submission that the RAD cited the Applicants' written arguments about the growing threat of the FARC and acknowledged one piece of country condition evidence from the NDP that contradicted its conclusion. However, I am not convinced that the RAD meaningfully engaged with the evidence of the FARC's ongoing influence in Colombia, nor did the RAD analyze this evidence or provide an explanation as to why this country condition evidence did not alter its conclusion. In its decision, the RAD concluded:

> There are numerous other documents in the country conditions evidence which show that the size of the FARC dissidents is considerably less than the size of the FARC at the time of the

> [2016] peace accord. The government reports that the FARC dissidents are responsible for a small percentage of attacks against the population. The area of influence of the FARC is also considerably reduced and is concentrated largely in the south.

[24] The RAD references documents contained in the most recent version of the NDP at the time of its decision (the "April 16, 2021 NDP"). However, as underscored by the Applicants, there are several other documents in the April 16, 2021 NDP that support the Applicants' position that the FARC and dissident groups have refused to demobilize, in spite of the 2016 Peace Agreement. The evidence in the April 16, 2021 NDP indicates that the FARC dissidents started to operate during the 2016 peace negotiations, refusing to demobilize "to keep the sources of income of illicit activities such as coca cultivation and illegal mining". In spite of the Peace Agreement, paramilitary groups continue to operate, and Colombia is "still challenged" by "armed non-state actors: the paramilitary successor groups". Evidence in the NDP further indicates that the Peace Agreement remains a "precarious situation" marked by "anxieties and an increased sense of insecurity", and that "the levels of violence in Colombia are sufficient for the situation to still be considered as a conflict".

[25] While the RAD's decision includes footnotes citing to items in the April 16, 2021 NDP that support its finding that the FARC has diminished in size, it failed to engage with the other country condition documentation in the April 16, 2021 NDP that contradicts this finding and reveals that the risk of violence from the FARC and dissident groups remains high in Colombia. The RAD is required to assess the country condition evidence that contradicts its findings and to <u>explain</u> why that evidence did not alter its conclusion. The RAD did acknowledge the evidence highlighted by the Applicants, yet its decision fails to analyze it. Since the RAD clearly

consulted the April 16, 2021 NDP, it was under an obligation to address and meaningfully assess the evidence in the NDP that contradicted its finding, and to explain why this evidence did not alter its conclusion that the FARC's influence has diminished in Colombia (*Cetinkaya* at para 66; *Adeoye* at para 13, citing *Kovacs v Canada (Citizenship and Immigration),* 2010 FC 1003 at paras 57-61 and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration),* 1998 CanLII 8667 (FC) at paras 15-17). As rightly noted by counsel for the Applicants during the hearing, the RAD's review of the contradictory evidence was perfunctory at best.

[26] At paragraph 16 of *Vargas v Canada (Citizenship and Immigration),* 2011 FC 543, this Court affirms: "It is expected that significant evidence is to be specified, analyzed and considered, especially when it appears to be in marked contradiction to a finding of the Board". In this case, the RAD's failure to adequately specify, analyze and consider the contradictory evidence renders its decision unreasonable. The RAD's conclusion does not flow from the analysis undertaken (*Vavilov* at para 103).

[27] Having determined that the RAD erred in its assessment of the country condition evidence, I do not find it necessary to address the remainder of the issues raised by the Applicants.

V. **Conclusion**

[28] For the reasons above, I find that the RAD's erroneous assessment of the country condition evidence renders its decision unreasonable. Accordingly, this application for judicial review is granted. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-5443-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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