

Federal Court



Cour fédérale

Date: 20220803

Docket: IMM-7615-21

Citation: 2022 FC 1160

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 3, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**WILSON LOPEZ GOMEZ
MARTHA PATRICIA BENITEZ PARRA
VALENTINA LOPEZ BENITEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, Wilson Lopez Gomez, his wife, Martha Patricia Benitez Parra, and their daughter, Valentina Lopez Benitez, are all citizens of Colombia. They are seeking judicial review of the decision rendered on September 13, 2021, by the Refugee Appeal Division (RAD) affirming the decision of the Refugee Protection Division (RPD) that the applicants are not

refugees within the meaning of the Convention, as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA), nor persons in need of protection, and that they had an internal flight alternative (IFA) in Barranquilla and Cartagena.

[2] Pursuant to this application for a remedy, the Court is asked to decide whether it was reasonable for the RAD to dismiss the applicant's appeal.

[3] The RAD did not make any adverse findings regarding the applicants' credibility. The key issue for the RAD was whether there was an internal flight alternative.

[4] For the reasons that follow, I find the RAD's decision in this regard to be reasonable. Consequently, I dismiss this application for judicial review.

I. The facts

[5] The principal applicant, Mr. Lopez Gomez, and his wife owned a business in Bogotá before they arrived in Canada in 2018.

[6] According to Mr. Lopez Gomez, he was intercepted at his home on May 9, 2016, by two men sent by the National Liberation Army or Ejército de Liberación Nacional (ELN) in Casanare. He was told that he had to pay 10% of the profits from his past sales, plus a monthly amount of 15% of his future sales and that if he refused to give them what they wanted, they would kill him and his family members.

[7] Mr. Lopez Gomez filed a complaint with the Office of the Attorney General of the Nation. He subsequently paid the ELN 30 million pesos.

[8] Starting in July 2016, the applicants made return trips between the United States and Colombia, returning twice to their country of origin.

[9] On April 30, 2017, the ELN in Casanare demanded payment of 20 million pesos. On May 8, 2017, Mr. Lopez Gomez was intercepted and beaten by three men who reminded him to pay the requested amount.

[10] In October 2017, the applicants applied for a visa to Canada, which was issued on November 6, 2017. Mr. Lopez Gomez left Colombia on July 19, 2018, and made a claim for refugee protection in Canada under section 96 and subsection 97(1) of IRPA. His wife and daughter joined him on August 1, 2018. His wife and daughter based their claim for refugee protection on Mr. Lopez Gomez's allegations.

II. The RPD's decision

[11] In a comprehensive decision, the RPD denied the applicants' claim for refugee protection. Because the claimants' allegations were not linked to any of the five Convention grounds, the RPD reviewed the claim for refugee protection under subsection 97(1) of the IRPA.

[12] By applying the two-step test established by the Federal Court of Appeal in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) [*Rasaratnam*], the RPD found that Barranquilla and Cartagena were viable IFAs for the applicants in Colombia.

[13] For the purposes of this assessment, the RPD considered all the evidence, including the applicants' testimony, the documents filed as exhibits, the submissions of their counsel, as well as the objective evidence.

[14] The RPD was of the view that Mr. Lopez Gomez did not demonstrate, on a balance of probabilities, the first aspect of security, namely the ELN's interest in finding them in Barranquilla and Cartagena. It found that the proposed IFAs were safe places for applicants because (1) both cities were located more than 1,000 kilometres from Bogotá; (2) the applicants' family had no problems in Bogotá; (3) Mr. Lopez Gomez was last in contact with the ELN on June 30, 2018; (4) the ELN did not attempt to contact the applicant or his family since June 30, 2018; (5) Mr. Lopez Gomez failed to provide an objective basis for his claims that the ELN would want to find him in the proposed IFA because it would be "a challenge" for them; (6) the documentary evidence indicated that the ELN operates independently; and (7) the interactive map of "Colombia's illegal armed groups (maps)" seemed to indicate that the ELN does not have a presence in Barranquilla and Cartagena.

[15] In light of the second part of the IFA test, the applicant did not submit any arguments to challenge the RPD's finding that, objectively, Barranquilla and Cartagena were reasonable places where they could relocate.

III. The RAD's decision

[16] The applicants appealed to the RAD, arguing that the RPD erred in finding that there was an IFA.

[17] The key issue for the RAD was whether there was an internal flight alternative. The RAD was of the view that the threat from the ELN in Casanare was related to the fact that Mr. Lopez Gomez and his wife owned a business and were vulnerable to extortion. According to the RAD, the applicants were not at serious risk of persecution in Barranquilla and Cartagena, and it would not be unreasonable for them to seek refuge there.

[18] Based on the first part of the test, the RAD found relevant elements showing that the ELN in Casanare was not motivated or interested in finding the applicants, inter alia:

-although the ELN warned Mr. Lopez Gomez that it would go after his family if he did not pay the required amount, the ELN did not bother the members of his family who remained in Colombia;

-the applicants were targeted because they owned a business and the ELN in Casanare wanted to extort money from them. However, the applicants abandoned their business in 2018. The reason for which the ELN in Casanare targeted them no longer existed.

[19] The RAD found that given the independent nature of ELN factions, the applicants did not establish, on a balance of probabilities, that the ELN in Casanare would find them in the

proposed IFAs. Although it acknowledged that the ELN is an armed group that can attack civilians to advance its interests and has a network that included several cities in Colombia, the RAD found that the applicants did not submit any evidence that the ELN would follow through on its threat, and did not explain why a group of guerrillas in conflict with the central government would look for them in the proposed IFAs. Also, they did not explain how the ELN would find out if they returned to Colombia.

IV. Analysis

[20] The applicants alleged that the RAD erred in finding that they had an IFA. According to them, the RAD did not consider the fact that there were still dissident groups in Colombia and ignored the evidence regarding the danger that the applicants still faced in Colombia. The applicants argued that the evidence in the record showed that there were dissident forces in northern Colombia and Cartagena, and that this evidence was ignored.

[21] I disagree.

[22] The applicable standard of review in this case is that of reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*].

[23] The main issue in this case is the reasonableness of the assessment of the findings of fact made by the RAD. With respect to the findings of fact that were assessed, the Supreme Court of Canada held that a reviewing court may only intervene in “exceptional” circumstances: *Vavilov*

at paragraphs 91 to 92. A new assessment of the evidence by the reviewing court is therefore excluded.

[24] In this case, the applicants are essentially submitting the same grounds that they relied on before the RAD. After having reviewed the decision and the evidence, I find that the RAD's decision is reasonable and clearly explained, and therefore there is no need to intervene.

[25] It was up to the applicants to persuade the RPD and the RAD that, on a balance of probabilities, an IFA either did not exist or was unreasonable in the circumstances (*Rasaratnam; Gallo Farias v. Canada (Citizenship and Immigration)*, 2008 FC 1035 at paragraph 34).

[26] Further, the onus was on the applicants to provide sufficient credible evidence showing that they still faced a risk, in the proposed IFA, from their agent of persecution: *Berhani v. Canada (Citizenship and Immigration)* 2021 FC 1007 at paragraph 32.

[27] However, the RAD's reasoning clearly indicated that the applicants did not submit any evidence establishing that the ELN would have been motivated or interested in finding them in the proposed IFAs. In the absence of evidence of such motivation, the applicants' allegations that the ELN had the ability to pursue them were irrelevant.

[28] The applicants cited several excerpts from the National Documentation Package to argue that the ELN was indeed present in northern Colombia and that the various fronts of the ELN communicated with one another. Nevertheless, the fact that a persecutor is able to pursue an

individual is not decisive evidence that he is motivated to do so: *Leon v. Canada (Citizenship and Immigration)*, 2020 FC 428 at paragraph 13.

[29] For the sake of clarity, I would add that Mr. Lopez Gomez filed an affidavit in support of the application for judicial review. In paragraph 13 he stated that [TRANSLATION] “(the guerrillas told me that I have become a military target for them. It is well known that they will never leave me alone in Colombia”. Mr. Lopez Gomez said he testified to this effect during the hearing before the RPD but that the RPD decision made no mention of it. The applicants argued that it was incorrect to argue that a group like the ELN would forget about a family they targeted “as a military objective in the past.” The problem here is that this is a new argument that could and should have been raised before the RAD. However, the applicants did not do so. Therefore, this Court cannot consider it today.

[30] Finally, the applicants alleged that the RAD’s decision violated their right to fundamental justice, as set out in section 7 of the *Canadian Charter of Rights and Freedoms* (the Charter), Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (UK), 1982*, c 11. Mr. Lopez Gomez argued that his removal to Colombia, where his life and that of his family members were threatened, would violate his right to life and security of person, as well as the right not to be subject or cruel and unusual treatment or punishment, guaranteed by sections 7 and 12 of the Charter. However, these arguments are premature and inadmissible at this stage, while the applicants are not in imminent danger of removal to their country: *Hernandez Rodriguez v. Canada (Citizenship and Immigration)*, 2012 FC 1331 at paragraph 28.

[31] In view of the foregoing, I find that the RAD's decision has the hallmarks of a reasonable decision, namely justification, transparency and intelligibility.

V. Conclusion

[32] The application for judicial review is dismissed.

[33] Neither party proposed a question for certification.

JUDGMENT in docket IMM-7615-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question to be certified.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: WILSON LOPEZ GOMEZ, MARTHA PATRICIA
BENITEZ PARRA, VALENTINA LOPEZ BENITEZ
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VIA VIDEO CONFERENCE

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JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: AUGUST 3, 2022

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