Federal Court   Cour fédérale

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 4, 2023

PRESENT: The Associate Chief Justice Gagné

 BETWEEN:

**RONALD FERNANDO ORREGO SUAREZ
NATALIA SALDARRIAGA
JUANITA ORREGO SALDARRIAGA
JUAN JOSE ORREGO SALDARRIAGA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1]   The applicants are members of a Colombian family who arrived in Canada in May 2018

after spending more than four years in the United States. They claimed refugee protection,

alleging that they feared persecution by members of a criminal gang in their own country.

[2]   The Refugee Appeal Division [RAD] confirmed the decision of the Refugee Protection

Division [RPD] and rejected the applicants' claim for refugee protection on the grounds that they

had an internal flight alternative in Bogotá, Barranquilla or Cartagena.

[3]   For the following reasons, this application for judicial review is dismissed.

I.   <u>Facts</u>

[4]   The facts recounted here can be found in the Basis of Claim Form of the applicants and in

the testimony they gave before the RPD.

[5]   In 2003, the principal applicant and his brother rented an apartment to an individual

nicknamed Raton. They later learned that this person was a member of the Banda Calatrava, the

main criminal group in the Calatrava district of Medellín. Raton subsequently insisted that the

principal applicant join the gang.

[6]   In 2011, Raton allegedly threatened to kill him if he did not join them; shortly afterwards,

Raton was jailed, and he has been behind bars ever since.

[7]   In November 2013, members of the gang went to the principal applicant's place of work

to tell him that Raton was looking for him in order to obtain money and confidential information

about some of the applicant's clients. When he refused, two individuals linked to Raton attacked

him and threatened to kill him.

[8]   The principal applicant left Colombia for the United States in January 2014.

[9]   In May 2014, two armed individuals allegedly pointed their guns at his wife, who was still living in Colombia; they told her that they belonged to the Clan del Golfo, one of Colombia's most powerful cartels, and that their boss, Raton, was looking for the principal applicant.

[10]   She and her two children left in September 2014 to join the principal applicant in the United States.

[11]   In February 2018, two individuals allegedly went to the home of one of the principal applicant's aunts. They told her that, since the principal applicant had betrayed the Clan del Golfo, they were waiting and ready to punish him upon his return.

[12]   The applicants crossed the Canada–United States border in May 2018 and claimed refugee protection in Canada.

II.   Impugned decision

[13]   The RAD dismissed the appeal against the RPD's negative decision because, in its opinion, the applicants had failed to demonstrate that there was a serious possibility that they would be subjected to a risk to their lives in one of the three cities proposed as an internal flight alternative.

[14]   First, the RAD concluded that the objective documentary evidence did not establish a link between the Banda Calatrava and the Clan del Golfo, even though the individuals in the last two incidents described by the applicants—which allegedly occurred after the principal applicant's departure—presented themselves as members of the Clan del Golfo.

[15]   Second, the RAD was of the opinion that members of the local gang in the Calatrava district of Medellín had neither the interest nor the ability to track down the applicants in the Colombian cities proposed as internal flight alternatives, especially since the applicants had not received any new threats since February 2018.

III.   Issues and standard of review

[16]   The applicants are challenging only the RAD's conclusions on the first prong of the internal flight alternative test, namely whether they would face a serious risk of persecution or a serious risk of harm if they were to relocate to the proposed cities. Accordingly, this application for judicial review raises the following two issues:

    A.   *Did the RAD err in concluding that the evidence showed no link between the Banda Calatrava and the Clan del Golfo?*

    B.   *Did the RAD place too high a burden on the applicants in analyzing their prospective risk?*

[17]   The standard of review to be applied by the Court in considering these issues is reasonableness, according to the presumption in *Canada (Minister of Citizenship and*

Immigration) v Vavilov, 2019 SCC 65 at paras 11, 16–17, 25, as none of the circumstances

justifying a departure from that presumption apply in this case.

[18]   A reasonable decision is one that is transparent, intelligible and justified in relation to the

relevant factual and legal constraints (*Vavilov* at para 99).

IV.   Analysis

A.   *Did the RAD err in concluding that the evidence showed no link between the Banda Calatrava and the Clan del Golfo?*

[19]   The applicants submit that the RAD's conclusion that the Banda Calatrava is not

affiliated with the Clan del Golfo is unreasonable because the individuals who threatened the

wife and the aunt of the principal applicant identified themselves as members of that group.

Since their testimony was found to be credible, there was no reason to question this fact.

[20]   With respect, I disagree. The applicants are confusing credibility with sufficiency of

evidence. The fact that testimony is found to be credible is not always sufficient to conclude that

an applicant's burden has been met on a balance of probabilities (*Huang v Canada (Citizenship

and Immigration)*, 2018 FC 940, at para 43).

[21]   The RAD considered the applicants' testimony but concluded that the mere fact that

individuals had claimed to belong to a more powerful organization when they were making their

threats was not sufficient to counter the objective documentary evidence.

[22]   The documentary evidence shows that the Clan del Golfo is composed of demobilized former paramilitary members, former fighters from the Autodefensas Unidas de Colombia (AUC) and former members of the Revolutionary Armed Forces of Colombia (FARC). The Banda Calatrava is more of a neighbourhood criminal gang, and there is no indication that its members, with whom the principal applicant grew up, are former paramilitary or FARC members.

[23]   Moreover, the documentary evidence indicates that the Clan del Golfo targets the police, social leaders, human rights defenders, Afro-Colombians and Indigenous people. At least some of its members wear uniforms, which was not the case for the individuals who threatened applicants.

[24]   In my view, it was open to the RAD to prefer this objective evidence and to find that the applicants' evidence, although credible, was insufficient to establish a link between the two criminal organizations. This is a rational conclusion based on the evidence before the RAD.

B.   *Did the RAD place too high a burden on the applicants in analyzing their prospective risk?*

[25]   The applicants argue that the RAD placed too high a burden on them in its assessment of the ability and motivation of the agents of persecution to search for them in the proposed cities. The RAD allegedly applied the balance of probabilities standard, whereas a fear of harm may justify refugee protection even if there is less than a 50% probability that it will occur. In support

of this argument, the applicants cite the reasons of Justice Grammond in *Gomez Dominguez v*

Canada (Citizenship and Immigration), 2020 FC 1098 at para 29:

> Future events are not proven, but feared. This fear justifies refugee
> protection even if the probability of the event occurring is less than
> 50%.

[26]   The RAD allegedly made the same error when it concluded, at paragraph 28 of its

reasons, that "the RPD's conclusion that the appellant failed to demonstrate, on a balance of

probabilities, that his agents of harm currently have an interest in him to the point of searching

for him in the proposed IFAs is entirely correct".

[27]   In the alternative, the applicants argue that the RAD cannot, without sufficient evidence,

conclude that an internal flight alternative exists solely because the applicants have failed to meet

their burden of proof.

[28]   Again, I cannot accept the applicants' position.

[29]   When the RAD's reasons are analysed as a whole, I do not believe the RAD placed too

high a burden of proof on the applicants. It weighed the evidence on a balance of probabilities to

determine whether there was a serious risk of harm. A distinction must be made between the

burden of proof with respect to a fact in support of the motivation and means of the agent of

persecution, and the standard to be considered in assessing the risk faced by a refugee protection

claimant (*Bolivar Cuellar v Canada (Citizenship and Immigration)*, 2022 FC 641, at paras 14–

20). The RAD did not err in applying the balance of probabilities burden of proof to assess

whether a fact is more likely than not to be true.

[30]   In *Rasaratnam v Canada (Minister of Employment and Immigration)* (CA), 1991 CanLII

13517 (FCA), [1992] 1 FC 706 at 710, the Federal Court of Appeal articulated this distinction in

clear terms:

> … the Board must be satisfied on a balance of probabilities that
> there is no serious possibility of the claimant being persecuted in
> the part of the country to which it finds an IFA exists.

[31]   The RAD concluded, on a balance of probabilities, that the applicants were not being

pursued by a national armed group, namely the Clan del Golfo. It also concluded that they had

failed to show that the neighbourhood criminal gang, with which the applicant had come into

contact twice, in 2014 and 2018, had the ability and interest to search for them in the cities

proposed as internal flight alternatives. Moreover, no other relatives of the applicants have been

approached by the agents of persecution since 2018, and the only events central to this refugee

protection claim occurred in the neighbourhood where the applicants were living in Medellín.

[32]   In light of the evidence, it was reasonable for the RAD to conclude that the appellants

had failed to establish that they would face a serious possibility of persecution or be subjected to

a risk to their lives or to a risk of cruel and unusual treatment or punishment in one of the cities

proposed as an internal flight alternative.

[33]   Finally, I am of the view that this case is distinguishable from *Gomez Dominguez*, where

the applicants proved, on a balance of probabilities, that the FARC had an unusual motivation to

target them, as well as the capacity to carry out their plan. There is simply no such evidence in

this case.

V.   Conclusion

[34]   This application for judicial review is dismissed. It was open to the RAD not to be

satisfied with the applicants' evidence of a link between the national criminal organization and

the neighbourhood gang.

[35]   Moreover, the RAD's reasons, taken as a whole, satisfy me that it applied the correct

legal test in assessing prospective risk and that it applied the appropriate burden of proof in

considering the factual issues before it.

[36]   The parties did not propose any question of general importance for certification, and no

such question arises from the facts of this case.

<u>JUDGMENT in IMM-8420-21</u>

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

3. Without costs.

"Jocelyne Gagné"
Associate Chief Justice

Certified true translation
Vincent Mar

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