

Federal Court



Cour fédérale

Date: 20230118

Docket: IMM-1352-22

Citation: 2023 FC 69

Toronto, Ontario, January 18, 2023

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

JESUS DAVID TORRES ARAQUE

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a January 20, 2022 decision [Decision] of the Refugee Appeal Division [RAD], refusing the Applicant's claim and determining that he is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The determinative issue was the availability of an internal flight alternative [IFA].

[2] For the reasons set out further below, the application is allowed.

I. Background

[3] The Applicant is a citizen of Colombia who alleges that he and his family face a serious forward-looking risk at the hands of Los Urabeños [LU] and the National Liberation Army (Ejército de Liberación Nacional) [ELN] as both groups sought to extort money from them between 2018 and January 2020.

[4] In July 2018, the Applicant's father paid money to LU, but allegedly received further threatening calls in October 2018, December 2018, and February 2019.

[5] The Applicant left Colombia in January 2019 and made a refugee claim while his family relocated to another home in Colombia. In March 2019, the family began receiving calls from the ELN and in January 2020, the Applicant's parents received a threatening note from the ELN, demanding a war tax payment. They then relocated to Barranquilla where they began receiving calls from unknown numbers.

[6] The Applicant's sisters fled on February 19, 2020 and his parents fled on October 2, 2020. They made refugee claims, which were joined with the claim of the Applicant.

[7] On July 2, 2021, the Refugee Protection Division [RPD] rejected the Applicant's claim on the basis of an IFA in either Barranquilla or Tunja. The RPD found that neither LU nor the ELN had a presence in the IFA locations and would not have the means or motivation to pursue the Applicant or his family.

[8] The Applicant appealed to the RAD. On January 20, 2022, the RAD issued the Decision, confirming the RPD's decision and finding that the Applicant had a viable IFA in Barranquilla.

[9] Relying on the April 16, 2021 National Documentation Package [NDP] for Colombia, the RAD found that neither LU nor the ELN had a presence in Barranquilla and that neither would be motivated to pursue the Applicant there. The RAD found that the evidence did not establish that the ELN had contacted the Applicant's family while they resided in Barranquilla or that they had received any threats while residing there. Similarly, the RAD was not satisfied that LU were present in Barranquilla or were motivated to pursue the Applicant's family in Barranquilla.

II. Issues and Standard of Review

[10] The Applicant raises the following two issues:

- A. Did the RAD err by failing to rely on the most recent version of the NDP?
- B. Did the RAD err when conducting its IFA analysis?

[11] The standard of review is reasonableness. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16-17.

[12] A reasonable decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at

paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

[13] This Court has found that the failure of the RAD to consider the most up-to-date NDP may constitute a reviewable error where the failure leads to the tribunal failing to consider and comment on evidence that contradicts its findings: *Canada (Citizenship and Immigration) v Kaur*, 2013 FC 189 at para 30; *Saalim v Canada (Citizenship and Immigration)*, 2015 FC 841 at para 26.

[14] The Applicant asserts that documentation added to the August 31, 2021 NDP establishes that both LU and the ELN have a current presence in Barranquilla and that both groups have the means to pursue and locate targets throughout the country. He contends that this documentation contradicts the core findings of the RAD underpinning its IFA analysis.

[15] The Applicant points to three pieces of information:

- a) The map at item 1.2 of the NDP that displays LU's areas of control.
- b) A July 29, 2021 Request for Information Request [RIR], which states that LU "assumed almost absolute control of the organized criminal activity along the

Pacific and Caribbean coasts” where Barranquilla is located, and which states that the ELN has a presence in the Atlántico Department where Barranquilla is found.

- c) An additional RIR dated August 13, 2021, which states under the subsection titled “Methods and Ability of These Groups of Track Targets” that sources indicate that the criminal groups are “definitely” able to track targeted individuals, mainly through “‘word of mouth’ through country-wide networks or ‘urban collaborators’” but also track their victims through informants “across the country”. The ELN is noted as being even “more sophisticated” and having “more urban contacts”.

[16] The Respondent argues that the asserted updates do not contradict the RAD’s IFA finding or demonstrate unreasonable fact-finding. It contends that the overriding issue is not whether the groups have a presence in Barranquilla, but whether they will leverage any presence and be interested and motivated to target the Applicant. It asserts that the evidence in this case does not support a finding that there is motivation to pursue the Applicant or that the Applicant is at risk as the RAD found.

[17] I agree that the RAD’s determination on IFA turned on its finding that the evidence failed to show that either the ELN or LU were motivated to find the Applicant and his family in Barranquilla or to locate them there. However, the analysis of the RAD included not only consideration of the Applicant’s evidence and whether there were continued threats or attempts to find the Applicant’s family while they were in Barranquilla, but also on the country condition evidence and the presence and activity of the ELN and LU in Barranquilla.

[18] In the Decision, the RAD reviewed the country condition evidence and considered whether the ELN and LU were present and active in Barranquilla. It noted that the RPD's decision referenced the possible presence of the ELN in Barranquilla in speculative terms; however, it rejected the notion that the ELN was present in Barranquilla, relying on the July 20, 2019 Colombia Reports Map found at NDP Item 1.2. The RAD further found that the country evidence did not show that LU was exercising its "country-wide" reach to assert its presence in Barranquilla. While the May 2020 RIR described LU as being present in the Atlántico Province within which Barranquilla is contained, the RAD did not consider this sufficient to show that the criminal gang was present or active in Barranquilla specifically.

[19] The RAD's reasons indicate that it considered NDP Item 1.2 to be relevant to its determinations. While the Respondent argues that there is no noticeable change in the map provided at NDP Item 1.2 arising from the August 31, 2021 update, I am unable to make that determination based on the record before me. On the basis of the information before me, I cannot conclude that the updates made in August 31, 2021, which relate to the presence, control and activity of the ELN and LU would have been immaterial to the RAD's analysis.

[20] Further, the RAD's analysis of the country evidence is brief and references few provisions of the NDP (Items 1.2 and 1.8 for ELN, and Items 7.15 and 7.28 for LU).

[21] As noted by the Applicant, there are further country documents and items from the NDP that have been recognized as being relevant to a determination of the degree of control and

presence of these groups in Barranquilla, including the UNHCR Guidelines: *Montano Alarcon v Canada (Citizenship and Immigration)*, 2022 FC 395 at paras 48-55.

[22] In my view, it is insufficient for the RAD to conclude that the ELN and LU do not have a presence in Barranquilla without providing clear justification of the basis for that conclusion, including consideration of the critical contradictory country documents: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 157 FTR 35 at para 17; *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at paras 26-32. As highlighted at paragraph 15 of *Monsalve v Canada (Citizenship and Immigration)*, 2022 FC 4, the concepts of “presence” and “influence” of the agents of persecution are not to be conflated; an organization can have reach and influence without a physical presence.

[23] For these reasons, the application for judicial review will be allowed, the Decision set aside, and the matter referred back for redetermination by a different member of the RAD.

[24] None of the parties raised a question for certification and I agree that none arises in this case.

JUDGMENT IN IMM-1352-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, the Decision is set aside, and the matter is referred back for redetermination by a different member of the Refugee Appeal Division.
2. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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OF CITIZENSHIP AND IMMIGRATION

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