

Federal Court



Cour fédérale

**Date: 20230131**

**Docket: IMM-1465-22**

**Citation: 2023 FC 139**

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

**Montréal, Quebec, January 31, 2023**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**JAMES ANDRES PASTRANA ACOSTA,  
LUISA FERNANDA RODRIGUEZ CAJIGAS  
SANTIAGO PASTRANA RODRIGUEZ AND  
DANIELA PASTRANA RODRIGUEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Decision delivered from the bench at Montréal, Quebec, on January 30, 2023)**

[1] The applicants are citizens of Colombia. The principal applicant, Mr. Pastrana, worked in the transportation industry. He alleges that, since 2008, he has been the victim of a criminal

organization known as the *cartel de la chatarrización*, which was responsible for the theft of his truck in 2008, threats that prompted him to sell his truck at a derisory price in 2014, and extortion between 2014 and 2017, the year he left Colombia.

[2] Both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board denied refugee protection to the applicants. Essentially, both the RPD and the RAD concluded, on slightly different grounds, that Mr. Pastrana had failed to show that the cartel was responsible for the crimes committed against him. They also concluded that Mr. Pastrana had an internal flight alternative [IFA] in other Colombian cities, since he was not being pursued by a group that operates nationwide.

[3] The applicants are now seeking judicial review of the RAD's decision. They argue that the RAD erred in analyzing some aspects of the evidence concerning the acts allegedly committed against Mr. Pastrana and that the IFA analysis is flawed.

[4] On judicial review, the Court rarely interferes with the decision maker's factual findings: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 at paragraph 125.

[5] I believe it was reasonable for the RAD, on the basis of the omissions and contradictions it found in Mr. Pastrana's testimony, to question his credibility and the nexus he sought to establish between the cartel and the acts against him. It was significant that his confinement was omitted from both the Basis of Claim Form [BOC Form] and the complaint to the public

prosecutor in December 2017. Having read the transcript of the hearing before the RPD, I believe that the RAD could also have relied on the contradiction between Mr. Pastrana's testimony and the statements in the BOC Form regarding his monthly extortion payments and the fact that the payments were not mentioned in the complaint to the public prosecutor. Therefore, even if the RAD did misunderstand the meaning of the verb *entregar* used by Mr. Pastrana in his testimony, the error did not affect the outcome because of the other problems I have mentioned.

[6] The applicants also submit that the RAD should have assessed the IFA on the assumption that Mr. Pastrana was being pursued by the cartel. The applicants are confusing two types of situations that must be distinguished.

[7] The first scenario is where the RAD rejects a claim for refugee protection solely on the basis of an IFA or presents the IFA as an alternative ground for rejecting the claim. In analyzing the IFA, the RAD must then take for granted the fear of persecution alleged by the claimant: *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968, [2020] 4 FCR 617 at paragraph 50. In other words, the RAD is telling the claimant that, even assuming that the claimant's story is entirely true, the claimant will be safe in another part of their country.

[8] The second scenario is where the RAD analyzes the claimant's allegations and concludes that they are founded in part but do not have the scope that the claimant is giving them. The RAD does not assume that the claimant's story is true. Rather, it examines the story in detail. The RAD must then analyze the IFA on the basis of its own findings regarding fear and not on the basis of the claimant's allegations.

[9] Mr. Pastrana's case falls under the second category. The RAD found that he had been the victim of extortion but that there was no nexus between his situation and a nationwide criminal organization, whether the cartel or another organization (RAD's decision at paragraph 38). The RAD was therefore not required to assess the IFA on the assumption that the cartel or any other major organization would be looking for Mr. Pastrana. Moreover, the RAD's conclusion regarding the testimony of a friend of Mr. Pastrana's is reasonable.

[10] For these reasons, the application for judicial review is dismissed. No question is certified.

**JUDGMENT in IMM-1465-22**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

No question is certified.

“Sébastien Grammond”

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1465-22

**STYLE OF CAUSE:** JAMES ANDRES PASTRANA ACOSTA, LUISA  
FERNANDA RODRIGUEZ CAJIGAS v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JANUARY 30, 2023

**JUDGMENT AND REASONS:** GRAMMOND J

**DATED:** JANUARY 31, 2023

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