

Federal Court



Cour fédérale

Date: 20230417

Docket: IMM-5620-22

Citation: 2023 FC 558

Ottawa, Ontario, April 17, 2023

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**JAIRO ALONSO PAZ ZAPATA
YARA PATRICIA ROJAS MOLINA
SARA SOFIA PAZ ROJAS
LAURA SOFIA PAZ ROJAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Jairo Alonso Paz Zapata, the Principal Applicant [PA], and his wife, the Associate Applicant [AA], sought refugee status in Canada with their two minor children in 2018. The Refugee Protection Division [RPD] found them not to be refugees or persons in need of

protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] on the basis that they had a viable Internal Flight Alternative [IFA] in their country of origin, Colombia.

[2] The Applicants apply under subsection 72(1) of the IRPA for judicial review of the RPD's May 20, 2022 decision. They argue the RPD erred by imposing an elevated standard of proof upon them when considering the viability of the proposed IFA, misapprehended the evidence, and unreasonably drew illogical inferences from the evidence. The Respondent submits the decision is reasonable.

[3] I am not persuaded that the RPD committed any error warranting the Court's intervention or that the decision is unreasonable. The Application is dismissed for the reasons that follow.

II. Background

[4] The Applicants lived in Jamundí in the Colombian Department of Valle del Cauca. The PA is a trained electrical engineer who operated his own business.

[5] In 2011, the PA began to volunteer with the Movimiento Politico Liberal Avance Social [MPLAS], a political organization that is part of the Colombian Liberal Party. He reports that in June 2018, he received a call from someone claiming to be a member of the Ejército de Liberación Nacional (ELN), threatening to kill him if he did not help recruit members to the ELN. He and the AA filed a complaint with police/prosecutors.

[6] In August 2018, the PA reports that while driving he was intercepted at gunpoint and threatened with death if he did not provide a list of recruits. The PA made another complaint to officials and went into hiding at a friend's home in the city of Pereira, four hours away. The AA then received a threatening phone call, which was again reported, but police refused to assist because the threat was made by phone. While in Pereira, the PA again had a gun pointed at him. A further complaint was made, but there was no police follow up.

[7] The Applicants travelled to the United States in late August 2018 before entering Canada. The Canadian Border Services Agency [CBSA] determined that the Applicants were excepted from the Safe Third Country Agreement and able to make a claim for protection in Canada (paragraphs 101(1)(e) and 102(1)(c) of IRPA, paragraph 159.5(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]).

[8] Subsequent to their arrival in Canada, the PA reports his colleague then received strange calls in November 2018 asking for his location. On January 13, 2021, the PA dissolved his company.

III. Decision under review

[9] The RPD first identified some of the inconsistencies in the Applicants' narrative but found them insufficient to justify an adverse credibility finding. The RPD accepted the Applicants' reported fear of the ELN based on the PA's political involvement and then assessed the viability of an IFA in Santa Marta, noting the area was accessible by way of an international airport.

[10] The RPD set out the two prongs of the IFA test, citing *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA).

[11] In considering the first prong of the test, the RPD acknowledged the Applicants' submissions that the ELN have a presence throughout Colombia and that regardless of where they go they would be at risk. The RPD noted that in assessing risk in the proposed IFA it was required to consider whether the ELN, as the reported agent of persecution, had both the motivation and the means to pursue the Applicants within the IFA.

[12] The RPD first addressed the question of motivation, noting the ELN: 1) had not attempted to locate the PA through family members in Colombia; 2) had not attempted to locate the PA through his business, because the evidence was insufficient to establish that calls to the business from unknown callers asking for the PA were ELN attempts to locate him; and 3) had not tried to locate the PA through the MPLAS. The RPD also noted the PA lacked a prominent profile, was not committed to political activism, was not a military target, and that his profession did not heighten his risk of being pursued by the ELN in Santa Marta. The RPD concluded the evidence was insufficient to establish on a balance of probabilities that the ELN were motivated to locate the Applicants in the IFA.

[13] The RPD then turned to the question of whether the ELN had the means to locate the Applicants in the IFA. Citing the documentary evidence, the RPD found that there was evidence of some ELN presence in the Department of Magdalena but little evidence indicating an ELN presence in Santa Marta. The RPD addressed the Applicants submissions that the ELN

collaborates with other armed groups with a presence in Santa Marta but noted the main armed group in Santa Marta was one of Colombia's biggest organized crime groups, the Gulf Clan, which was involved in territorial control disputes with the ELN. The RPD acknowledged the evidence of ongoing dialogue between ELN groups and an expansion of ELN activity in other parts of the country but found this did not demonstrate a means of locating the Applicants in the IFA, because the objective evidence simply did not support an ELN presence in Santa Marta. The RPD concluded there was insufficient evidence to establish on a balance of probabilities that the ELN has the means to locate the Applicants in Santa Marta. The RPD found the Applicants had failed to establish a serious possibility of persecution or risk of mistreatment on a balance of probabilities within the IFA.

[14] In assessing the second prong of the IFA test, the RPD found there was insufficient evidence that relocating to Santa Marta would be unduly harsh or objectively unreasonable, in light of the available resources in the city and the adult Applicants' education and employment history.

IV. Issues and Standard of Review

[15] The Applicants submit the RPD's decision is unreasonable, alleging a number of errors. I have framed the issues as follows:

- A. The RPD erred by imposing an elevated standard of proof when considering the viability of the proposed IFA.
- B. The RPD's decision is unreasonable because:

- i. it misapprehended the evidence and drew illogical inferences from the evidence in conducting its means and motivation analysis; and
- ii. it failed to assess forward-looking risk based on the PA's perceived profile.

[16] The RPD's decision is to be reviewed on the reasonableness standard. A reasonable decision is one that falls within the range of acceptable and rational outcomes supported by the applicable law and evidence, and is justified, transparent, and intelligible (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

V. Analysis

A. *The RPD did not impose an elevated standard of proof*

[17] The Applicants argue the RPD required they demonstrate with certainty that the ELN could and would locate them within the IFA. In advancing this argument, the Applicants rely on a single statement in the decision where the RPD summarizes its task as assessing whether the agents of persecution have both the motivation and means to pursue the claimants in the IFA. There is no merit to this submission.

[18] Isolated statements divorced from context are not helpful in assessing whether an administrative decision maker has erred. Decisions are to be read and reviewed holistically, isolated statements must be considered within their broader context. Adopting this approach, it is clear that the RPD both understood and applied the appropriate standard of proof in assessing the

first prong of the IFA test – did the evidence establish, on a balance of probabilities, a serious possibility of persecution or risk to life in the IFA.

B. *The RPD's decision is reasonable*

(1) The RPD's conclusions were not inconsistent with the evidence

[19] The Applicants argue the RPD's conclusion that it was improbable that the ELN had the means to locate them in the IFA was inconsistent with evidence the RPD accepted. In effect, the Applicants submit the RPD's conclusion is not supported by a logical chain of analysis. I disagree.

[20] In conducting its analysis, the RPD engaged in a thorough review of the objective documentary evidence, and in turn grappled with the evidence the Applicants have cited in their submissions. The RPD recognized that there was some evidence indicating an ELN presence in the Department of Magdalena in which the IFA was located. The RPD also noted that only one of thirty municipalities in the Department reported an ELN presence and that no such presence had been reported in Santa Marta, the IFA. The RPD also acknowledged evidence that ELN groups are in constant dialogue, that the ELN presence is expanding in different parts of Colombia, and that the ELN is in a position to monitor targets across Colombia, but found this evidence to be of little assistance where an ELN presence had not been established.

[21] The RPD's analysis was linked to and consistent with the documentary evidence. The analysis undertaken is transparent and intelligible and the RPD's conclusions were reasonably

available to it. That the Applicants believe the evidence supported an alternative conclusion – one the Applicants would have preferred – is not sufficient to warrant intervention on judicial review.

[22] The Applicants rely on *Monsalve v Canada (Citizenship and Immigration)*, 2022 FC 4 at paragraph 15 [*Monsalve*] to argue that the RPD unreasonably conflated the ELN's ability to exercise influence within the IFA with their physical presence in an area. Again, I disagree.

[23] I take no issue with the premise set out in *Monsalve*; influence can be exercised in the absence of physical presence. I also accept that the ELN's national profile might well allow it to exercise its influence in a location where it is not physically present. However, the possibility of the ELN acting through other armed groups within the IFA was considered by the RPD, which found no reliable evidence of cooperation or collusion. In fact, the objective evidence indicated the predominant armed group within the IFA was one that is involved in territorial disputes with the ELN. Again, there is no basis to interfere with RPD's conclusions in this regard.

(2) The RPD did not err in considering the PA's profile

[24] In the course of the hearing, the PA provided evidence to the effect that he would not resume political activities if returned to Colombia. The Applicants argue that the RPD improperly relied on this evidence when assessing the PA's political status or profile. They submit that the PA should not be coerced into renouncing his beliefs to avoid persecution.

[25] Again, I take no issue with the principle underlying this argument; an applicant should not be coerced into renouncing fundamental beliefs and rights to avoid persecution (*Colmenares v Canada (Minister of Citizenship and Immigration)*, 2006 FC 749 at para 14, *Gur v Canada (Citizenship and Immigration)*, 2012 FC 992 at para 22). However, that did not occur. Instead, the RPD simply noted that the PA himself stated that he would not engage in future political activity. This is distinguishable from the circumstances in the jurisprudence cited above and on which the Applicants rely. In addition, the RPD considered the PA's past political activities and the perceived political profile that might result from those activities, but concluded the PA had failed to demonstrate this would place him at risk in the IFA. Again, the Applicants have failed to establish that the RPD's conclusion in this regard is unreasonable.

(3) No reviewable error in assessing evidence of ELN interest

[26] Finally, the Applicants take issue with the RPD's reliance on the absence of evidence that the ELN attempted to pursue them through the PA's family and associates in Colombia as indicating a lack of motivation on the part of the ELN to locate the PA. The Applicants suggest in their submissions that the absence of evidence in this regard could be equally indicative of the ELN being aware the Applicants had departed Colombia. In support of this view, the Applicants point to the ELN's ability to track the movements of the Applicants and the absence of any reason for the ELN to target their family and friends.

[27] This argument amounts to a disagreement with the RPD and the weight it gave to the evidence. Neither the Applicants' speculation nor disagreement with the RPD demonstrates an error on the part of the RPD.

[28] The Applicants further submit the RPD failed to meaningfully consider the evidence of the PA being tracked and confronted by the ELN outside his hometown on two occasions. The RPD's analysis of this aspect of the Applicants' narrative is wanting, but I am not prepared to intervene on this basis alone.

[29] In addressing risk within the IFA, the RPD found the ELN lacked both means and motivation to locate the Applicant. The means finding alone was sufficient to support the RPD's conclusion that the Applicants had a viable IFA. While I prefer the RPD to have directly addressed the PA's reported encounters outside his hometown when considering the question of the ELN's motivation, this oversight does not undermine the overarching reasonableness of the RPD's IFA finding.

VI. Conclusion

[30] The Application is dismissed. The parties have identified no question of general importance, and none arises.

JUDGMENT IN IMM-5620-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5620-22

STYLE OF CAUSE: JAIRO ALONSO PAZ ZAPATA, YARA PATRICIA ROJAS MOLINA, SARA SOFIA PAZ ROJAS, LAURA SOFIA PAZ ROJAS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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