

Federal Court



Cour fédérale

Date: 20230504

Docket: IMM-7774-21

Citation: 2023 FC 653

Ottawa, Ontario, May 4, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

**JESSIKA ANDREA LARA MENDOZA,
KAELYN SOPHIA OYOLA LARA AND
JAYDEN STID OYOLA LARA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family. The Principal Applicant, Jessika Andrea Lara Mendoza [PA] and one of her two children are citizens of Colombia, while the other child is a citizen of United States America.

[2] The PA fears “El Bloqueo Oriental” or the “Eastern Bloc,” a splinter group of the Revolutionary Armed Forces of Colombia. According to the PA, the Eastern Bloc attempted to force her into selling drugs and prostitution.

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] dismissed their claim, and the Refugee Appeal Division [RAD] of the IRB in turn dismissed their appeal. Both decisions turn on findings of a viable internal flight alternative [IFA] in Barranquilla. The Applicants seek judicial review of the RAD decision.

[4] The main issue before me is whether the RAD decision is reasonable. In other words, the Court must determine whether the decision is intelligible, transparent and justified, further to the applicable, presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25, 99.

[5] For the reasons that follow, I am persuaded that the Applicants have met their onus (*Vavilov*, above at para 100) in this matter. As I explain below, I find the determinative issue is the RAD’s unreasonable consideration of whether the Eastern Bloc was motivated to find the PA in the proposed IFA. Declining to deal with the remaining issues raised in this matter, I therefore grant this judicial review application.

II. Relevant Background

[6] The PA was a victim of gender-based violence in Bogota, instigated by a person named Cacharro who allegedly worked for the leader of the Eastern Bloc, Jhon 40, because the PA and her friend refused to sell drugs and engage in prostitution for the Eastern Bloc.

[7] The PA and her friend moved to Medellin to avoid Cacharro. The PA's partner, Jhony, later joined them there, where he was stabbed by Cacharro. They moved back to Bogota, where gang members assaulted Jhony and the PA's mother while looking for the PA.

[8] The PA and Jhony then moved to Floridablanca where, they assert, they lived in hiding for six to eight months before moving to the United States of America, where the PA's younger child was born. Jhony was deported back to Colombia. Fearing the same fate, the PA travelled to Canada and claimed refugee protection. She and Jhony broke up while she was in Canada. The Applicants say that Jhony was attacked again upon his return to Bogota.

[9] The Applicants' credibility was not at issue before the RPD and the RAD.

III. Analysis

[10] The RAD acknowledged the Applicants' evidence of the attacks in Bogota and Medellin, as well as the assertion that the PA's ex-partner, Jhony, was attacked again upon his recent return to Bogota. The RAD found, however, that because the PA "was able to live safely in Floridablanca for 8 months and there was no contact from the Eastern Bloc while the

[Applicants] were outside of Colombia[, ...] the Eastern Bloc does not have the motivation to find the [Applicants] outside of Medellin and Bogota.”

[11] Nowhere does the decision mention that the PA and her then partner were living in hiding in Floridablanca, although it is mentioned in the PA’s basis of claim. While the Respondent points to the fact that they were working while living in Floridablanca, this also was not mentioned by the RAD and, thus, in my view is tantamount to impermissible bolstering and a request for the Court to engage in fact finding.

[12] I find it was incumbent on the RAD to consider, in light of this evidence, whether the Applicants would have to live in hiding in Barranquilla and how that could affect the viability of the IFA: *Chitsinde v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1066 at para 35; *Acevedo v Canada (Citizenship and Immigration)*, 2005 FC 585 at paras 11-13.

[13] Further, the assertion that the ex-partner was allegedly assaulted upon return to Bogota suggests ongoing motivation, in my view. The RAD, however, finds no motivation outside of Medellin and Bogota. This finding unreasonably ignores that they were found in Medellin after they left Bogota, and again upon the ex-partner’s return to Bogota several years later. If the RAD disbelieved or discounted the latter evidence, it should have stated such and explained why.

IV. Conclusion

[14] For the above reasons, I grant the Applicants’ judicial review application. The RAD decision is set aside and the matter will be redetermined by a different panel.

[15] No party proposed a question for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-7774-21

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is granted.
2. The September 24, 2021 decision of the Refugee Appeal Decision is set aside and the matter will be redetermined by a different panel.
3. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7774-21

STYLE OF CAUSE: JESSIKA ANDREA LARA MENDOZA,, KAELYN SOPHIA OYOLA LARA AND, JAYDEN STID OYOLA LARA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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