Federal Court  Cour fédérale

**Date: 20230622**

**Docket: IMM-3136-22**

**Citation: 2023 FC 881**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, June 22, 2023**

**PRESENT: Mr. Justice Régimbald**

**BETWEEN:**

**SARA CECILIA OBANDO SIERRA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The applicant, Ms. Sierra, is a citizen of Colombia. She alleges that she fears a man named Luis Alberto Ortega Medina, her former spouse, who abused her severely from 2016 to 2018 while she lived with him in Bogota, Colombia.

[2] The applicant is seeking judicial review of a decision of the Refugee Protection Division [RPD] dated March 9, 2022 [the Decision], determining that she is not a refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] The RPD concluded that the determinative issue in this case was that of prospective risk. The RPD determined that the applicant had not demonstrated that there is a serious possibility of persecution if she returned to Colombia because she is a member of the social group of women who fear gender-based violence. She also did not establish that the problems she might face as a single woman rise to the level of persecution.

[4] In addition, the RPD concluded that the applicant did not meet the criterion qualifying her a person in need of protection under section 97 of the IRPA, as there is nothing on the record that suggests that the agent of persecution would have the means and motivation to locate her if she returned to Colombia today.

[5] For the reasons that follow, the application for judicial review is dismissed. In view of the RPD's conclusions, the evidence before it and the applicable law, I see no reason to set aside the Decision. The RPD's reasons possess the qualities that make its reasoning logical and coherent in light of the relevant legal and factual constraints. There is therefore no reason for the Court to intervene.

## II. Facts

[6] The applicant is a citizen of Colombia. She lived in Germany from 1990 to 2015 with her first spouse and was a permanent resident of that country for a few years.

[7] When her first spouse died, she lived alone in Germany from 2004 to 2015 and later decided to return to live in Colombia. She lived there alone between 2015 and 2016.

[8] In 2016, the applicant met Luis Alberto Ortega Medina [the agent of persecution] in Colombia. He is a member of the military. The applicant lived with him from 2016 to 2018 in Bogota, and during that time, he severely abused her. She alleges that he harassed her, beat her, threatened her with a weapon and raped her several times.

[9] The applicant complained to the authorities, and legal action was taken against the agent of persecution to keep him away from her. However, the court order was not followed. On August 28, 2018, while she was in the apartment where she lived (but of which the agent of persecution was the tenant), he arrived and asked her to let him in because he wanted to talk to her. After he insisted, the applicant agreed. The agent of persecution assaulted the applicant while putting a gun to her head.

[10] The applicant alleges in her account that on September 5, 2018, the agent of persecution attempted to contact her by text and telephone and visited the apartment while she was not there.

On the same day, she filed a criminal complaint with the Office of the Inspector General against the agent of persecution because he had failed to comply with the court order.

[11] Fearing for her life and with the support of her son, the applicant left Colombia on September 9, 2018, even before the authorities could rule on the assault to which she was subjected and the agent of persecution's failure to comply with the court order. She arrived in Canada on September 11, 2018.

A. *RPD decision*

[12] After reviewing all the evidence, including the applicant's testimony, the RPD concluded on March 9, 2022, that the applicant was not a refugee or a person in need of protection under section 96 and subsection 97(1) of the IRPA.

[13] The panel noted that the allegations of spousal abuse were credible and that the applicant's subjective fear was real. However, the RPD concluded that the applicant's subjective fear was not prospective.

[14] To determine whether the applicant qualifies as a refugee under section 96 or as a person in need of protection under section 97 of the IRPA, the RPD analyzed the facts submitted by the applicant in terms of the risk that she would face if she returned to Colombia. In particular, the RPD considered the fact that since 2018, the agent of persecution has never attempted to contact her, or her family or friends in Colombia, in an attempt to locate her.

[15] The RPD also rejected the applicant's allegation that the agent of persecution was granted immunity to a certain degree because he was a member of the military. The RPD clarified that it was more likely that if the agent of persecution had a special status allowing him to escape justice, he would not have been ordered to appear before the authorities after a previous assault, and he would not have been given conditions with which to comply.

[16] In addition, the RPD determined that the applicant's situation would not be the same today if she returned to Colombia because the context of spousal abuse she experienced is no longer current. The RPD justified this conclusion by stating that the applicant would not be forced to return to the same location (she did not move from a dwelling rented by the agent of persecution), would not have to keep the same telephone number (she has not changed her contact information), is not married to the agent of persecution and has no children or common possessions with him; moreover, the romantic relationship did not last for a long enough period to determine the agent of persecution's motivation in a prospective manner.

[17] The RPD also stated that the fact that the applicant left the country three days after filing another complaint with the authorities undermined her refugee protection claim. Since she did not wait for the results of this new complaint, the evidence that the agent of persecution tried to contact her at the telephone number he already knew and that he showed up at her home (of which he is the tenant) is insufficient to establish that it is more likely than not that the agent of persecution would pursue her outside her home and call her at a different telephone number than the one he knew, to reach and persecute her again.

[18] Finally, the RPD considered the applicant's profile as a 71-year-old woman who would live alone in Colombia, should she return. It noted that the applicant had left Germany at age 66 to move closer to her family, that she had lived alone in Colombia before meeting the agent of persecution, and that her widow's pension income was sufficient to cover her expenses in Colombia. The fact that she is a single woman was never a separate element of persecution in her case, especially since the applicant did not mention that she had experienced any problems as a single woman in Colombia before she lived with the agent of persecution.

## III. Issues and standard of review

[19] This application for judicial review raises the issue of whether the RPD's decision that the applicant is not a refugee or a person in need of protection is reasonable, as she established neither a "serious possibility" or a "reasonable chance" of persecution under section 96, nor a risk of personalized harm for a reason described in section 97.

[20] In support of her application for judicial review, the applicant submits three main issues, namely, whether the RPD erred by

a) applying the wrong test when assessing the refugee protection claim under section 96 of the IRPA;
b) drawing conclusions based on stereotypes; and
c) failing to assess her refugee protection claim from the perspective of a single woman who is at risk of persecution if she returns to Colombia.

[21] The applicable standard of review is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Ali v Canada (Citizenship and Immigration)*, 2018 FC 688 at para 5; *Acikgoz v Canada (Citizenship and Immigration)*, 2018 FC 149; *Durojaye v Canada (Citizenship and Immigration)*, 2020 FC 700 at para 6). Thus, according to this standard, the burden is on the party challenging the decision to show that it is unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 100). As stated at paragraphs 127 and 128 of *Vavilov*, the principles of justification and transparency require that the reasons of the administrative decision maker adequately consider the key issues and concerns raised by the parties.

[22] In order to determine whether a decision is reasonable, the reviewing court must ensure that it has a clear understanding of the line of reasoning and check whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99).

[23] As the Supreme Court stated in *Vavilov*, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], particular attention must be paid to a decision maker's written reasons, and they must be read holistically and contextually for the very purpose of understanding the basis on which a decision was made (*Vavilov* at para 97). Reviewing courts must not conduct a "line-by-line treasure hunt for error" (*Vavilov* at para 284). Rather, the Court must consider the outcome of the decision and its justification to ensure that the decision as a whole is transparent, intelligible and justified

(*Vavilov* at paras 15, 95, and 136; see also *Ehigiator v Canada (Citizenship and Immigration)*, 2023 FC 308 at para 49).

[24] While the RPD's rationale could have been more straightforward and the analysis of the criteria in sections 96 and 97 clearer and more structured, it is important to understand that administrative tribunals are not held to the same standard of justification as courts of justice.

[25] Indeed, reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" or "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (*Newfoundland Nurses* at para 16, cited in *Vavilov* at para 128). Decision makers do not have to respond to each argument or refer to all the evidence—in fact, they are presumed to have considered all the evidence and arguments in the record (*Vavilov* at paras 127–28).

[26] As stated by the Supreme Court in *Vavilov*, "administrative justice" will not always look like "judicial justice", and reviewing courts must be aware of this (*Vavilov* at para 92).

## IV. Analysis

### A. *Test for meeting definition of "refugee" under IRPA, section 96*

[27] Section 96 states the following:

| **Convention refugee** | **Définition de *réfugié*** |
|---|---|
| **96** A Convention refugee is a person who, by reason of a well-founded fear of | **96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, |

| | |
|---|---|
| persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, | craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques : |
| (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or | a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays; |
| **(b)** not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country. | **b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut, ni, du fait de cette crainte, ne veut y retourner. |

[28] In order to meet their burden and demonstrate that they meet the definition of "refugee" under section 96 of the IRPA and the Convention, refugee protection claimants must meet the applicable legal test, namely, that there is a "serious possibility" or "reasonable chance" of persecution in the event of a return *(Alam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 [*Alam*] at para 8).

[29] Persons claiming refugee status must meet the applicable legal test by demonstrating on a balance of probabilities that they "have a reasonable subjective fear of persecution and that this subjective fear is objectively well-founded" [emphasis added] *(Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*]; *Alvarez Contreras v Canada (Citizenship and Immigration)*, 2009 FC 398 [*Alvarez Contreras*] at para 16).

[30] Therefore, in order to meet the legal test under section 96 of the IRPA, persons claiming refugee status must first establish a subjective fear and then demonstrate that this subjective fear has an objective basis.

[31] As to the standard of proof applicable to the facts to meet the legal test for refugee status, its application may be confusing as it applies to separate issues.

[32] First, the balance of probabilities standard applies to the underlying facts that refugee protection claimants must prove to demonstrate their subjective fear, and to the underlying facts that they must prove to demonstrate the objective basis of that fear. Claimants must therefore demonstrate the existence of a subjective fear and the objective basis of that subjective fear, and both are established by factual evidence that is assessed on a balance of probabilities (*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 120 citing *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680, 1989 CanLII 9466 (FCA) [*Adjei*]).

[33] Thus, a claimant will have to demonstrate his or her subjective fear by providing facts that, assessed on the balance of probabilities standard, will establish that fear. The answers to the following questions can serve as an example of facts related to subjective fear: What events occurred in the country of origin that give rise to this subjective fear? What actions were taken by the person to protect himself or herself? Did he or she move (to the same or another city), change his or her contact information, change job, or notify the authorities to seek state protection in the country of origin? In other words, the person claiming refugee protection must

demonstrate that he or she is truly afraid and has taken clear steps to protect himself or herself. This essentially means analyzing the credibility of the individual when he or she testifies, and the likelihood of the information contained in the various forms accompanying the Basis of Claim Form (*Alvarez Contreras; Sanchez Molano v Canada (Citizenship and Immigration)*, 2011 FC 1253 at para 16; *Perez v Canada (Citizenship and Immigration)*, 2015 FC 1100 at para 22; *Cobian Flores v Canada (Citizenship and Immigration)*, 2010 FC 503 at para 4).

[34] The objective basis of the subjective fear, on the other hand, must also be assessed on the facts presented by the person claiming refugee protection. These facts will enable the refugee protection claimant to demonstrate a "well-founded fear of persecution" under section 96 of the IRPA (*Ward* at page 712; *Canada (Minister of Citizenship and Immigration) v Kaaib*, 2006 FC 870 at para 25 citing *Williams v Canada (Citizenship and Immigration)*, 2005 FCA 126 at paras 19–22). These underlying facts must also be proven on a balance of probabilities.

[35] The objective basis for a subjective fear will be established following a review of the objective evidence regarding country conditions, such as the National Documentation Package (NDP) (*Alvarez Contreras* at para 16). In particular, the complicity of the state or its inability to protect its citizens is relevant (*Ward* at 722–26; *Narvaez v Canada (Minister of Citizenship and Immigration)* (FCTD), [1995] 2 FC 55, 1995 CanLII 3575 (FC) [*Narvaez*] at 66–67; *Aguilar Soto v Canada (Citizenship and Immigration)*, 2010 FC 1183). Thus, as stated by the Supreme Court of Canada in *Ward* at page 712, "if a state is able to protect the claimant, then his or her fear is not, objectively speaking, well-founded" [emphasis added]. The ability and motivation of the agent of persecution to pursue the person locally or across the country, insofar as the state is

not itself the agent of persecution, are intrinsically linked to the state's ability to protect its citizens (*Perez Mendoza v Canada (Citizenship and Immigration)*, 2010 FC 119 [*Perez Mendoza*] at paras 28–33; *Vigueras Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359 [*Vigueras Avila*] at paras 4, 22, 28). This factor becomes especially important in cases where an internal flight alternative is alleged, a test related to the state's ability to protect its citizens throughout the country, and which can also demonstrate the objective basis of the fear (Sasha Baglay & Martin Jones, *Refugee Law*, 2nd ed (Toronto: Irwin Law, 2017) [Baglay & Jones] at 156–60; Lorne Waldman, *Canadian Immigration & Refugee Law Practice* (Toronto: LexisNexis Canada, 2023) [Waldman] at 924).

[36] That said, there is confusion because the standard of proof applies at two levels when determining refugee status. On the one hand, the facts, if established on a balance of probabilities standard, will enable refugee protection claimants to attempt to discharge their burden of establishing their subjective fear and the objective basis for their fear. On the other hand, these factual elements, if established, will enable claimants to discharge their burden and demonstrate that there is a "serious possibility" or a "reasonable chance" of persecution if they return, which is the legal test for obtaining refugee status under section 96 (*Adjei*; *Alam* at paras 8–11; *Ramanathy v Canada (Citizenship and Immigration)*, 2014 FC 511 [*Ramanathy*] at paras 15–17; *Paz Ospina v Canada*, 2011 FC 681). A standard of proof therefore applies at two levels in the test for refugee status.

[37] Thus, once the underlying facts are proven on a balance of probabilities standard, it is necessary to apply these findings of fact to the legal test itself and determine whether the facts as

proven demonstrate a “serious possibility” or a “reasonable chance” of persecution in the event of a return. The question in this regard is not to determine whether the claimants will actually be persecuted upon return, but whether they have discharged their burden of demonstrating that there is a “serious possibility” or a “reasonable chance” of persecution in the event of a return (*Adjei* at page 681; *Alam* at para 8; *Ndjizera v Canada (Citizenship and Immigration)*, 2013 FC 601 at paras 25–26).

[38] Applying the legal test for fear of persecution therefore does not require that claimants demonstrate that it is “more likely than not” that they will be persecuted if they are returned. In other words, they need not show that there is more than a 50% chance that persecution will occur (*Alam* at para 5). This standard of proof, normally equivalent to the balance of probabilities, is too high.

[39] Thus, claimants will be able to discharge their burden and demonstrate that there is a “reasonable chance” or a “serious possibility” of persecution even though, in fact, this “probability” of serious persecution may be well below 50%. Refugee status could therefore be granted even if, theoretically, the likelihood of serious persecution is low but still “serious” or “reasonable”.

[40] There is therefore a “special threshold” for meet the legal test (*Alam* at para 8, *Ramanathy* at para 15). Rather than having to demonstrate on a balance of probabilities standard that persecution is likely, a person claiming refugee status must instead demonstrate, on a

balance of probabilities, that there is a “reasonable chance” or a “serious possibility” of persecution. The legal test to be met at this stage is therefore less onerous.

[41] Therefore, as stated by Justice Mosley in *Ramanathy*, the basis for the fear is established when the applicant demonstrates that there is a “serious possibility” or “reasonable chance” that they will be persecuted [emphasis added]. That said, the underlying facts submitted by the person claiming refugee status will be assessed on the normal civil standard based on the balance of probabilities (therefore more than 50%):

> [15] It is well established that the claimant need not prove that persecution would be more likely than not in order to meet the objective portion of the test under s 96. The claimant must establish, however, that there is more than a “mere possibility” of persecution. The applicable test has been expressed as a “reasonable chance” or a “serious possibility”: A*djei v Canada (Minister of Employment and Immigration)*, 1989 CanLII 9466 (FCA), [1989] 2 FC 680, [1989] FCJ no 67 (FCA).
>
> [16] This test is lower than the balance of probabilities evidentiary standard. It may be confused in its application because both the existence of the subjective fear and the fact that the fear is objectively well founded must be established on a balance of probabilities: *Chan v Canada (Minister of Employment and Immigration)*, 1995 CanLII 71 (SCC), [1995] 3SCR 593 at para 120 citing *Adjei*, above. As Justice O’Reilly noted in *Alam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 at para 5, while the test is “well known and widely accepted, it is notoriously difficult to express in simple terms.” Having reviewed jurisprudence on the application of the standard, Justice O’Reilly concluded at paras 8 to 11:
>
> > 8 The lesson to be taken from *Adjei* is that the applicable standard of proof combines both the usual civil standard and a special threshold unique to the refugee protection context. Obviously, claimants must prove the facts on which they rely, and the civil standard of proof is the appropriate means by which to measure the evidence supporting their factual contentions. Similarly, claimants must ultimately persuade the Board that they are at risk

> of persecution. This again connotes a civil standard of proof. However, since claimants need only demonstrate a risk of persecution, it is inappropriate to require them to prove that persecution is probable. Accordingly, they must merely prove that there is a "reasonable chance," "more than a mere possibility" or "good grounds for believing" that they will face persecution.
>
> …
> [Emphasis added.]

[42] Thus, it is only after the person has presented his or her evidence of the facts (both for the element of subjective fear and for the objective basis of this subjective fear), and the facts have been established on a balance of probabilities standard, that the person can meet the legal test under section 96 of the IRPA. He or she will then have, in light of the evidence presented and overall, discharged his or her burden and proven that there is a "serious possibility" or "reasonable chance" of persecution if he or she is returned, thus deserving protection. In *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497 [*Gebremedhin*] at paras 27–29, Justice McVeigh explained the distinction well (see also *Aslan v Canada (Citizenship and Immigration)*, 2021 FC 1165 [*Aslan*] at paras 20–26):

> [28] ... In order to show a well-founded fear of persecution under section 96 of the Act, an applicant must establish that there is a "reasonable chance" or "serious possibility" of persecution (*Adjei v. Canada (Minister of Employment and Immigration)*, 1989 CanLII 9466 (FCA), [1989] 2 FC 680 (FCA) at paras 5–8; *Sebastiao v Canada (Minister of Citizenship and Immigration)*, 2016 FC 803 at paras 13–14 [*Sebastiao*]). The standard of proof for facts on which a claimant relies is a balance of probabilities. However, once proven, the legal threshold to demonstrate persecution is only a "serious possibility."
> [Emphasis added.]

[43] Once the fear of persecution is established, the refugee protection claimant must link the persecution to a Convention ground (Baglay & Jones at 156 and 175; Waldman at 808, 866, and 895). The claimant must be targeted for persecution in some way, "either personally or collectively" *(Rizkallah v Canada (Minister of Employment and Immigration)*, [1992] FCA No 412 (CA) (QL); *Fi v Canada (Citizenship and Immigration)*, 2006 FC 1125 [*Fi*]).

[44] The applicant submits that in this case, although the RPD applied the correct standard of proof for section 96, that of "the serious possibility" of persecution, it misapplied it in its analysis of the prospective risk of persecution. The applicant states that the RPD instead wrongly applied a higher burden, namely, that it is "more likely than not" (the balance of probabilities standard) that she will actually be persecuted in the event of a return. She relies on parts of the RPD's analysis, including paragraphs 38 to 40, where the RPD uses the words [TRANSLATION] "more likely than not" to describe its conclusion on certain facts. We will come back to that.

B. *Test applicable to definition of "person in need of protection" under IRPA, section 97*

[45] Section 97 of the IRPA is intended to protect legitimate refugee protection claimants who cannot qualify as refugees under the test under section 96 of the IRPA, either because of they are unable to demonstrate a subjective fear and the objective basis of that fear, or because the fear of persecution is unrelated to a Convention ground. Therefore, section 96 cannot help them. Section 97 of the IRPA reads as follows:

| **Person in need of protection** | **Personne à protéger** |
|---|---|
| **97 (1)** A person in need of protection is a person in Canada whose removal to their country or countries of | **97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son |

nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

**(a)** to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

**a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

**(b)** to a risk to their life or to a risk of cruel and unusual treatment or punishment if

**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

**(i)** the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

**(ii)** the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

**(iii)** the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

**(iv)** the risk is not caused by the inability of that country to provide

**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins

| | |
|---|---|
| adequate health or medical care. | médicaux ou de santé adéquats. |
| **Person in need of protection** | **Personne à protéger** |
| **(2)** A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection. | **(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection. |

[46] Under section 97, claimants do not need to establish that they fear persecution as they do under section 96. They must instead establish, again on a balance of probabilities standard, that there are "substantial grounds to believe" or that it is "more likely than not" (i.e., the balance of probabilities standard) that they will be subjected to a danger of torture, a "risk of cruel and unusual treatment or punishment" [emphasis added], or a threat of death, in the event of a return *(Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 [*Li*] at paras 9, 14, 29, 33, 36–39; *Paramananthalingam v Canada (Citizenship and Immigration)*, 2017 FC 236 [*Paramananthalingam*] at paras 13, 17; *Odetoyinbo v Canada (Citizenship and Immigration)*, 2009 FC 501 at paras 7–8). They will then have to establish that this risk is personalized and different from that faced by the inhabitants of their home country.

[47] Thus, under section 96 and as discussed above, claimants must establish, on a balance of probabilities, a subjective fear and the objective basis of that fear, then making it possible to meet the legal test of a "serious possibility" or "reasonable chance" of persecution. Once again, the alleged persecution must be directed against them, either "personally" or as a "member of a community", and be related to a Convention ground. However, under this standard, it is possible

to meet the test under section 96 even if, in reality, the chances that persecution will actually occur are below 50%.

[48] The threshold for the test is therefore lower for section 96 than for section 97, because section 97 requires that it be "more likely than not" (therefore that there is a more than 50% chance) that a claimant will be subject to a risk of harm identified in section 97 in the event of a return. Furthermore, section 97 requires that this risk be personalized and different from that of other citizens of the country (and unlike section 96, membership in a group that is persecuted is insufficient). As Justice McVeigh explained in *Paramananthalingam*:

> [16] The purpose of section 97 is to capture those legitimate refugee claimants who may not meet the stringent standards of a well-founded fear of persecution. Despite the lower evidentiary threshold under section 96, proving both objective and subjective fear of persecution is very difficult. Section 97 acts as a safety valve which Parliament created to protect those persons who, even if found lacking credibility, face a personalized risk of harm. It bears repeating here that well-founded fear of persecution and a personalized risk of harm require different analysis.

[49] Section 97 is therefore an additional remedy for claimants who cannot demonstrate persecution on the basis of a ground under section 96 or, for example, who could not discharge their burden of demonstrating a subjective fear or its objective basis in order to meet the test under section 96 of the IRPA (*Li* at para 33). It is therefore possible for claimants to meet their burden of proof under section 97, while being unable to do so under section 96. Therefore, it would be erroneous to automatically conclude that claimants who are unable to meet the test under section 96 (either because of their burden of demonstrating a subjective fear and the objective basis of the fear, or because the fear is not among the grounds listed in section 96) could not satisfy the element identified in section 97 (*Paramananthalingam* at para 17).

C. *Application to facts: RPD did not err in imposing overly onerous burden of proof in determining applicant unable to discharge her burden of proof under sections 96 and 97*

[50] The applicant no longer challenges the RPD's decision on her refugee protection claim under section 97 of the IRPA. The applicant therefore concedes that the RPD applied the correct burden of proof in deciding that she had not discharged her burden of demonstrating a prospective risk of personalized harm on the basis of an element identified in section 97.

[51] However, the applicant challenges the burden of proof that the RPD applied to her refugee protection claim under section 96 because the RPD used the words [TRANSLATION] "more likely than not" in its findings of fact.

[52] The RPD therefore apparently erred, in the applicant's view, because the applicable burden of proof is not whether it is "more likely than not" that she would be subject to a risk of harm in the event of a return (burden under section 97), but whether the applicant has a "serious possibility" or a "reasonable chance" of persecution (burden under section 96), such that she does not have to demonstrate that the actual chances of her being persecuted are greater than 50%.

[53] It is true that the RPD could have been clearer in its reasons. However, the standard of judicial review does not require perfect reasons. As explained by the Supreme Court in *Vavilov* at paragraphs 92 and 128, administrative decision makers cannot be expected to explain their decisions in the same way as a judge could. Administrative decision makers do not have to answer all the arguments or draw a conclusion on each item of evidence or component of the

reasoning. They should only address the main arguments put forward by the parties to demonstrate that these arguments have been considered.

[54] While it is true that the RPD uses the words [TRANSLATION] "more likely than not," these words are used in the assessment of the evidence and not in the applicable legal test under section 96 or 97. In other words, the RPD did not err in requesting that the applicant prove, on a balance of probabilities, the underlying facts on which she relies to demonstrate a "serious possibility" or a "reasonable chance" of persecution (test under section 96), just as it did not err in applying the same standard of proof, using the words [TRANSLATION] "more likely than not," to make findings of fact on the prospective risk of personalized harm (test under section 97).

[55] For example, at paragraph 38 of the Decision, the RPD twice explained that it is [TRANSLATION] "more likely" that if the agent of persecution had a special status because he is a member of the military, he would not have had to appear before the court to face justice. In using these terms, the RPD rejected a factual element submitted by the applicant, namely, that she could not claim state protection and that members of the military had a particular status. This is an application of the balance of probabilities standard to a factual element.

[56] As noted at paragraphs 38 and 39 of the Decision, the applicant filed a complaint with the authorities, who imposed conditions with which the agent of persecution had to comply. Then, after the events leading up to the last complaint to the authorities, the applicant waited only three days before leaving the country, without waiting for the results of her complaint. Consequently, the applicant could not demonstrate that the state was unable to protect her (see, *a*

*contrario*, *Narvaez*). Since there is a presumption that the state can protect its citizens, there needs to be "clear and convincing" proof of its inability to do so (*Ward* at 724–26). Since the applicant was unable to discharge her burden, she was unable to demonstrate the objective basis of her fear, as it was not a "well-founded" fear under section 96 of the IRPA (*Ward* at 726).

[57] At paragraph 39 of the Decision, the RPD states that the events alleged by the applicant cannot establish that it is [TRANSLATION] "more likely than not" that the agent of persecution will continue to pursue her and call her at a different telephone number. The RPD therefore concludes that the applicant did not discharge her burden of proving that she took the necessary steps to protect herself (such as moving and changing telephone numbers), but that these steps were ineffective, hence the need to claim refugee protection in another country. Again, the RPD applied the balance of probabilities standard to the factual elements that the applicant must establish in order to discharge her burden of demonstrating a "serious possibility" or "reasonable chance" of persecution in the event of a return. The RPD, in these words, merely concluded that the underlying facts on which the applicant based her refugee protection claim have not been established on a balance of probabilities standard.

[58] Finally, at paragraph 40 of the Decision, the RPD makes a finding of fact that the applicant could not establish that it is [TRANSLATION] "more likely than not" that the agent of persecution is still motivated to find, persecute, and harm her. Again, this conclusion is based on the evidence as a whole, because the agent of persecution did not attempt to contact her, her family members or her friends in Colombia (at paragraph 37), the applicant did not move to another dwelling or town (the apartment where she was staying was rented by her agent of

persecution), and she did not change her telephone number (paragraph 39). Furthermore, by leaving the country only three days after the last complaint, the applicant could not demonstrate that the state was unable to protect her and thus rebut the presumption of state protection.

[59] In addition, the applicant has sufficient financial means (a widow's pension) to live independently in Colombia, with another address and a different telephone number, and the agent of persecution has no obvious reason to cross paths with the applicant again because, for example, they have no children together or property in common (see the Decision at paras 37–41). These are all findings of fact reached on the balance of probabilities standard.

[60] The RPD's overall reasons support its conclusion at paragraph 36 of the Decision, where the RPD accepts that the applicant is afraid but rejects that fear as prospective. Thus, in the RPD's opinion, the applicant's fear cannot establish a "serious possibility" or a "reasonable chance" of persecution in the event of a return to Colombia, a conclusion that is also justified at paragraphs 5 and 41 of the Decision.

[61] Therefore, and contrary to the applicant's argument, the RPD did not err in its application of the standard of proof. The RPD's findings regarding these facts were reached on a balance of probabilities standard, and none of these findings of fact, taken individually, are determinative.

[62] Collectively, the findings of fact justify the RPD's decision that the applicant did not discharge her burden of proof with respect to the applicable legal test. Since she failed to prove the factual elements required to support her refugee protection claim, the applicant was unable to

demonstrate, on a balance of probabilities standard, a “serious possibility” or “reasonable chance” of persecution under section 96, or a prospective risk of personalized harm on the basis of an element identified in section 97.

[63] Therefore, the reasons for the RPD’s decision need to be read as a whole. Where the legal test of “serious possibility” or “reasonable chance” has been applied, decision makers cannot be criticized for making their findings of fact on a balance of probabilities. As Justice McVeigh explained in *Gebremedhin* at paragraph 29:

> [29] The RAD assessed whether the Applicant’s activities in Canada would come to the attention of the Ethiopian authorities. This is a factual determination which the RAD made on a balance of probabilities. This is not the same as replacing the legal threshold of “serious possibility” of persecution (*Sebastiao*, above, at paras 14–15). Once the RAD made its factual determinations on a balance of probabilities, it then looked at the totality of evidence and determined that the Applicant did not face a serious possibility of persecution. When the decision is assessed as a whole, the RAD did not impose a higher legal threshold than was required. The RAD found there was no basis for a sur place claim. [Emphasis added.]

[64] In this case, the facts are similar to those in *Aslan*, where Justice Brown explained that the decision maker applied the correct legal test and assessed the application overall but concluded that the evidence did not support the conclusion that the person would be subjected to a risk. In doing so, the decision maker did not impose an unnecessarily heavy burden of proof on the applicant.

> [24] That said, in my view the Decision is read as a whole, demonstrates the Officer did not misunderstand the allegations about the ship or apply the wrong test for that part of the claim. The Officer assessed the claim on the entirety of the Applicant’s circumstances, as well as political opinion, and concluded he did not have the profile of someone whose political opinion would put

> him at risk. Ultimately, the Officer's findings in relation to the comments on the ship turned on the fact there was a lack of sufficient evidence to show the crewmates had actually reported his comments.

[65] Where the RPD uses the words "more likely than not", it is not confusing the standard of proof of a balance of probabilities applicable to findings of fact with the legal test of "serious possibility" or "reasonable chance". The RPD is clearly alluding to the standard of proof it is applying to the facts, not the legal test (as also explained by Justice Russell in *Jeyaratnam v Canada (Citizenship and Immigration)*, 2018 FC 1244 at para 45).

[66] Finally, relying on *Gomez Dominguez v Canada (Citizenship and Immigration)*, 2020 FC 1098 [*Gomez Dominguez*], the applicant submits that instead of asking whether the motivation and ability of her agent of persecution had been proven on a balance of probabilities ("more likely than not"), the RPD should have conducted an overall risk assessment and determined whether it posed a "serious possibility" or a "reasonable chance" of future persecution, as directed by *Adjei* at paragraph 31.

[67] In *Bolivar Cuellar v Canada (Citizenship and Immigration)*, 2022 FC 641 at paras 14 to 20, rendered in 2022 after *Gomez Dominguez*, Justice Walker distinguished *Gomez Dominguez* to explain the risk (or "serious possibility") analysis and its burden of proof. Justice Walker explained that in *Gomez Dominguez*, the applicant proved on a balance of probabilities that the Revolutionary Armed Forces of Colombia had an extraordinary motivation and the ability to attack her. Justice Walker then clarified that the balance of probabilities standard is the correct standard to apply to the facts that a refugee protection claimant must establish in the assessment

of the prospective risk of persecution, namely, whether there is a “serious possibility” of persecution in the event of a return (see also *Anyira v Canada (Citizenship and Immigration)*, 2021 FC 882 at paras 41–42).

[68] In this case, that is exactly what the RPD did. It performed an overall risk assessment, considered the evidence as a whole on a balance of probabilities standard and determined that there was no “serious possibility” or “reasonable chance” of persecution in this case. With respect to the factual burden, the RPD did not err in using the words [TRANSLATION] “more likely than not” to explain its conclusions. Therefore, the RPD did not apply an overly onerous standard of proof to the legal test. *Gomez Dominguez* must therefore be read and understood in its entire context and is not relevant in this case.

D. *RPD’s findings not based on stereotypes*

[69] The applicant argues that the RPD’s findings of fact are undermined by stereotypes. In particular, she submits that the RPD’s analysis implicitly suggests that the spousal abuse she suffered was not serious; for example, she criticizes the RPD for considering the short duration of her relationship with the agent of persecution, and the fact that they were not married, had no children and did not possess common property, therefore implying that the agent of persecution would not have the motivation to persecute her if she returned. In the applicant’s view, insinuations of this sort, particularly as shown at paragraph 39 of the Decision, are based on stereotypes, something that was previously condemned by the Court in *Sebok v Canada (Citizenship and Immigration)*, 2012 FC 1107 [*Sebok*] at para 15.

[70] I cannot agree with the applicant's argument that the RPD relied on stereotypes to come to its conclusion. The RPD reasonably considered the particular circumstances in the applicant's case, as set out in *Sebok*. Alleging that the agent of persecution would have more difficulty locating the applicant because they have no property in common or because she will not have the same address or telephone number is not conjecture. Rather, it is a logical and consistent conclusion that considers the reality of the applicant today in 2023, based on the evidence on the record.

[71] Contrary to the applicant's allegations, the RPD did not question the violence she suffered. Rather, it considered the facts before it to determine whether, on a balance of probabilities, the applicant had discharged her burden to demonstrate that there is a "serious" or "reasonable chance" of persecution under section 96, or that it is more likely than not that she would be subjected to a prospective risk of personalized harm on the basis of an element identified in section 97 were she to return.

[72] The RPD concluded that the applicant had not discharged her burden. Relying on the facts submitted, and on the applicable balance of probabilities standard, the RPD concluded that the applicant had neither established a serious possibility of persecution nor a prospective risk. The RPD reached this conclusion because of the evidence submitted, as discussed above *(Lopes Gomez v Canada (Citizenship and Immigration)*, 2022 FC 1160 at paras 14, 18, 20, 27, 29, 31).

[73] In doing so, in my view, the RPD did not apply an erroneous standard of proof or make its decision on the basis of stereotypes. It instead provided a fairly good explanation for the

reasons for its conclusions, and its decision is reasonable, coherent, intelligible and transparent in this regard.

E. *RPD sufficiently considered applicant's single woman profile in its analysis*

[74] The applicant submits that the RPD was not sensitive to her psychological condition and the fact that she is a single woman aged 71. She submits that the serious abuse and the after-effects of the violence she suffered led her to leave the country permanently and that she could therefore not return to it, especially at such an old age.

[75] The applicant further submits that the RPD erred at paragraph 41 of the Decision when it concluded that [TRANSLATION] "nothing in the claimant's particular situation would put her in the position of facing a serious possibility of persecution simply for being a woman living alone in Colombia". Rather, the applicant submits that the NDP and the evidence submitted demonstrate that violence against women exists in Colombia and that the state does not intend to take any real action to counter the problem.

[76] In my view, in considering the evidence as a whole, the RPD reasonably concluded that, in light of the evidence submitted, the applicant was not more likely to be a victim of persecution because she is a woman living alone. This evidence included the absence of a specific risk, the fact that she lived alone in Colombia for almost two years without being persecuted before moving in with her agent of persecution, her financial independence, her proven ability to live alone and the fact that she had friends and family in Colombia. The RPD made this finding of fact by stating that it had given some weight to the objective evidence relating to the trend of

violence against women in Colombia (Decision at para 42). Therefore, its decision is reasonable, coherent, intelligible and transparent in this regard.

[77] The applicant also submits that single women in Colombia are more vulnerable to being victims of violence in Colombia. Therefore, she alleges that she does not have to demonstrate that she specifically will be persecuted in the future. It is true that *Salibian v Canada (Minister of Employment and Immigration)* (CA), [1990] 3 FC 250, 1990 CanLII 7978 (FCA) at 259, *Fi* at paragraph 16, and *Arocha v Canada (Citizenship and Immigration)*, 2019 FC 468 at para 12, on which the applicant relies, state that to the extent that reprehensible acts have been committed or were likely to be committed against members of a group to which a refugee protection claimant belongs, refugee protection claimants are not required to demonstrate that they have been or will be persecuted themselves. This is the fundamental principle underlying refugee protection.

[78] However, while it is true that the applicant is not required under section 96 of the IRPA to demonstrate that her fear of persecution is "personalized" because she is already in the group of women who are single or spousal abuse victims, she must still demonstrate that this group is subject to widespread persecution. As stated by Justice Martineau at paragraph 16 of *Fi*, on which the applicant relies, the same paragraph also states that a "refugee claim that arises in a context of widespread violence in a given country must meet the same conditions as any other claim" [emphasis added].

[79] Therefore, to succeed on this argument, it is still necessary for the applicant to discharge her burden on a balance of probabilities to demonstrate that she is part of a group subject to

widespread persecution. However, the applicant was unable to do so. The RPD concluded that the evidence did not establish that the applicant faced a serious possibility of persecution solely because she is a single woman (and a victim of spousal abuse) for the reasons discussed above (see *Camacho v Canada (Citizenship and Immigration)*, 2022 FC 1507 at paras 11, 14, 28; *Sebok* at paras 7, 24, 25).

[80] In other words, as required by *Fi*, on which the applicant relies, she was unable to "meet the … conditions" of a refugee protection claim. The RPD's conclusion is that the applicant was unable to demonstrate how there was a "serious possibility" or a "reasonable chance" of persecution if she were returned to Colombia, based on her membership in the group of women who are victims of spousal abuse or based on the group of women living alone (because she previously lived alone without being a victim and there was no specific evidence of a particular risk of persecution for Colombian women simply because they live alone) (Decision at paras 37–42).

[81] With regard to Colombia's inability to protect women from violence, again, the RPD reached a contrary finding of fact. As explained by the Court in *Vigueras Avila* at paragraphs 28 to 29 (see also *Perez Mendoza* at para 33), where the agent of persecution is not the state, a refugee protection claimants must demonstrate that their government has not been able to protect them. This is a question of fact.

[82] In this case, although there is objective evidence of violence against women in Colombia, the evidence in this case is that before meeting her agent of persecution, the applicant was not

subjected to violence. Furthermore, the evidence shows that when the applicant complained to the authorities, they imposed measures against the agent of persecution to protect her. The fact that the agent of persecution reoffended cannot be directly associated with a failure of the state to take additional measures, especially since the applicant never gave the state the opportunity to prove it, having left rather quickly for Canada.

## V. Conclusion

[83] In my view, the RPD Decision is sufficiently coherent, intelligible and transparent. The RPD did not make any errors justifying the Court's intervention.

[84] For these reasons, the application for judicial review is dismissed.

[85] No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.

**JUDGMENT in IMM-3136-22**

**THE COURT ORDERS as follows:**

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Guy Régimbald"
Judge

Certified true translation
Michael Palles

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3136-22 |
| **STYLE OF CAUSE:** | SARA CECILIA OBANDO SIERRA v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | JANUARY 19, 2023 |
| **JUDGMENT AND REASONS:** | RÉGIMBALD J. |
| **DATED:** | JUNE 22, 2023 |

**APPEARANCES:**

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