

Federal Court



Cour fédérale

Date: 20231218

Docket: IMM-528-22

Citation: 2023 FC 1718

Toronto, Ontario, December 18, 2023

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

**JORGE WILSON ORTIZ CELEDON
IVETTE CECILIA ROMERO PRIETO
SOFIA ORTIZ ROMERO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants in this case are Jorge Wilson Ortiz Celedon (the Principal Applicant), his spouse Cecilia Romero Prieto, and their daughter Sofia Ortiz Romero. They are citizens of Columbia, who claimed refugee protection in Canada due to persecution from a criminal gang called Los Rastrojos.

[2] The Refugee Protection Division (RPD) denied the Applicants' claim. They seek judicial review of this decision.

[3] The Applicants' refugee claim is related to the experience of the Principal Applicant's mother. She owned agricultural land in Colombia, and between 2001 and 2005, Los Rastrojos murdered some other local landowners for refusing to turn over their land. In April 2011, the group occupied his mother's land, and she continued to receive threats after that. She eventually received protection from the Colombian government and was compensated for the loss of her land. The mother left Colombia and claimed refugee status in Spain, where one of her daughters lives. Two of the Principal Applicant's brothers also fled to Spain where they made refugee claims.

[4] The Principal Applicant and his family moved into another property owned by his mother. In January 2021, unknown persons came to that property, yelling and asking about the Principal Applicant's mother. After this event, the Applicants left to stay with the wife's sister before fleeing to the United States and eventually arriving in Canada. Seven days before leaving Colombia they made a denunciation to the Fiscalia but did not name the Los Rastrojos. There is no evidence that the Applicants have followed up on this complaint since they left Colombia.

[5] The Applicants submitted a refugee claim after their arrival in Canada, claiming to fear persecution by the Los Rastrojos. The RPD assessed their claim under section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27, because they had not established a nexus to a Convention ground. Their claim was dismissed because the RPD found they had

failed to rebut the presumption of state protection, and they had an Internal Flight Alternative (IFA) in Colombia.

[6] The Applicants submit that the RPD decision is unreasonable because: it failed to recognize the importance of land ownership in Colombia and thus did not examine the case in its proper context; the IFA conclusion is flawed because there is evidence that state protection is inadequate; and the RPD failed to consider the evidence about the means and motivation of the criminal group.

[7] None of the Applicant's arguments can succeed. The RPD decision is reasonable.

[8] While the RPD acknowledged the mother's experience of being dispossessed of her land at the hands of the Los Rastrojos, it also noted the protection and financial compensation she received from the government. Refugee law protects people, not their property, and forcible loss of land is not a recognized ground of protection under the Convention. The RPD did not ignore the context of the case.

[9] The RPD decision examined the measures taken by Colombia to offer protection to its citizens from threats by criminal gangs. It outlined the various measures provided to the Principal Applicant's mother, including a bullet proof vest, cellphone, secure transportation, and a bodyguard. The RPD also examined the objective country condition evidence on the practical availability of such measures, and concluded that reasonably effective state protection was available in Colombia. There is no basis to interfere in this determination. The RPD correctly

noted that the law does not demand perfection; adequate protection is all that is required: *Samuel v Canada (Citizenship and Immigration)*, 2008 FC 762 at para 32. In this case, the RPD's conclusion that such measures were available to the Applicants is reasonable based on the evidence in the record.

[10] The Applicants point to a statement in the country condition evidence that they suggest indicates state protection measures are not effective, particularly in rural areas. I am not persuaded that this one comment is enough to cast doubt over the decision. The RPD is presumed to have considered all of the evidence, unless there is a clear contradiction involving a key point, and it is not the role of a court on judicial review to re-weigh the evidence.

[11] Turning to the IFA determination, the RPD's finding that the Applicants had not demonstrated that the Los Rastrojos had the means and motivation to pursue them in the IFA locations is reasonable. The Applicants point to evidence cited by the RPD in support of their argument that the criminal group has alliances that would enable it to track them down in the IFA locations. Once again, this amounts to asking the Court to re-weigh the evidence. The RPD discussed the evidence in some detail, noting that there were indications that the group had lost power and influence, and may have disbanded. The fact that it preferred this evidence over the excerpts relied on by the Applicants is not unreasonable. There is no basis to interfere with the RPD's findings on this point.

[12] For these reasons, the application for judicial review will be dismissed.

[13] There is no question of general importance for certification.

JUDGMENT in IMM-528-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-528-22

STYLE OF CAUSE: JORGE WILSON ORTIZ CELEDON ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 14, 2023

**JUDGMENT AND
REASONS:** PENTNEY J.

DATED: DECEMBER 18, 2023

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