

Federal Court



Cour fédérale

**Date: 20240524**

**Docket: IMM-5055-23**

**Citation: 2024 FC 778**

**Ottawa, Ontario, May 24, 2024**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**DAYHAM CAMILO MALPICA MARINO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of a negative pre-removal risk assessment (“PRRA”) decision. He is a citizen of Colombia, and says that he fears that he will be threatened and killed by the Clan del Golfo (“the Clan”) if he is forced to return.

[2] The Applicant entered Canada with his common-law partner (“Laura”), and Laura’s mother (“Alba”) and sisters; they all claimed refugee status. The Applicant was found ineligible to submit a refugee claim, and was then invited to submit a PRRA application. I note here that the rest of the Applicants’ family has been granted refugee status and so they do not face the prospect of return to Colombia.

[3] The Applicant’s PRRA relied on the threats directed towards himself, Alba and the rest of the family. In December 2019, Alba was solicited by the Clan to sell drugs from the clothing stall she operated with her family members in Bogota. When she refused, the Clan threatened her as well as the Applicant and the rest of the family. The Clan members told the Applicant and Alba that they had no choice but to comply, and warned them not to “snitch” by reporting the incident to the authorities. At this point, the Applicant was assisting Alba almost every night with the closing of the stall and he witnessed these threats.

[4] In early January 2020, the Clan threatened the Applicant with death while he was alone at his place of employment. They told him that he should not “snitch” if he valued his life. The Clan subsequently began monitoring his home in Bogota. In early February 2020, the Clan attempted to kidnap the Applicant’s sister-in-law, and one year later the Applicant and Alba were ambushed on the street, assaulted and threatened at gunpoint.

[5] Following this attack, the Applicant and his family members reported the incidents to the Attorney General's Office and moved to another city in Colombia. A few months later, the Clan found them in the new location and told them they would die for snitching. The Applicant and his family immediately moved to another location, sold their belongings and fled Colombia as soon as they were financially able to do so. They claimed refugee status upon their arrival in Canada, but the Applicant was found ineligible and so submitted a PRRA instead. His risk narrative was based on Alba's Basis of Claim form, which set out the incidents described above.

[6] The Officer refused the Applicant's PRRA, finding that he was usually only accosted by the Clan when he was with Alba and there was only one incident when he was threatened separately. The Officer found that the articles about the Clan submitted by the Applicant were not persuasive because they did not mention any personal threats against him, and he did not have the profile of the typical targets of Clan violence. The evidence did not support a finding that the Clan was searching for the Applicant, nor how they would know he had returned to Colombia or could locate him in the country. In addition, the Officer noted that it was Alba who refused to do business with the Clan and there was no evidence that the Applicant was on their radar or being sought by them. For all of these reasons, the Officer concluded that the Applicant had not demonstrated that he would be at risk if he returned to Colombia.

[7] The Applicant seeks judicial review of the decision, arguing that the Officer's assessment of his forward-facing risks is unreasonable because it ignored the Clan's history of threats in

Bogota and failed to consider that they tracked him and his family to other locations in Colombia. He argues that the Officer also ignored the fact that the Clan had threatened him directly, and this gave him the profile of someone who would be tracked.

[8] I agree. The PRRA decision is unreasonable.

[9] It is not necessary to discuss each of the Applicant's submissions in great detail. The PRRA Officer's conclusions fail to explain how the Officer weighed the evidence on two key points. First, the Officer appears to accept that the Clan had repeatedly warned the Applicant and Alba not to "snitch" – meaning not to report the recruitment efforts or threats, assaults or attempted kidnapping to the authorities. The Officer does not call into question the evidence that after the Applicants reported the incidents to the police they faced a new death threats from the Clan precisely because they were "snitches". However, there is no explanation for how this factored into the final analysis of the Applicant's forward-facing risk.

[10] Second, the Officer acknowledges that the Applicant was threatened when he was with Alba, and on one occasion when he was alone. Yet the second incident seems to be discounted entirely, without any explanation about why it was not significant. On the evidence, the Officer's statement that Alba was the Clan's recruitment target and that she and the Applicant were threatened is unassailable. The difficulty is in understanding how the Officer factored in the

Clan's specific threat against the Applicant when he was alone into its analysis of his forward-facing risk. Perhaps the Officer had reason to doubt the Clan's intentions, but these are not explained.

[11] Examining the decision as a whole, the Officer accepted the main points of the Applicant's narrative: that the Clan attempted to recruit Alba; when she rebuffed their solicitation they threatened her, the Applicant and their family, and he witnessed all of this. The Clan subsequently threatened the Applicant, then attempted to kidnap his sister-in-law, tracked the family down when they fled Bogota, and made further threats specifically directed to the Applicant and Alba. Several of the threats specifically warned them not to report anything to the police, but despite that the family did submit a report to the authorities. They were subsequently threatened with death.

[12] It was certainly open to the Officer to find that the Applicant's evidence was lacking in regard to the Clan's threats against him and their ongoing interest in finding him if he returned to Colombia. However, such a conclusion needed to be stated clearly and explained in the decision. The Officer did not do that.

[13] The Respondent submits that the Officer reasonably considered the fact that the Applicant relied on Alba's Basis of Claim narrative and did not file his own personal narrative.

However, this is not an adequate justification for a lack of reasoned analysis. Alba's narrative included all the information about the threats from the clan directed both towards her and the Applicant. In addition, the PRRA Officer did not raise any concerns in the decision about the lack of personal narrative and thus it cannot be at issue on judicial review.

[14] For the reasons set out above, I find that the Officer's decision is not reasonable, when measured against the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[15] The application for judicial review will be granted. The decision will be quashed and the matter will be sent back for reconsideration by a different Officer.

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

**JUDGMENT in IMM-5055-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The PRRRA decision dated February 20, 2023, is hereby quashed and set aside.
3. The matter is sent back for reconsideration by a different officer.
4. There is no question of general importance for certification.

"William F. Pentney"

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Judge

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

**DOCKET:** IMM-5055-23  
**STYLE OF CAUSE:** DAYHAM CAMILO MALPICA MARINO v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 16, 2024

**JUDGMENT AND REASONS:** PENTNEY J.

**DATED:** MAY 24, 2024

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