Federal Court  Cour fédérale

Date: 20240705

Docket: IMM-13564-22

Citation: 2024 FC 1060

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 5, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

FREDY ALEXANDER RODRIGUEZ NEIRA
KELLY JOHANNA PUENTES PENA
KEWIN YESID RUIZ PUENTES
MANUEL FELIPE RODRIGUEZ PUENTES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, citizens of Colombia, are seeking judicial review of a decision by the Refugee Appeal Division [RAD] dated December 2, 2022 [Decision], rejecting their refugee

protection claims and determining that they are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD relied on the ground that the applicants had an internal flight alternative [IFA] in Colombia. The applicants argue that the RAD's decision was unreasonable in that it disregarded the evidence on the record demonstrating a determination contradictory to the one reached.

[2] The refugee protection claim was based on the facts alleged by Mr. Neira [the principal applicant] regarding his fear of persecution because of threats from a group named Los Radicales [the agents of persecution]. The principal applicant was able to identify a member of the National University of Colombia [UNC] who was also a member of the Los Radicales group. The applicants allege that Los Radicales is a group linked to the Revolutionary Armed Forces of Colombia [FARC]. The principal applicant alleges that, after the applicants left Colombia, his parents were harassed by Los Radicales, the agents of persecution.

[3] The RAD confirmed the decision of the Refugee Protection Division [RPD] dated May 19, 2022, according to which the applicants have a viable IFA in Colombia. The applicants argue in this judicial review that the RAD erred in its analysis of the evidence regarding the motivation and ability of Los Radicales, a group allegedly linked to the FARC, to find the principal applicant.

[4] Having reviewed the record submitted to the Court, including the parties' written and oral representations, as well as the applicable law, I am of the view that the applicants have not

discharged their burden of demonstrating that the RAD's decision was unreasonable. For the reasons that follow, the application for judicial review is dismissed.

II. Facts

[5] The applicants allege that they have feared persecution since November 7, 2018, when the principal applicant came face to face with Los Radicales during a demonstration at the UNC in the city of Bogota, where he was working at the time. During this demonstration, the principal applicant identified one of the Los Radicales protestors, who was also an employee of the UNC. On February 15, 2019, the applicants filed a complaint explaining to the police that they had recognized members of Los Radicales.

[6] The principal applicant alleges that he received a threatening letter in March 2019 and that he received threatening calls on his parents' telephone line. Since these incidents, and because of the fact that he was forced to leave his job and the city of Bogota, the principal applicant alleges that he fears Los Radicales because he recognized the employee protesting.

[7] The applicants sought refuge in another city, but they continued to receive texted SMS threats on February 1, 2018. The applicants stated that an incident involving the principal applicant's son, whom drug dealers accosted on October 21, 2021, to search his cell phone, demonstrated the agents of persecution's motivation. The applicants then tried to relocate to Bogota, but to no avail, because Los Radicales allegedly continued to threaten them there.

[8] The applicants argue that Los Radicales have a connection with the FARC, which has influence and resources (ability) to find the principal applicant.

[9] Following a hearing, the RPD issued its reasons for decision on May 19, 2022, concluding that the principal applicant and the other members of his family had not met their burden of demonstrating that there was a serious possibility of persecution on a recognized Convention ground or that there was, on a balance of probabilities, a risk to their lives, a risk of cruel and unusual treatment or punishment or a danger of torture if they returned to Colombia. The RPD rejected the applicants' refugee protection claim on the grounds that a viable IFA was available in Colombia.

[10] The RPD stated, first, that it took into account the written threats received by the principal applicant, but the fact that Los Radicales were able to locate him in a city outside his workplace did not lead to the conclusion that, on a balance of probabilities, they would be able to find the principal applicant elsewhere in the country. Second, the RPD concluded that the principal applicant's son was not a rival dealer and that the drug dealers perceived him as an innocent person whom they did not want to harm. The RPD was of the view that the incident involving the principal applicant's son had nothing to do with the alleged problems related to the fear of persecution by Los Radicales. Third, the RPD relied on the evidence on the record, in particular the articles about the FARC and the demonstrations at the UNC, and concluded that there was no evidence to support a finding that these demonstrations were linked to the same groups as Los Radicales.

[11] The RAD confirmed the RPD's conclusions regarding a viable IFA and rejected the applicants' refugee protection claims.

III. Decision under judicial review

[12] The RAD conducted an independent review of the record, including the evidence on the record and the recording of the virtual hearing held by the RPD on February 15, 2022, before concluding that the applicants' appeal to the RAD should be dismissed and that the determinative issue was the IFA. The RAD determined that the applicants were neither Convention refugees nor persons in need of protection. It concluded that the risk of harm from Los Radicales did not have a nexus to a Convention ground. The RAD therefore considered the refugee protection claim under subsection 97(1) of the IRPA.

[13] In conducting the IFA analysis, the RAD applied the two prongs of the applicable test set out in *Rasaratnam v Canada (Minister of Employment and Immigration (CA)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 [*Rasaratnam*], and *Thirunavukkarasu v Canada (Minister of Employment and Immigration (CA)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*]. Only the first prong of the test is subject to judicial review and, therefore, only the first prong is summarized below.

[14] With respect to the ability to locate the applicants in the IFA, the RAD stated that the applicants had not demonstrated Los Radicales' ability to locate them elsewhere in Colombia. The articles submitted into evidence did not demonstrate that the protestors recognized by the principal applicant had ties to the FARC and that they would be able to find the principal

applicant and his family in the IFA, where the criminal group is present. The RAD relied on the fact that the principal applicant did not indicate in the written account in the Basis of Claim Form [BOC Form] or in the amendment to his BOC Form that Los Radicales was a group affiliated with the FARC and that the threats were from that group.

[15] The RAD concluded that the applicants had not established that the agents of persecution were affiliated with the FARC. The RAD also stated that the threatening letter and the threatening telephone calls to the landline of the principal applicant's parents in Bogota, where the principal applicant was living at the time, were not evidence that demonstrated Los Radicales' ability to find the principal applicant in the IFA.

[16] With regard to the motivation to find the applicants in the proposed IFA, the RAD stated that the RPD was correct in concluding that the fact that the telephone calls had ceased in August 2021, after the principal claimant's parents' telephone line had been cut, was a strong indication that the agents of persecution did not still have the motivation to search for the applicants and that they did not have a continuing motivation to pursue the applicants throughout Colombia. The RAD concluded that once the line was cut, there was no retaliation and no new incident involving Los Radicales because this group knew the parents' address and the parents did not move or change their lifestyle.

[17] The RAD acknowledged that the principal applicant filed a complaint with the authorities on February 15, 2019, to report the threats. The content of the complaint was not submitted into evidence before the RPD, and the RAD therefore considered the testimony of the principal

applicant, who stated that he did not know the name of the person he recognized among the protesters and who was a secretary at the UNC. The RAD was of the view that the evidence on the record did not support the finding that this person whom the applicant stated that he recognized actually was a member of the Los Radicales group. The RAD concluded that the evidence on the complaint was unsatisfactory to show that Los Radicales had an ongoing motivation to search for the applicant throughout Colombia to that day.

[18] Finally, the RAD confirmed the RPD's decision that the applicants had a viable IFA. The applicants now seek judicial review of the RAD's decision.

IV. Issues and standard of review

[19] The only issue in this judicial review is whether the RAD reasonably concluded that there was a viable IFA in Colombia.

[20] The applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 53; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at paras 7, 39–44).

[21] A reasonable decision is one that is made on the basis of a coherent and rational chain of analysis, and that is justified in light of the facts and law that constrain the decision maker. The Court's intervention is not justified where the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at para 99, *Mason* at para 59).

[22] This approach is meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It is rooted in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers (*Vavilov* at para 13).

[23] A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–6; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" process; it remains a robust form of review (*Vavilov* at para 13; *Mason* at para 63).

[24] The burden is on the party challenging the decision to show that it is unreasonable, for example, that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency(*Vavilov* at para 100).

V. Analysis

A. *The RAD's decision is reasonable*

[25] A Convention refugee and a person in need of protection must face the identified risk in every part of their home country. As a result, if a claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97, regardless of the merits of other aspects of the claim (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 7).

[26] The test for establishing whether an IFA is viable in the claimant's country is set out by the Federal Court of Appeal in *Rasaratnam* and *Thirunavukkarasu.* The Federal Court of Appeal states that in order to establish whether a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, of two prongs:

a. There is no serious possibility of the claimant being persecuted or personally subjected to a danger of torture, to a risk to his life or to a risk of cruel and unusual treatment or punishment in the part of the country to which it finds an IFA exists; and

b. Conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for the claimant to seek refuge there.

Rasaratnam at 711; *Thirunavukkarasu* at 592, 595–7

[27] Once the potential for an IFA is raised, the claimant bears the onus of establishing it is not viable: *Thirunavukkarasu* at 594 and 595.

[28] The applicants argue that the RAD did not consider several pieces of evidence submitted that contradicted its findings and clearly demonstrated that the Los Radicales group is linked to the FARC and that Los Radicales therefore had the ability and motivation to find the principal applicant.

[29] With regard to Los Radicales' ability to find the applicants, the applicants argue that the RAD failed to consider the many newspaper sources describing the August 15 and November 7, 2018, demonstrations taking place at the same location, and that, even taking into account the various objectives and the FARC's declaration in which it dissociated itself from the demonstrations, the evidence should have been sufficient to meet their burden to prove that there were ties between Los Radicales and the FARC. The applicants allege that the evidence shows that Los Radicales were able to find the principal applicant elsewhere in Colombia given that Los Radicales were able to obtain the address and telephone number of the principal applicant's parents in Bogota.

[30] With respect to Los Radicales' motivation to locate the applicants, the applicants argue that the RAD erred in concluding that there was no longer a threat now that the principal applicant no longer works at the UNC. According to the applicants, the RAD drew conclusions that contradict the factual background on the record because the evidence shows that Los Radicales infiltrated the university and the principal applicant is able to identify the person at the UNC who is a member of the Los Radicales group.

[31] The applicants submit that the RAD erred in omitting the fact that Los Radicales tried to intimidate the principal applicant's family. According to the applicants, the RAD erred in omitting the facts about the attempts made by the criminal group to contact and try to intimidate the principal applicant's family. The applicants rely on *Cejudo Hernandez v Canada (Citizenship and Immigration)*, 2019 FC 1019 [*Cejudo*] at paragraph 33, to explain that the reason the principal applicant did not hear from the agents of persecution was because he was in Canada.

The applicants stated that being in Canada meant that Los Radicales could no longer pursue them because they lacked the resources to search for them in Canada. According to the applicants, as soon as they return to Colombia, they will be at risk of being identified and found.

[32] It appears that the RAD clearly identified the test applicable to the IFA, and I am of the view that it reasonably applied that test and that its findings under each prong of the test are not unreasonable.

[33] In my opinion, the applicants have not demonstrated that the RAD's findings are unreasonable with respect to Los Radicales' ability to find them. First, I agree with the respondent that the RAD analyzed the evidence submitted, including the newspaper articles, to reach a reasonable conclusion that the applicants had not established that the protesters seen by the principal applicant at the student demonstration on November 7, 2018, had ties to the FARC (the August 2018 protest between the government and FARC) and that Los Radicales, the agents of persecution, were associated with the FARC. The fact that two events occurred in 2018 does not mean that one is related to the other.

[34] Second, I agree with the respondent that the RAD assessed the evidence before it and reasonably concluded that Los Radicales were able to locate the principal applicant's parents in Bogota in March 2019, but that this did not necessarily mean that Los Radicales had the ability to find the applicants in the proposed IFA or elsewhere than Bogota.

[35] Similarly, the applicants did not demonstrate that the RAD's findings were unreasonable with respect to Los Radicales' motivation to find them. The RAD had relied first on the fact that the principal applicant's parents no longer received telephone calls after cutting their landline. It was not unreasonable for the RAD to consider the cessation of calls as an indicator that the agents of persecution no longer have any motivation to pursue the applicants throughout the country.

[36] The RAD also relied on the fact that the principal applicant's parents had not moved or changed their lifestyle since receiving the threatening letter at their home in March 2019. It was not unreasonable for the RAD to consider the fact that the agents of persecution, who knew the parents' address and had the opportunity, had not contacted the principal applicant's parents since the last threats in March 2019 to conclude that the agents of persecution no longer have an interest in searching for the applicants anywhere in the country where an IFA exists.

[37] I agree with the respondent that the RAD could reasonably rely on the absence of evidence that the agents of persecution tried to locate the applicants since August 2021 to find that there was a lack of ongoing interest in pursuing them and therefore a finding of an IFA (*Chavez Perez v Canada (Citizenship and Immigration)*, 2021 FC 1021 at para 10; *Ocampo v Canada (Citizenship and Immigration)*, 2021 FC 1058 at para 28).

[38] As mentioned in paragraph 31 above, the applicants rely on *Cejudo* to explain that the reason the principal applicant did not hear from the agents of persecution was because he was in Canada and that if he had to return to Colombia, he would be at risk of being identified and

found. In *Cejudo*, the Court states the following at paragraph 34 to demonstrate that these findings at paragraph 33 were not determinative in its decision:

> [33] However, the RAD fails to mention that a significant reason for not hearing from them could have been that the Applicant has been in Canada since December 28, 2016; the criminals might not know how to contact him in Canada. The RAD's statement that the Applicant has not heard from the criminals since November 2016 does not necessarily lead to a conclusion that the criminals would not pursue him if he returned to Mexico.
>
> [34] To be clear, I am not making a finding one way or the other on that question. The RAD may have had a reason to discount the geographical distance between Canada and Mexico as being an explanation for the lack of contact by the union. If that is so, it is not transparent as it is not readily apparent from the reasons given nor from a review of the underlying record.

[39] Moreover, in our case, the RAD did not make a finding on geographical distance, but rather on the nature of the persecution. At paragraphs 30 to 34 of the Decision, the RAD concluded that the applicants cannot rely on a fear of persecution because the persecution ceased when the telephone line was cut. Even though Los Radicales knew the address of the principal applicant's parents, the RAD reasonably concluded that Los Radicales made no effort to search for the principal applicant or his family after the telephone line was cut.

[40] In my opinion, the RAD's rationale is intelligible, transparent and justified in light of the record before it (*Vavilov* at paras 15, 98). The burden is on the applicants to show that the RAD's decision is unreasonable, and they have not demonstrated that the RAD made errors that are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

[41] In its analysis, the RAD considered all the evidence that had been submitted to the RPD and reasonably concluded that the applicants have not demonstrated that they would be subjected to a serious risk of persecution or to a danger of torture, to a risk to their lives or to a risk of cruel and unusual treatment or punishment if they were to relocate to the city of the proposed IFA, or that such relocation to the proposed IFA would be objectively unreasonable. In the circumstances, the Court cannot intervene.

[42] The applicants are essentially asking the Court to reweigh and reassess the evidence that the RAD itself has weighed and assessed. Unfortunately, this is not the Court's role on judicial review (*Zhang v Canada (Citizenship and Immigration)*, 2023 FC 1308 at para 36; *Vavilov* at paras 124–5).

VI. Conclusion

[43] The RAD's decision is reasonable The RAD has conducted a reasonable assessment of whether a viable IFA exists.

[44] The application for judicial review is dismissed.

[45] The parties did not propose any questions for certification, and I agree that none arise in the circumstances.

JUDGMENT in IMM-13564-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Ekaterina Tsimberis"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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