

Federal Court



Cour fédérale

Date: 20151201

Docket: IMM-2406-15

Citation: 2015 FC 1333

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 1, 2015

Present: The Honourable Mr. Justice Bell

BETWEEN:

**DIEGO FABIAN GARCIA CORREDOR
CARLOS ALBERTO GARCIA BERNAL
PAULA XIMENA LOPERA NINO
JUAN DIEGO GARCIA LOPERA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision of the Immigration and Refugee

Board, Refugee Protection Division (RPD) rejecting the applicants' claim. The RPD found that the applicants were not Convention refugees according to section 96 of the Act, or persons in need of protection under section 97. In my view, this application for judicial review must be allowed.

II. Background and alleged facts

[2] The primary applicant, Diego Fabian Garcia Corredor (Mr. Corredor) is accompanied in his father's refugee claim, Carlos Alberto Garcia Bernal, his wife Paula Ximena Lopera Nino (Ms. Nino) and his minor son, Juan Diego Garcia Lopera. Mr. Corredor was appointed a representative for his minor son. The applicants are all citizens of Colombia.

[3] Mr. Corredor was working as a lawyer in Colombia, and Ms. Nino was an odontologist. Both worked in Ibagué, Colombia, Mr. Corredor's home town. For several years, Mr. Corredor worked in the field of dissolution of cooperative financial institutions. In 2006, he began working for a financial institution named Hogarcoop. As part of his work with Hogarcoop, he met with more than 300 persons affected by the failure of the institution and he had to make a list of priority creditors. He completed this list in May 2008 and gave it to his supervisor for publication. The date of publication is uncertain, but Mr. Corredor believed that it was before June 16, 2008.

[4] On January 23, 2008, Ms. Nino received a first telephone call at home, asking her where her husband was. On March 26, 2008, Ms. Nino received three telephone calls during which her husband was personally threatened. Mr. Corredor testified that it was the first time that he

received death threats during his career. On March 27, 2008, the applicants left to go live with a friend in Bogota, approximately 400 kilometres from Ibagué.

[5] On May 10, 2008, in Bogota, Mr. Corredor received two calls on his cell phone a few minutes apart. Mr. Corredor alleged that during the first call, they demanded that he hand over the money invested in Hogarcoop and that during the second call, he was insulted and he was allegedly told that [TRANSLATION] “they knew where he was hiding in Bogota”. Mr. Corredor testified that he received these calls on his private cell phone, a number that only his family had.

[6] On May 15, 2008, the applicants travelled to the United States for a period of a little more than three months during which they also visited Canada for a few days. According to Mr. Corredor, his family and he did not consider making a refugee claim at this time and wanted to wait until the situation in Colombia calmed down. The applicants returned to Ibagué on August 24, 2008. Before their return, Mr. Corredor had his property in Ibagué secured with a security system from an American company whose services he had retained during his stay in the United States. From August 25 to September 30, 2008, Mr. Corredor also retained the services of an armed bodyguard.

[7] According to Mr. Corredor, the telephone threats started again on September 15, 2008. On September 27, 2008, Ms. Nino was allegedly approached aggressively by two people while she was in a supermarket within one hundred metres of their house, in Ibagué. These people allegedly asked where her husband was and stated that she had to [TRANSLATION] “settled his accounts”.

[8] Following this last event, the applicants again left Ibagué for Bogota. On October 30, 2008, they purchased their plane tickets to Canada. On that day, Mr. Corredor reported the threats to the police.

[9] The applicants arrived in Canada on November 13, 2008, and made a refugee claim on the same day.

[10] According to Mr. Corredor, the threats came from the Revolutionary Armed Forces of Colombia (FARC). The applicants allegedly learned their identity after they left Ibagué, when the FARC left pamphlets in front of Mr. Corredor's house and revealed its identity to Ms. Nino's mother during a telephone call that occurred between January 24, 2009, and February 7, 2009. Mr. Corredor allegedly also learned, using Google Maps, that graffiti containing the word "FARC" was written on the walls of his house. Mr. Corredor, in his affidavit, stated that the pamphlets left at his home identified the agent of harm as belonging to Front 25 of the FARC and that these pamphlets declared him a military objective.

III. Impugned decision

[11] The RPD found that the applicants were not able to establish a reasonable possibility of persecution for one of the Convention grounds or that, on a balance of probabilities, they would face a personal risk of torture, risk to life or risk of cruel and unusual treatment or punishment if they returned to Colombia. In short, the RPD was not satisfied with the credibility of the allegations advanced during the testimony, despite the evidence presented. The RPD also concluded that the applicants had an internal flight alternative in Pereira, Colombia.

[12] According to the RPD, Mr. Corredor was not credible with respect to his allegations of death threats. The RPD found that Mr. Corredor had not established, on a balance of probabilities, that the FARC was the source of the alleged threats. The RPD considered the documentary evidence with respect to the organization and the acts committed by the FARC, in addition to the documentary evidence filed by the applicants establishing that the FARC participated in money laundering and extortion. However, the RPD determined that it is reasonable to expect that such an organization would identify itself at the first opportunity to obtain what it desired (rather than waiting several months before identifying itself to Ms. Nino's mother) and that it would be more specific about its objectives, given the criminal nature of its activities.

[13] The RPD also questioned Mr. Corredor as to whether he had chosen to return to Ibagué rather than going to Bogota or staying in the United States. Mr. Corredor answered that he could be tracked down in Bogota, but the RPD was not satisfied with this response. The RPD added that this explanation is not reasonable, given that he had very quickly left Ibagué after the threats, which he had obviously taken seriously. Mr. Corredor also stated that he did not want to stay in the United States, because he wanted to return to Ibagué and see whether the situation had become calmer since his departure. The fact that Mr. Corredor had taken the threats quite seriously to decide to leave Ibagué for Bogota the next day and to return to Ibagué a few months later revealed contradictory actions according to the RPD.

[14] The RPD had also found inconsistent the fact that Mr. Corredor had had installed in his home such an advanced security system, but that at the same time, he returned to Ibagué,

thinking that the situation had become calmer. Therefore, the RPD found that no link could be established between the security measures taken and the allegations of threats given the findings on the lack of credibility of the refugee claim.

[15] At the hearing, the RPD invited Mr. Corredor to explain why he had waited seven months after the start of the telephone threats to report the events to the police. Mr. Corredor testified that it was because he always hoped that the state could protect him. The RPD gave no probative value to the report filed with police, stating that it is contradictory to believe in state protection, but to wait so long before filing a report, knowing that he would leave Colombia for Canada 15 days later.

[16] The RPD gave no weight to the pamphlets that were allegedly placed on the step of Mr. Corredor's house by the FARC or to the graffiti appearing on the front of his house. According to the RPD, anyone could have written this graffiti and printed these pamphlets. The RPD also gave no weight to the affidavit of Mr. Corredor's mother and the affidavit of Ms. Nino's mother, given that the evidence was not relevant and that it had already been established that Mr. Corredor's allegations was not credible.

[17] The RPD found that the applicants had an internal flight alternative and that Mr. Corredor could change professions to protect himself. The RPD found that the applicants could live with his brother, in Pereira, which is 124 kilometres from Ibagué, given that he was never contacted by the person making the threats against Mr. Corredor and that more than seven years had elapsed since these threats started. With respect to the change in profession, the RPD determined

that the source of threats was due to Mr. Corredor's occupation and was not based on who he is. According to *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 99, [2007] FCJ No 336, the possibility of Mr. Corredor giving up his profession, if he fears being tracked down because he is a lawyer, is not a breach of one of his fundamental rights.

IV. Issues

[18] After reviewing the parties' claims and their respective files, I repeat the issues proposed by the minister and restate them as follows:

1. Is the RPD's decision as to Mr. Corredor's lack of credibility reasonable in the circumstances?
2. Is the RPD's decision that the applicants have an internal flight alternative reasonable?

V. Standard of review

[19] The standard of review applicable to the issue of the refugee claimant's credibility is that of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732, 160 NR 315). This issue requires a review of the facts and law, and it was established by case law that the RPD's jurisdiction and expertise regarding an applicant's credibility must be given a high degree of deference. Therefore, this Court will only intervene if the decision on credibility is unreasonable, in that it does not fall "within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 (*Dunsmuir*)), and if the decision-making

process is not justifiable, transparent and intelligible (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59; *Dunsmuir*, above at para 47).

[20] With respect to the IFA finding, the applicable standard is also that of reasonableness (*Diaz v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1243, [2008] FCJ No 1543 at para 24; *Kumar v Canada (Minister of Citizenship and Immigration)*, 2012 FC 30, [2012] FCJ No 26 at para 16). In this respect, the RPD benefits from a special expertise to which a high degree of deference must be given. This Court will not intervene if the RPD's finding meets the standard of reasonableness as set out in *Dunsmuir*.

VI. Analysis

A. *Mr. Corredor's credibility*

[21] Although I must give a high degree of deference to the RPD's decision, I am satisfied, for the following reasons, that the conclusion regarding Mr. Corredor's credibility does not fall "within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir*, above at para 47). I am also of the view that the decision-making process is not justified, transparent and intelligible in the circumstances, within the meaning of *Dunsmuir*. I will explain. First, the threats against Mr. Corredor began around March 2008. Apparently, the members of the FARC only identified themselves as agents of persecution in January 2009, at the time when Ms. Nino's mother, Mr. Corredor's mother-in-law, allegedly received threats by telephone. The RPD found that the FARC would not wait 10 months to [TRANSLATION] "make himself known", given the criminal nature of this organization. This

finding, which is unfounded, is based on highly speculative hypotheses. The RPD used this speculation to undermine Mr. Corredor's credibility. Second, the RPD found that Mr. Corredor, during the hearing, could not describe what the people making threats had demanded of him during the telephone threats of March 26, 2008. According to the RPD, the fact that Mr. Corredor could not have answered undermined his credibility. However, I note that Mr. Corredor indeed mentioned that the persons making threats wanted him not to respect the priorities for the payment of creditors as stipulated in the applicable law. Third, it is not disputed that Ms. Nino was assaulted on September 27, 2008, and that during the assault, the attackers made threats against Mr. Corredor. This evidence, which corroborates Mr. Corredor's testimony, was not mentioned by the RPD in his analysis. Fourth, Mr. Corredor's mother and mother-in-law both filed affidavits in which they described the threats made against them owing to Mr. Corredor's refusal to comply with the demands of the agents of persecution. Faced with these affidavits, the RPD simply noted that it gave them [TRANSLATION] "no weight" since it had already been established that Mr. Corredor's allegations were not credible. However, these affidavits clearly affected the issue and were central to Mr. Corredor's allegations. Furthermore, the facts set out in the affidavit of Mr. Corredor's mother-in-law were not challenged. Indeed, his refugee claim in Canada was granted and was founded, among other things, on the same facts contained in his affidavit before the RPD, in support of Mr. Corredor's application. Since this unchallenged affidavit was relevant to Mr. Corredor's application, it was unreasonable for the RPD to give it [TRANSLATION] "no weight". Finally, Mr. Corredor submitted into evidence two pamphlets that were found on the step of his home and that claimed to come from the FARC. He also submitted before the RPD photographs of the initials "FARC" painted on the front of his house in Colombia following his departure. The RPD gave no weight to the FARC pamphlets and the

photographs of the FARC initials. Based on the les circumstances and considering the unchallenged affidavit of the mother-in-law, I consider that it was unreasonable to give “no weight” to this evidence.

[22] Indeed, no weight was given to the evidence that supported Mr. Corredor’s allegations. The RPD never contemplated whether this evidence should have been considered in support of his credibility. Its assessment of the evidence was not reasonable. I recognize that it is up to the RPD and not to the Court to assess the evidence presented and their probative value (*Kanthisamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113, [2014] FCJ No 472 at para 99). However, it is established that the RPD has a duty to consider the evidence as a whole before making a decision (*Islam v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1246, [2015] FCJ No 1292 at para 26), and cannot reject evidence under the sole pretext that it is inconsistent with a conclusion already reached (*Chen v Canada (Minister of Citizenship and Immigration)*, 2013 FC 311, [2013] FCJ No 335 at para 20-21). The importance of considering some pieces of evidence increases based on their degree of relevance to the facts alleged (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35 at para 17; *Canada (Minister of Citizenship and Immigration) v Gabor*, 2015 FC 168, [2015] FCJ No 145 at para 18). By not considering all the evidence relevant to the alleged facts, it becomes impossible for the decision-maker to make an enlightened and informed analysis. The explanations given by the RPD to justify its findings were not transparent, intelligible or justified. In any event, given the fact that several of the RPD’s findings on Mr. Corredor’s credibility’s allegations are speculative and unfounded, as set out above, the RPD’s decision not to consider the evidence no longer holds.

[23] With respect to Mr. Corredor's failure to contact the Colombian authorities earlier, the minister alleges that waiting several months before reporting the threats to the police, i.e. 15 days before leaving for Canada, does not show that he truly intended to avail himself of state protection before making a refugee claim in Canada. In my view, the fact that Mr. Corredor had not contacted the Colombian police earlier shows that he did not take all possible steps to obtain protection in the circumstances (*Fuentes Hernandez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1126, [2008] FCJ No 1397 at paras 27-28; *Quintero Sanchez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 491, [2011] FCJ No 610 at para 25). Therefore, it was reasonable for the RPD to find that such conduct compromises the plausibility of his allegations and his credibility. However, in light of the previously identified errors, this deficiency in Mr. Corredor's evidence does not justify a finding of general lack of credibility (*RKL v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No 162, 2003 FCT 116 at para 14).

B. *The internal flight alternative*

[24] Mr. Corredor stated that the RPD's analysis on the internal flight alternative (IFA) is unreasonable, as it did not consider the facts and the documentary evidence establishing a large concentration of FARC in Pereira. He argued that his family and he cannot return to Colombia, since Mr. Corredor was declared a military objective. Therefore, it is very possible that he may be found, given that the FARC have contacts throughout Colombia.

[25] The existence of an IFA requires the application of a two-part test, with the burden on the applicant to show, on a balance of probabilities: (1) that there is a serious possibility of being

persecuted in this region, and (2) that in all circumstances, it would be unreasonable for the applicant to seek refuge in this region (*Chavarro v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1119, [2010] FCJ No 1397 at para 38; *Berber v Canada (Minister of Citizenship and Immigration)*, 2012 FC 497, [2012] FCJ No 587 at para 37 (*Berber*)). To show this, the applicant must present concrete and real evidence of conditions that would put his life or that of his family in danger (*Ranganathan c Canada (Ministre de la Citoyenneté et de l'Immigration)*, [2000] ACF no 2118, [2001] 2 CF 164 at para 15; *Berber*, above at para 37).

[26] Given the unchallenged evidence of Mr. Corredor's mother-in-law, Ms. Nino's unchallenged evidence regarding her assault, the unchallenged evidence of the FARC's activities, which was given no weight, in addition to the RPD's failure to consider the documentary evidence regarding the conditions in Colombia, I find that the RPD's decision of an IFA is not unreasonable. The RPD must form its basis on evidence establishing an applicant's safety in the region targeted by the IFA. The conditions of the geographic region are an integral part of the evidence to be considered before finding that an IFA is reasonable (*Keerthaponrajah v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 627; 41 ACWS (3d) 701 at para 7). Therefore, the RPD's IFA finding for Mr. Corredor and his family does not fall within the possible and acceptable outcomes (*Dunsmuir*, above at para 47).

VII. Conclusion

[27] The RPD's decision that Mr. Corredor's story was not credible and that he and his family have an internal flight alternative in Pereira is not reasonable and justifies this Court's intervention.

JUDGMENT

THE COURT:

ALLOWS the application for judicial review, without costs, and refers the matter back to a different member of the RPD for redetermination. No question is certified.

“B. Richard Bell”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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