

Federal Court



Cour fédérale

**Date: 20160411**

**Docket: IMM-8496-14**

**Citation: 2016 FC 402**

**Ottawa, Ontario, April 11, 2016**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**LUIS CARLOS GALVIN ALVAREZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, rejecting the applicant's claim after finding the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the IRPA respectively.

[2] For the reasons that follow the application is dismissed.

I. Background

[3] The applicant, Luis Carlos Galvan Alvarez, is a citizen of Columbia, who fled that country for the United States in February, 2014. He did not seek protection in the United States, his intention being to come to Canada where his sister resides. He travelled to this country in August, 2014, claiming refugee protection at the Port of Entry.

[4] The applicant fled Columbia because of a fear of violence due to the lack of security perpetuated by the illegal criminal and paramilitary groups including the Revolutionary Armed Forces of Columbia [FARC] and the National Liberation Army [ELN]. At the RPD he stated that he fears future persecution as a result of his profession as a mechanical engineer. He fears that if returned to Columbia he would be exposed to a real danger of robbery, extortion and abduction as an engineer.

[5] The applicant has returned to Colombia, a stay pending determination of this judicial review application having been denied.

II. Decision under Review

[6] The RPD dismissed the applicant's application, concluding (1) that he failed to establish a nexus to any of the five enumerated grounds under section 96, as his fear relating to his status as an engineer stems from criminal activity in Columbia, not persecution and (2) the risks

identified are generalized in nature rather than personalized risk pursuant to sub-paragraph 97(1)(b)(ii) of the IRPA.

[7] In finding no nexus to a Convention ground, the RPD held that the applicant's status as an engineer did not place him in a particular social group based on a former voluntary status, unalterable due to its historical permanence as interpreted in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 70 [*Ward*]. The RPD further concluded the risk of harm the applicant faced under section 96 is speculative and he did not establish, on a balance of probabilities, a risk of persecution as an engineer.

[8] The RPD further held that the applicant's fear arising out of being an engineer was generalized and he therefore failed to establish his claim under section 97 of the IRPA. The RPD found evidence of widespread incidents of extortion, kidnapping and threats in Columbia reflecting a risk which others generally face in Colombia. Relying on Justice Danièle Tremblay-Lamer's decision in *Prophète v Canada (Minister of Citizenship and Immigration)*, 2008 FC 331 at para 23, 70 Imm LR (3d) 128, the RPD concluded at paragraph 17 of its decision that: "While some engineers have been targeted by various criminal organizations in Columbia, all Columbians are at risk of becoming victims of violence and this does not remove the claimant from the category of generalized risk." The RPD further notes that the reasons the applicant might be targeted are unclear, that crime is pervasive and is a condition faced by all citizens.

### III. Analysis

[9] Relying on *Ward* at paragraph 70, the applicant argues that in rejecting his claim based on a failure to establish a nexus to one of the five grounds under section 96 of the IRPA, specifically membership in a particular social group, associated by a former voluntary status, unalterable by its historical permanence, the RPD merely articulated a bald conclusion without supporting reasons. I respectfully disagree. The RPD decision in this case is, in my opinion rationally rooted in both the facts and the law (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47).

[10] In seeking protection, the applicant bears the burden of establishing both subjective and objective fear on a balance of probabilities (*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 120; *Ye v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1221 at para 15). At the hearing the RPD and the applicant's counsel both asked the applicant what he fears and why, and the applicant responded that he fears extortion and robbery were he to start a business (Certified Tribunal Record, Volume 2 at pages 484 and 487). In response to why engineers, as a group, are subject to persecution in Colombia, the applicant admitted he could only provide an opinion and believes that this might be related to an engineer's technical work in specialized areas (Certified Tribunal Record, Volume 2 at page 487). Further, while the documentary evidence relied on by the applicant demonstrates that engineers have experienced criminality in Colombia, that evidence does not demonstrate that these individuals were persecuted or targeted because they were engineers.

[11] While I am not prepared to conclude that a claimant's status as an engineer could never meet the requirements of membership in a particular social group for the purposes of section 96 of the IRPA, the RPD's finding in this case was not unreasonable. Employment and occupation has been identified as not ordinarily raising an issue relating to the themes of human rights and anti-discrimination underpinning international refugee protection, (*Galvan v Canada (Minister of Citizenship and Immigration)*), [2000] FCJ No 442 at paras 16, 34-35, 193 FTR 161 (TD); *Olvera v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1048 at para 31, 417 FTR 255; *Rios v Canada (Minister of Citizenship and Immigration)*, 2012 FC 276 at paras 62-67, 9 Imm LR (4th) 88). The applicant failed to distinguish his situation from these cases.

[12] In concluding that the applicant had failed to establish a nexus, the RPD's reasons are brief. However, the reasons when read as whole in the context of the record allow the Court to understand why the decision was made and to determine if the decision falls within the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*), [2011] 3 SCR 708 at paras 14-16).

[13] The applicant's evidence relating to engineers demonstrates a fear that engineers, including him, intending to start a business would be perceived as wealthy and thus targeted for robbery, kidnapping and extortion. Relying on this evidence, there was a rational basis to characterize the applicant's fear as stemming from criminality and not persecution and to then conclude that the risk he alleged was generalized in nature for the purposes of sub-paragraph 97(1)(b)(ii) of the IRPA (*Saint-Hilaire v Canada (Minister of Citizenship and Immigration)*), 2010 FC 178 at paras 17, 20, 185 ACWS (3d) 734).

IV. Conclusion

[14] It was reasonable for the RPD to find that the applicant's evidence relating to the risk to engineers failed to (1) discharge the burden of establishing a nexus for the purpose of section 96 and (2) demonstrate that the groups the applicant fears would target him personally for the purpose of sub-paragraph 97(1)(b)(ii) of the IRPA.

[15] In concluding that the RPD's findings in respect of nexus and generalized risk are reasonable, I need not address the issues relating to standard of proof and appreciation of the evidence raised by the applicant. Mootness was also originally identified as an issue by the respondent as a result of the applicant's removal to Colombia. The respondent subsequently abandoned this issue and in light of my finding on the merits there is no need to address the question of mootness.

[16] The parties have not identified a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed. No question is certified.

"Patrick Gleeson"

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Judge

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

**DOCKET:** IMM-8496-14

**STYLE OF CAUSE:** LUIS CARLOS GALVAN ALVAREZ v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 30, 2016

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** APRIL 11, 2016

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