

Federal Court



Cour fédérale

**Date: 20180104**

**Docket: IMM-1508-17**

**Citation: 2018 FC 4**

**Ottawa, Ontario, January 4, 2018**

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

**BETWEEN:**

**ALEXANDER CASTRILLON GUTIERREZ**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD or the Board], dated March 6, 2017 [Decision], which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under ss 96 and 97 of the Act.

## II. BACKGROUND

[2] The Applicant is a citizen of Colombia. He arrived in Canada on December 4, 2016 and made a claim for refugee protection.

[3] The basis of the Applicant's claim dates back to the 1990s when the AUC, a Colombian paramilitary group, targeted his parents for extortion. After the family ceased being able to pay, the AUC threatened the Applicant's siblings. The threats caused the Applicant's siblings to flee Colombia between 1997 and 1999. One of his brothers settled in the United States after studying there. His other brother and his sister fled to Canada where they made successful claims for refugee protection. The Applicant and his parents stayed in Colombia.

[4] Continued persecution by the AUC led to the Applicant's parents leaving Colombia on December 24, 2006. After transiting through the United States, they arrived in Canada on January 16, 2007. Like the Applicant's brother and sister, the Applicant's parents made successful refugee claims.

[5] The Applicant attempted to immigrate to the United States between 2012 and 2015. His applications for an American visa were denied.

[6] The Applicant alleges that his flight to Canada was prompted by a series of threatening phone calls telling him that he had to leave Colombia that began in August of 2015. The Applicant did not initially report the threats to Colombian authorities but moved himself and his

family from Medellin to Itagui, Colombia. The Applicant says that he left Colombia after receiving another call in Itagui in September of 2016. The Applicant considered this call more threatening since the caller purportedly told the Applicant that he knew that the Applicant's brother, a Royal Canadian Mounted Police [RCMP] officer in Canada, was a snitch for the police and had cost the caller a lot of money. The Applicant believed that this level of detail indicated that the caller knew a lot about his family. The Applicant says that he reported this call to Colombian authorities before he departed Colombia but that he did not hear more about their investigation.

[7] The Applicant travelled to the United States without his family. He first made an asylum claim in the United States. After being released from detention, the Applicant journeyed to Canada and made his refugee claim at the Canadian border.

### III. DECISION UNDER REVIEW

[8] The Board found that the claimant is neither a Convention refugee nor a person in need of protection. The Board's conclusion is based on a negative credibility determination.

[9] After stating that the Applicant's identity was established, the Board Member moves on to the Board's credibility concerns. Because they were numerous, the Decision purports to only describe some of the Board's specific concerns.

[10] The Decision characterizes the Applicant's delay in leaving Colombia as so "egregious" that it negatively affects his credibility. Even though the Applicant's siblings left in the late

1990s, and the Applicant's parents left in 2006, the Applicant remained in Colombia. Since the Applicant had allegedly stayed to take care of his parents, his stated reason for staying disappeared after 2006. The Board points out that the Applicant's parents' refugee narrative described three of their children being threatened in the 1990s. Since three of the Applicant's siblings fled Colombia in the late 1990s, the Board questions whether the Applicant was among those threatened. This leads the Board to question whether the Applicant was threatened more recently as well.

[11] The Board does not find the nature of the alleged threats to the Applicant to be plausible. The Applicant indicated that he was told to leave Colombia because his brother had cost the people threatening him money. Yet there was no demand for money, as there had been in his parents' case. The Board does not accept that forcing the Applicant to leave Colombia and rejoin his family in Canada could constitute reprisal. This leads the Board to believe that the threats were concocted after the Applicant failed to obtain an American or Canadian visa.

[12] The Applicant stated that, because of his family's history, his fear for his life never disappeared, but that he did not experience threats in Colombia between 2006 and 2015. The Applicant also acknowledged that economics contributed to his decision to seek a visa in 2012. The Board finds the Applicant's stated fear inconsistent with his failure to report the 2015 threats to Colombian authorities. The Board concludes that the Applicant has had economic reasons for attempting to leave Colombia since 2012.

[13] The Board finds the Applicant's failure to go to the police after the first threatening phone call inconsistent with the Applicant's statement that his fear of persecution never disappeared between 2006 and 2015. The Board Member points out that the Applicant initially testified that he considered the first call a bad joke. When the Board confronted the Applicant with its concerns about this explanation, the Applicant added that he had no confidence in the police and that he did not ignore the first call. The Board finds that this subsequent explanation directly contradicts the Applicant's earlier explanation.

[14] The Board also takes issues with the timing of the Applicant's decision to report the 2016 threat to Colombian authorities. The Board notes that the Applicant's written testimony states that he had already bought a ticket to leave Colombia before going to the authorities. During oral testimony, however, the Applicant claimed that he decided to leave Colombia after being unsatisfied with official response to his report. The Board finds the Applicant's explanation for this contradiction "obtuse and indirect." The Applicant also suggested that a report from the authorities may have been lost. The Board does not believe that this report ever existed or that the Applicant reported the threats to Colombian authorities. Instead, the Board finds the Applicant untruthful based on his inability to tell a consistent story.

[15] The Board Member finds that the Applicant also contradicted himself when he stated during oral testimony that the callers specifically identified themselves as AUC. The Applicant's written narrative described the first threatening phone call as coming from an unknown individual. The Applicant initially explained this inconsistency by asserting that he had only suspected the first callers as being AUC because they mentioned his family, but that they had not

stated that they were AUC. Asked to explain the inconsistency between this explanation and his earlier oral testimony, the Applicant blamed this on an oversight in the written narrative caused by the stress that he was under at the time. The Board notes that this does not explain inconsistencies in the Applicant's oral testimony regarding the call.

[16] The Board further notes that the Applicant's story about his level of education changed between the Port of Entry form and oral testimony. The level of education in the earlier form was corroborated by the Applicant's brother's testimony. The Board finds that the Applicant was deliberately misleading about his education level in an attempt to influence the Board's determination of whether he could successfully relocate to Bogota.

[17] The Applicant's parents' narrative from their 2007 refugee claim states that the Applicant left home in 2001 and had not been in contact with them since leaving home. The Board takes issue with the Applicant's claim during oral testimony that he lived in the same city as his parents until they left Colombia, at which time he moved from Medellin to Bogota. He claimed that he never lost contact with his parents until they left Colombia. The Applicant was unsure why his parents indicated in 2007 that they had lost contact with him. The Board notes that the Applicant's oral testimony about not losing contact with his parents contradicts not only his parents' narrative but also the Applicant's own written narrative. The Applicant's narrative states that he lost contact when he moved to Bogota before his parents left. The Board accepts that these contradictions are peripheral to the Applicant's allegations, but finds that they contribute to overall credibility concerns.

[18] Regarding the testimony of the Applicant's brother, the Board finds him to be credible because his testimony was straightforward, free of embellishment, and without inconsistency or contradiction. But the Board finds that the brother's testimony was based on information provided by the Applicant rather than direct observation. Since the Board had already decided that the Applicant lacked credibility, it places no weight on evidence that relies on the Applicant's truthfulness.

[19] The Board finds that the Applicant's brother's profession as an RCMP officer in Canada did not put the Applicant at risk of harm in Colombia in the past and would not do so in the future. The Board notes that the Applicant's brother left Colombia nearly twenty years ago. He joined the RCMP in 2010. And since the Board does not find the Applicant credible, no credible evidence suggests that any armed group linked the Applicant to his brother. The Board therefore finds that no threats were made to the Applicant on account of his brother's occupation.

[20] In conclusion, the Board states that it places no weight on any of the Applicant's oral testimony or written claims. The Applicant's inability to provide any reliable evidence prevents the Board from rendering a favourable decision.

#### IV. ISSUES

[21] The Applicant raises the following issues in this application:

1. Is the Board's credibility finding unreasonable?
2. Is the Decision's handling of the principle of comity unreasonable?
3. Is the Decision's lack of a separate s 97 analysis unreasonable?

## V. STANDARD OF REVIEW

[22] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[23] The standard of review applicable to the RPD's credibility determinations is reasonableness. See *Diaz v Canada (Citizenship and Immigration)*, 2016 FC 1343 at para 10 [*Diaz*].

[24] The RPD's application of comity to the facts and the decision not to conduct a separate s 97 analysis are questions of mixed fact and law which are also reviewed under a standard of reasonableness. See *Dunsmuir*, above, at para 53.

[25] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above,



at para 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

## VI. STATUTORY PROVISIONS

[26] The following provisions of the Act are relevant in this application:

### **Convention refugee**

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

### **Person in need of protection**

97 (1) A person in need of protection is a person in Canada whose removal to their

### **Définition de réfugié**

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

### **Personne à protéger**

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait

country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

## VII. ARGUMENT

### A. *Applicant*

#### (1) Credibility

[27] The Applicant submits that the Decision is unreasonable because it sets out some, but not all, of the Board's credibility concerns when making its overall credibility determination. The Federal Court of Appeal has held that the reasons for rejecting a refugee claim on credibility grounds must be given in "clear and unmistakable terms": *Armson v Canada (Minister of Employment & Immigration)* (1989), 101 NR 372 (WL Can) at para 20 (FCA) [*Armson*]. The reasons must allow a claimant to know why the claim has failed. See *Mehterian v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 545 (QL) (CA) [*Mehterian*]. This Court has stated that "if the Board believes only a part of the applicant's story it is obliged to say how much was accepted and how much rejected": *Ramirez v Canada (Minister of Citizenship & Immigration)* (1999), 166 FTR 158 (WL Can) at para 3 (TD). The Decision expressly states that it will only discuss a few of the Board's credibility concerns. The Applicant says that this does not allow him to properly address all credibility issues in an appeal.

[28] The Applicant also says that the Board's implausibility finding about the nature of the threats he faced relies on the paramilitary group who threatened him acting rationally. The Applicant asserts that the AUC is widely considered a terrorist group. This Court has accepted that "terrorist groups often act irrationally": *Yoosuff v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1116 at para 8. See also *Selliah v Canada (Minister of Citizenship and*

*Immigration*), 2006 FC 493 at para 6; *Franco Taboada v Canada (Citizenship and Immigration)*, 2008 FC 1122 at para 35; *Londono Soto v Canada (Citizenship and Immigration)*, 2008 FC 354 at para 26 [*Londono Soto*]; *Builes v Canada (Citizenship and Immigration)*, 2016 FC 215 at para 17. The Board did not find it plausible that the group that threatened the Applicant would be satisfied with him leaving Colombia because it neither benefited them nor amounted to a reprisal. The Applicant says that to base an adverse credibility finding on the plausibility of the actions of terrorists is unreasonable.

[29] The Applicant submits that the Board erred by basing a credibility finding on its perception of the reasonableness of the Applicant's response to being threatened. The Board found it implausible that the Applicant did not take the first call seriously, given his stated fear for his life and the caller's mention of the Applicant's family. Plausibility findings should only be made in the clearest cases. The Board should consider that "refugee claimants come from diverse cultures, and actions which appear implausible when judged from [a Canadian perspective] might be plausible when considered from within the claimant's milieu": *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7 [*Valtchev*]. Because an implausibility finding depends on the Board's perception of rational behaviour, it is an error for the Board not to refer to relevant evidence that could potentially refute an implausibility conclusion. See *Valtchev*, above, at para 8, quoting *Leung v Canada (Minister of Employment & Immigration)* (1994), 81 FTR 303 (WL Can) at para 15 (TD), quoted in *Santos v Canada (Minister of Citizenship and Immigration)*, 2004 FC 937 at para 14. A plausibility finding that does not rely on a reliable and verifiable evidentiary base is "unfounded speculation": *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 11. The Applicant says

that it is not outside the realm of possibility that he could have an ongoing fear for his life, yet might not have reported the first call to the police. The Applicant may have become more afraid after the second call. Therefore, the Applicant submits that the Board's implausibility finding is unreasonable.

[30] The Applicant also submits that the Board's concerns over discrepancies about whether the first caller identified himself as AUC should not have been material to the Board's credibility determination. Given the AUC's past targeting of the Applicant's family, the Applicant says it was reasonable for him to presume that the AUC were the perpetrators and forget whether the caller identified himself. The Applicant says that the Decision focuses on minor, explicable inconsistencies in making its adverse credibility finding. This violates the instruction that the Board is not to be zealous to find a claimant not credible or engage in a microscopic examination of the evidence. See *Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at para 24. The Applicant says that his belief that the AUC had targeted him is what is relevant to the Decision.

[31] The Applicant submits that the Board's adverse credibility finding is partially based on technical, rather than substantive, discrepancies which are immaterial to his claim. The Board finds that the Applicant lied about the level of education he attained and that this was a deliberate attempt to mislead the Board. The Applicant says that his education level is immaterial and that the perceived discrepancy could simply be the result of ambiguities in translation. This Court has held that it is unreasonable to reject claims based on immaterial, secondary issues when the Board ignores important parts of the claimant's case. See *Simba v Canada (Minister of*

*Citizenship and Immigration*), 2000 CanLII 14777 (FCTD) [*Simba*], quoting *Mahathmasseelan v Canada (Minister of Employment & Immigration)* (1991), 15 Imm LR (2d) 29 (WL Can) at para 9 (FCA). See also *Owusu-Ansah v Canada (Minister of Employment & Immigration)* (1989), 8 Imm LR (2d) 106 (FCA); *Armson*, above, at para 24. The Applicant says that the Decision also focuses on a minor discrepancy between the Applicant's testimony and his parents' written narrative, even though the Board acknowledges that the discrepancy is immaterial to the Applicant's claim.

[32] The Applicant submits that the Board's decision to base its credibility finding on immaterial inconsistencies and unspoken grounds results in the Board ignoring corroborating testimony, country condition evidence, and the Applicant's testimony that supports his claim. The Applicant also says that the Board only considered past persecution and failed to conduct a forward-looking assessment of the risk the Applicant faces if returned to Colombia. Despite finding the Applicant's brother credible, the Board ignores the Applicant's brother's testimony about the fear the Applicant communicated to him and his belief, based on his knowledge of the drug trafficking trade, that the Applicant was at risk. Even where the Board does not find a claimant credible, it should still expressly assess evidence which could affect the claim. See *SS v Canada (Minister of Citizenship and Immigration)* (1999), 167 FTR 130 at para 11 (TD) [*Seevaratnam*]. To reach a conclusion based on certain evidence and then dismiss the remaining documentary evidence as not genuine because it is inconsistent with that conclusion inverts the reasoning process. See *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 at para 20 [*Chen*].

[33] The Applicant says that the National Documentation Package for Colombia provides extensive corroboration which substantiates the Applicant's testimony. The Applicant points to the United Nations High Commissioner for Refugees' "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia" (September 2015) [Guidelines]. The Guidelines describe ongoing risks from paramilitary groups in Colombia and how family members of targets are also at risk of threats and extortion. This aligns with the Applicant's testimony about being targeted. This Court has held that "when the [Board] refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact": *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)* (1998), 157 FTR 35 (WL Can) at para 17 (TD). See also *Goman v Canada (Citizenship and Immigration)*, 2012 FC 643 at para 13; *Hernandez Montoya v Canada (Citizenship and Immigration)*, 2014 FC 808 at paras 36-37; *Gopalarasa v Canada (Citizenship and Immigration)*, 2014 FC 1138 at para 39. Furthermore, even where a claimant's subjective fear of persecution is not found credible, if the claimant's identity is not in dispute the objective evidence of country conditions may establish that the claimant's particular circumstances make him or her a person in need of protection. See *Fixgera Lappen v Canada (Citizenship and Immigration)*, 2008 FC 434 at para 27; *Maimba v Canada (Citizenship and Immigration)*, 2008 FC 226 at para 22.

[34] The Applicant also submits that any perceived delay in his decision to leave Colombia should not have impacted the Decision. While the Applicant's siblings did leave between 1997 and 1999, and his parents left in 2006, the Applicant alleges that he was only directly targeted in

2015. The Decision characterizes this as a delay that was “egregious” and finds that it discredits the Applicant’s allegations. The Applicant points to *Ibrahimov v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1185 at para 19, where Justice Heneghan held that “when a claim is based on a number of discriminatory or harassing incidents which culminate in an event which forces a person to leave his country, then the issue of delay cannot be used as a significant factor to doubt that person's subjective fear of persecution.” See also *Londono Soto*, above, at para 31.

(2) Comity

[35] The Applicant notes that his siblings and parents were all accepted as Convention refugees in Canada. The decisions in both those claims and the Applicant’s parents’ written narrative were all submitted to the RPD. In these circumstances, the Applicant says that the Board had a duty to explain the reasons for departing from previous findings of the RPD. In *Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at para 25 [*Mendoza*], Justice Zinn held that “it is incumbent on the RPD Member when reaching a different result than was previously reached by another Member regarding a claim by a family member under similar circumstances, to explain why a contrary result was reached.” See also *Djouah v Canada (Citizenship and Immigration)*, 2013 FC 884 at para 25 [*Djouah*].

(3) Section 97

[36] The Applicant submits that the Decision’s analysis under s 97 of the Act errs because the Board stops its analysis at credibility and does not consider whether the Applicant faces an objective risk. The Applicant says that the test under s 97 of the Act is entirely objective as it is



based on the claimant's profile and the documentary evidence before the Board. Therefore, even if the claimant is primarily disbelieved, the Board is obliged to consider whether the claimant is at risk based on its finding regarding the claimant's profile. The Applicant says that the Board's finding that "the claimant did not provide any reliable evidence to support his allegations" blatantly ignores testimony from a witness that the Board found credible, country condition evidence, and the Applicant's family members' positive decisions.

[37] In *Odetoyinbo v Canada (Citizenship and Immigration)*, 2009 FC 501 at para 7, Justice Martineau held that "[i]t is well settled that an adverse credibility finding, though it may be conclusive of a refugee claim under section 96 of the [Act], is not necessarily conclusive of a claim under subsection 97(1)." See also *Bouaouni v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211 at para 41. The Applicant says that doubts about a claimant's credibility do not relieve the RPD of the responsibility of basing its determination on all of the evidence. See *Mensah v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 1038 (QL) (CA); *Baranyi v Canada (Minister of Citizenship & Immigration)*, 2001 FCT 664 at para 14; *Voytik v Canada (Minister of Citizenship and Immigration)*, 2004 FC 66 at para 20. Finding a claimant not credible means only that the claimant's testimony cannot be relied on; it does not mean that the facts attested to are untrue. This is illustrated by *Attakora v Canada (Minister of Employment & Immigration)* (1989), 99 NR 168 (WL Can) at para 13 (FCA), where the Federal Court of Appeal held that "[w]hether or not the applicant was a credible witness... that does not prevent him from being a refugee if his political opinions and activities are likely to lead to his arrest and punishment."

[38] The Applicant therefore submits that the Board's conclusion under s 97 of the Act is unreasonable because it fails to consider whether his removal to Colombia would subject him to the risks stipulated in s 97. The error is exacerbated by the Board's failure to discuss the documentary evidence which detailed the risks the Applicant would be subject to upon return. The Applicant says that the absence of a s 97 analysis alone requires the matter to be returned to the RPD for reconsideration. See e.g. *Ayilan v Canada (Citizenship and Immigration)*, 2008 FC 1328 [*Ayilan*].

B. *Respondent*

(1) *Credibility*

[39] The Respondent submits that the Applicant's suggestion that the RPD must set out every credibility concern is not supported by the jurisprudence. The Applicant relies on case law which says that the RPD must set out in its reasons why it does not find a claim to be credible in clear and unmistakable terms. See *Armson*, above, at para 20; *Mehterian*, above, at para 2. The Respondent says that the Applicant is arguing about the adequacy of reasons. Since the Decision allows the Applicant to know why his claim failed, the reasons are adequate in this case. The Respondent notes that the Applicant does not claim to not understand the Board's credibility concerns. Instead, the Applicant says that he cannot address other, unstated credibility concerns.

[40] The Respondent says that there is no merit to the Applicant's argument because the Decision is based on a cumulative credibility assessment and lists seven specific credibility concerns. In the Decision, these concerns appear under the headings "Delay in Leaving," "Nature

of Threats,” “Attempts to leave Colombia,” “Reporting to the Authorities,” “Agents of Persecution,” and “Miscellaneous Discrepancies” regarding education and the Applicant’s parents. The Respondent says that a review of the transcript demonstrates the reasonableness of the Board’s concerns and that the Decision does include the Board’s key credibility concerns. This is further demonstrated by the Applicant’s former counsel’s post-hearing submissions which addressed some of these issues.

[41] The Respondent says the Board’s concern over the Applicant’s delay in leaving Colombia is reasonable. The Applicant cites cases that found concerns over delay unreasonable where the claimant alleged cumulative incidents of persecution. The Applicant does not allege cumulative incidents of persecution. When questioned about why he did not take steps to leave Colombia until 2012 after his parents’ departure in 2006, the Applicant explained that in 2012 his business had closed and his economic situation declined. But he denied seeking to leave for economic reasons and maintained that he had always remained afraid.

[42] Further, the Respondent says that the Board’s concerns extended to the Applicant’s explanation for the delay. The Applicant said that he did not leave Colombia in the 1990s so that he could look after his parents, yet his parents left in 2006. It was also unclear whether the Applicant had been threatened along with his siblings in the 1990s.

[43] The Respondent submits that the Board’s implausibility finding about the nature of the threats allegedly faced by the Applicant is not unreasonable. The AUC extorted money from the Applicant’s parents. The Applicant alleged that a caller claimed that the Applicant’s brother had

caused them to lose money. The Board found it implausible that the AUC would demand that the Applicant leave Colombia because his departure would not benefit the AUC. Rather than speculation, the Respondent says that the Board drew a common-sense inference about the motives of the agents of persecution. See *Sandirasekaram v Canada (Citizenship and Immigration)*, 2015 FC 1005 at paras 10-11.

[44] Even if the Board's finding is speculative, the Respondent notes that in *Varatharasa v Canada (Citizenship and Immigration)*, 2017 FC 11, Justice Gleeson agreed that it was not a claimant's responsibility to explain the agent of persecution's actions, but still held that the decision was reasonable based on the officer's other concerns.

[45] The Respondent says that it was open to the Board to find that the Applicant was not credible because of his failure to report the first phone call to Colombian authorities. The Applicant says that this finding was based on the Board's own perception of what constitutes reasonable behaviour, and that it was possible for the Applicant to have an ongoing fear of persecution yet not report the call. The Respondent says that the question is not the reasonableness of the Applicant's response to the threats because the test on review "is not a listing of the entirety of reasonable possibilities, but rather, whether the RPD's findings were reasonably open to it." The Respondent submits that this is similar to *Diaz*, above, at paras 13-14, where the RPD based credibility concerns, in part, on the claimant's failure to disclose an alleged threat to his wife.

[46] The Respondent submits that the Board's concern about inconsistency in the Applicant's story as to whether the callers identified themselves is reasonable. The Respondent suggests that the Applicant's characterization of these inconsistencies as microscopic misapprehends the Board's concern. The Applicant testified that the caller in 2016 identified himself as AUC, then added that the first caller also specifically identified himself as AUC. This contradicted the Applicant's written narrative which stated that the first caller's identity was unknown. When asked to explain this inconsistency, the Applicant's explanation was that he had perceived the first caller to be AUC. The Respondent says that concern over these inconsistencies was reasonably open to the Board.

[47] The Respondent notes that the Board also identified concerns over the Applicant's testimony about when he decided to leave Colombia. The Applicant's written narrative stated that he had already purchased a ticket to Mexico before reporting the 2016 call to Colombian authorities. In oral testimony, he stated that he decided to leave when police failed to provide protection after he made the report. When the Board asked the Applicant to explain this contradiction, he stated that he decided to leave after he received the 2016 call. Later, when questioned by his counsel, the Applicant again stated that that he decided to leave after he went to the authorities.

[48] The Respondent submits that the Board did not make credibility findings based on immaterial or technical discrepancies. The Board signals that concerns over the Applicant's level of education and inconsistency with his parents' claim are additional credibility concerns by labelling them "Miscellaneous Discrepancies." The Respondent notes that the Applicant argues

that he is prejudiced by the Board's failure to mention every credibility concern, yet also faults the Board's inclusion of concerns which the Applicant says are irrelevant. The Board explains that its discussion of the education concern is relevant because the issue arose in response to consideration of an internal flight alternative [IFA] in Bogota. The Respondent says that it was reasonably open to the Board to find that this was a deliberate attempt to mislead. The Board did not accept the Applicant's explanation that he had only completed three years of courses over five years of attending school. The Respondent notes that the Applicant's brother's testimony supported the finding that the Applicant had the higher level of education. The Respondent submits that the cases relied on by the Applicant to suggest that the Board erred by considering irrelevant concerns are instances where the RPD failed to consider more important facts, which is distinguishable from the present case.

[49] Regarding inconsistency with the Applicant's parents' claim, the Respondent notes that the Board acknowledges that the inconsistency is not central to the Applicant's claim. But the Respondent submits that it remained open to the Board to make findings about the Applicant's overall credibility based on clearly inconsistent statements.

[50] The Respondent submits that having found the Applicant not credible, the Board was not obliged to consider the remaining relevant evidence. The Respondent says that the Applicant's reliance on *Seevaratnam*, above, is misplaced. This Court considered similar arguments in *Joseph v Canada (Citizenship and Immigration)*, 2011 FC 548 at para 12, and held that where "the Board's concerns about the credibility or trustworthiness of the claimant's evidence causes it to doubt the very essence of the claim... the Board need not look to general country condition

evidence to determine whether the claim was well-founded.” Similarly, *Chen*, above, is distinguishable as the Board in that case disbelieved the claimant’s testimony because it was not supported by the country condition evidence. The Respondent says that *Chen* has no application where the concern is the Applicant’s inconsistent testimony.

[51] The Respondent also points out that the Board explains that, despite finding the Applicant’s brother to be credible, his testimony was not based on first-hand knowledge. Therefore, the Board’s conclusion that the testimony was not credible evidence in support of the Applicant’s claim is reasonable.

[52] The Respondent submits that documentary evidence on its own cannot support a claim for protection where no credible evidence links the claimant to the agents of persecution. Since the Board did not find the Applicant’s evidence linking him to the threats credible there was no need to consider whether the documentary evidence applied to the Applicant. See *Rahaman v Canada (Citizenship and Immigration)*, 2007 FC 1008 at para 17 [*Rahaman*].

(2) Comity

[53] The Respondent submits that the Board did not need to explain why it found the Applicant’s claim different from his family members’ claims because the facts of the Applicant’s claim are clearly different. Unlike the cases relied on by the Applicant, this was not an instance of similar claims submitted at similar times. In *Mendoza*, the claimant brothers’ refugee claims were based on largely similar facts. In *Djouah*, the claimants were all members of the same dance troupe and made claims based on the same facts and evidence. The Respondent also notes

that comity applies to points of law and does not apply between tribunal decisions and findings of fact. See *Nwabueze v Canada (Citizenship and Immigration)*, 2017 FC 323 at para 9.

[54] The Respondent says that there was no basis for the Board to consider the Applicant's claim as being similar to that of his siblings and parents. The Applicant's siblings' and parents' claims recount them being threatened at gunpoint. The Applicant's parents also faced demands for money. Further, the Applicant submitted his claim nearly twenty years after his siblings left Colombia and a decade after his parents left.

(3) Section 97

[55] The Respondent submits that the Board was not required to conduct a separate analysis under s 97 of the Act. In *Lopez v Canada (Citizenship and Immigration)*, 2014 FC 102 at para 41 [Lopez], Justice Kane held that "a negative credibility finding is sufficient to dispose a claim under both sections 96 and 97, unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim." See also *Velez v Canada (Citizenship and Immigration)*, 2010 FC 923. The Respondent submits that this case is analogous to *Lopez*. In *Lopez*, the claim of two Salvadoran brothers failed because the documentary evidence only addressed generalized risk faced by some young men in El Salvador, and the brothers did not provide objective and credible evidence of the risk they faced. See *Lopez*, above, at paras 41-46.

[56] The Respondent points to *Dag v Canada (Citizenship and Immigration)*, 2017 FC 375 [Dag], where Justice Diner considered *Ayilan*, above. Justice Diner points out that in *Ayilan*, "a



s. 97 analysis was required, given (a) the Board's finding that the applicant was or may have been discriminated against, coupled with (b) the documentary evidence provided by the applicant": *Dag*, above, at para 22. In *Dag*, the Board found that the applicant had never been subject to discrimination. Justice Diner goes on to state that the RPD "simply lacked an evidentiary basis on which to conduct a s. 97 analysis based on personal risk to the Applicant": *Dag*, above, at para 23. The Respondent submits that having found the Applicant not credible, there was no evidence of personalized risk upon which the Board could conduct a s 97 analysis.

[57] The Respondent therefore requests that the application for judicial review be dismissed.

#### VIII. ANALYSIS

[58] In my view, there is no substance to the Applicant's arguments that the Board was obliged to decide his claim in accordance with the positive decisions received by his parents and two siblings. Each refugee claim is decided on its own facts and merits. See *Gilles v Canada (Citizenship and Immigration)*, 2010 FC 159 at para 43. Cases do arise – particularly in family situations – where the same facts are relied upon, so that it makes sense to decide them in the same way or, at least, to explain why they should not be decided in the same way. See *Mengesha v Canada (Citizenship and Immigration)*, 2009 FC 431 at para 5. But this is not one of those cases. The facts of the Applicant's case were very different from those of his parents and siblings, even though the same agent of persecution is alleged.

[59] Nor do I think there is any substance to the Applicant's argument that a separate s 97 analysis was required in this case. Risk cannot be established on the basis of general country

documentation alone. The Applicant was required to establish either a personal risk or that he had a profile or belonged to a class of persons who, under the country documentation, would, on a balance of probabilities be at risk. See *Lopez*, above, at paras 41-46. The Applicant failed to do this. Having found the Applicant not to be credible, there was nothing upon which the Board could have based a s 97 analysis. See *Dag*, above, at para 23.

[60] The Applicant argues that there was credible evidence before the Board that was sufficient to warrant a separate s 97 analysis.

[61] He points to the evidence provided by his brother who the Board found to be credible. In the Decision, the Board points out that the brother's testimony "regarding the problems [the Applicant] had in Colombia is based on the verbal assertions of [the Applicant] and admittedly not based on first-hand knowledge." Because the Board had already found the Applicant's assertions not to be credible, the Board places "no weight on any evidence that relies on the truthfulness of this claimant." The Board then goes on to deal with the possible connection between the brother's status as an RCMP officer and the risk that the Applicant claims to face in Colombia:

[24] With regard to the witness' profession as a member of the RCMP, there is nothing before the panel to suggest that the witness' occupation as a member of the RCMP has placed or would place this claimant at risk of harm in Colombia. This witness left Colombia almost twenty years ago. He has been a member of the RCMP since 2010. There is no credible evidence before this panel to suggest that any armed group has linked or would link this particular claimant to his brother in Canada. There is no credible evidence before this panel to suggest that any harm has come or would come to the claimant as a result of his brother's employment in Canada.

[62] The brother provided the following testimony on point at the hearing:

**WITNESS:** Well, basically, you know, I'm just going to go straight up to my point here is that, I mean, I work for the drug enforcement in Canada. These people try to kill me, my parents. That's why we left Colombia, apply for refugee in Canada. Somehow these people could be connected to drug business.

My occupation here is to investigate and dismantle criminal organizations in Canada, also internationally and somehow these people could have found out what I do up here in Canada, put a dent in their organization and somehow they found that my brother's still in Colombia and starting to harass him and made threats against him and his family.

[Certified Tribunal Record, p 201]

...

**COUNSEL:** And what did he tell you then in September 2015?

**WITNESS:** Okay. Well, he mention me, that people have call him and mention my name and basically I was a snitch to the police in Canada and that they made threats to him and his family.

[Certified Tribunal Record, p 204]

...

**COUNSEL:** And what did he say in this phone call of September 2016?

**WITNESS:** Basically initially I said before that people call him, unknown people call him and they knew, like, they were losing money and if he didn't leave Colombia there was going to be repercussions to him and his family. They were going to kill him basically, him and his family as well, that somehow they knew it was connected to my parents' departure, my departure, all my family departure and he was the only one left. So I guess he was going to pay the price.

**COUNSEL:** Okay, just for clarifying this part, did he call you also in September 2015 or just September 2016?

**WITNESS:** No, he — well he communicated through my parents as well. Just to clarify, so the last phone call where he mention that these people mention my name was in 2016, 2016 which is the year which is obviously when he left, because I

remember he left shortly after he receive the last phone call where they mention my name, but I know he receive previous calls as well in the previous year which would have been 2015. From that same people I don't know, but ---

**COUNSEL:** Let me ask you, just if you know from your professional experience and your life experience, too, of course, did you think that this modus operandi correspond to any organization that you may know?

**WITNESS:** Yeah, definitely. Most definitely. It's just drug cartels basically in Colombia. Drug cartels operate in Colombia. They use people. They use innocent people to export narcotics. They also use threats, intimidation, killing if they're losing money because of the police and it doesn't just mean Colombian police, but if they have the power to kill people overseas in another country they will do it as well; right? It's basically the MO is fear. You know, there's dangerous people.

**COUNSEL:** Yeah, again this is — I'm asking — probably this is my last question further to your instructions, but again this is an opinion what I'm asking.

**WITNESS:** Yeah.

**COUNSEL:** Do you know why these individuals who were affected in their business didn't proceed to kill your brother instead of giving him the opportunity to leave? Do you have an opinion on that?

**WITNESS:** They didn't do it right away, but at some point most likely they would have done it; right? I know my brother moved a few times location, so it was hard to track, probably tracking down, but I know — I have no doubt in my mind that these people would have tracked him down, him and his family at some point and kill him or kidnap him and torture and all kind of techniques.

**COUNSEL:** Okay. And just finally this is probably the very last.

**WITNESS:** Yeah.

**COUNSEL:** Again it's an opinion what I'm asking you, if you know from your experience how these individuals could find Alexander if he moves to Bogota?

**WITNESS:** Well, we're talking about criminal organizations. They infiltrate people even in the government. Police is not an exception either. Money talks in Colombia and unfortunately that's

the way it is. They can infiltrate people and high-ranking officers, police. They can find through criminal record checks and databanks where people live, you know. They have identity. They can track down like we will do it in Canada. You just give a name and an identity and you'll find out where's the address and where people are living; right?

So in Colombia would have been the same. They can track down people easily whenever they move regardless is in one city or the other one. Well, they were able to track me down somehow and found me in Canada. So you can imagine they could do, could do in Colombia as well; right?

[Certified Tribunal Record, pp 205-206]

...

**PRESIDING MEMBER:** And all of the information you have with regard to the phone calls that your brother received and all of the threats that he received, is that all second-hand knowledge? Is that all based on — merely on what your brother has told you?

**WITNESS:** Yes.

**PRESIDING MEMBER:** Do you have any other knowledge from any other source?

**WITNESS:** No, no.

[Certified Tribunal Record, pp 206-207]

[63] It seems to me that the brother is speculating about a possible connection: “Somehow these people could be connected to drug business” and “somehow these people could have found out what I do up here in Canada” and “somehow they found that my brother’s still in Colombia and starting to harass him and made threats against him and his family.”

[64] Given the speculative testimony of this witness and his agreement that his only source of information of threats to the Applicant is the Applicant himself, who the Board finds not to be credible, I don’t think that the brother’s evidence can be said to be the basis for a separate s 97

analysis. This evidence would only come into play in assessing a future s 97 risk if the Applicant's evidence is believable. The Applicant's account of the threats certainly accords with conditions in Colombia and the methods of paramilitary groups who deal in drugs, but the Applicant would hardly be likely to put forward a narrative that did not accord with those conditions. Given the other credibility findings, the general conditions described by the brother cannot redeem the Applicant's false narrative, provided the Board's negative credibility findings are reasonable.

[65] So, this application comes down to the Board's credibility analysis and findings. My conclusion is that there is nothing unreasonable in the Board's credibility assessment and the application must be dismissed.

A. *Failure to Discuss All Concerns*

[66] The Applicant says that the Board "must set out and discuss all concerns relating to the credibility of the Applicant if she is to rely on them in her negative determination" [emphasis added].

[67] The authorities cited by the Applicant do not support this position. They make it clear that the Board must give reasons for rejecting a claim "in clear and unmistakable terms." See *Armson*, above, at para 20.

[68] As *Mehterian*, above, makes clear the “reasons must be sufficiently clear, precise and intelligible that the claimant may know why his claim has failed and decide whether to seek leave to appeal, where necessary.”

[69] The Board explains the reasons for rejecting the claim as follows:

[6] This claim fails on the issue of credibility. Credibility concerns arose very early on in the hearing and continued throughout. There were serious enough omissions, contradictions, discrepancies and implausibilities to give the panel reason to doubt that the sworn testimony of this claimant was not truthful. Counsel himself requested that he be permitted to provide written submissions due to the complex credibility concerns that arose during the hearing or as counsel termed it “confusing testimony”. The credibility concerns were numerous and therefore, for brevity sake, only a few will be outlined in these reasons. However, let it be clear that this decision was not based on any one credibility issue in isolation but rather on the cumulative assessment of all areas of credibility concerns even those not mentioned within these reasons.

[70] The Board then goes on to cite and discuss particular instances that demonstrate why credibility is a serious concern in this case: delay in leaving; the nature of the threats; previous attempts to leave Colombia; reporting to the authorities in Colombia; agents of persecution; and miscellaneous discrepancies.

[71] The Applicant cites no jurisprudence to suggest that reasons for a decision cannot be understood unless all credibility issues are set out. Clearly, the Applicant knew at the hearing that his evidence raised credibility concerns, and those concerns were sufficiently clear and acknowledged for Applicant’s counsel to request that he be allowed to provide written submissions on what he conceded was “confusing testimony.” On these facts, the Applicant was

fully aware of a significant range of concerns that required an explanation. He could have been in no doubt as to why his claim was refused.

B. *Reasons for Leaving Colombia – Plausibility and Speculation*

[72] The Applicant complains as follows:

14. The Panel states in the reasons that she finds it implausible that the Applicant would have been told to leave the country as she cannot see how this would have benefited the alleged callers or be considered a reprisal. The Applicant testified that he believes the threatening calls were made by the AUC or Bacrim, widely considered to be paramilitary terrorist groups. The Panel bases her finding of implausibility on what she finds to be an unreasonable course of action of said terrorist groups. It is submitted that it is an error for the Panel to have placed herself in the mind of terrorists, who do not necessarily act in a logical manner, and then make an adverse credibility finding based on same.

[73] This issue is dealt with in the Decision as follows:

[9] The claimant indicated that the threats made against him were for him to leave Colombia. There was no demand for money as was the case with his parents neither was there a demand for his brother to cease his law enforcement activities in Canada. The claimant indicated that the caller stated that the claimant's brother caused them to lose a lot of money yet no demand for money was made of the claimant as a reprisal. The only demand made was for the claimant to leave Colombia. The panel questioned how the clamant [*sic*] leaving Colombia to join his family for a better life in either the U.S.A or Canada would benefit these alleged callers or be considered a reprisal. The panel does not find these assertions to be plausible. The panel believes that the claimant had a desire to leave Colombia for economic reasons and when attempts to obtain U.S.A and Canadian visas failed, he concocted these threats.

[74] The Board later explains the basis of its belief that the Applicant desired to leave Colombia for economic reasons. So the Board's concern is that the Applicant did not provide a



sufficient reason as to why the threats would cause him to leave Colombia for reasons other than economic. The Board does not speculate about what was in the minds of the alleged agent of persecution. The real focus is on the threat itself – the Applicant was told to leave and threatened with death if he didn't leave. There was no demand for money and no demand for the Applicant's brother to cease law enforcement activities in Canada. In the Board's mind, the nature of the threats does not offset the concern that the Applicant left Colombia for economic reasons. I do not see the Board speculating about the motives of the AUC. The Board is attempting to understand why the Applicant acted as he did, given the nature of the threat itself, his delay in leaving, and his obvious desire to leave Colombia for economic reasons.

[75] The record reveals that the Applicant was consistent in saying that he was threatened with death if he did not leave Colombia:

- **Port of Entry notes:** “In 2015 I received some death threats calls from people and they said I had to leave the country, that if I didn't leave the country I had to face the consequences, that I was going to be killed” (Certified Tribunal Record at p 48);
- **Basis of Claim narrative:** “In August 2015 I received a telephone call to my home number in Medellin from an unknown individual who told me that I had to leave Colombia as my family did in the past, otherwise they would kill me.... I was told again that I had to leave the country, followed by more dead [*sic*] threats.... In Itagui I did not have any problems until the first week of September 2016 when I received another telephone call at home telling me again that I had to leave Colombia, to get lost or else they would kill me and my family” (Certified Tribunal Record at pp 24-25);
- **Hearing testimony:** “during that first call they said that I have to leave the country; otherwise, they would make an attempt against my life” (CTR at 181); “during the last call they referred to my brother as a snitch, that he had been responsible for their losses of money and because of this they were going to – made [*sic*] attempts against my life” (Certified Tribunal Record at p 186).

Whether this overcomes the credibility concerns caused by the Applicant's economic motive to concoct the death threats, or embellish them with an instruction to leave, I don't think the death

threats are inherently implausible. Since paramilitaries finance themselves through extortion, they have an incentive to maintain a “culture of fear” by killing or forcing into exile family members of targets who do not pay, as this encourages other targets to keep paying. However, the credibility concerns in the Applicant’s case is more a function of his response to the alleged threats, the long period since the original extortion, his delay in leaving, and the conflicting evidence about the connection with his family’s claims.

C. *The First Phone Call – Reasonable Behaviour*

[76] The Applicant’s concern here is as follows:

15. The Panel also found implausible that the Applicant would not have taken the first threatening phone call he received seriously, considering that he testified that he had an ongoing fear for his life and that the callers made specific mention of his family. It is submitted that it is an error for the Panel to make a negative credibility finding based on her own perception of what constitutes ‘reasonable’ behaviour.

...

The Applicant submits that it was not outside of the realm of possibility for him to have had an ongoing fear for his life and still not have reported the first call to the police. It is not implausible for the Applicant to have become more seriously afraid for his life after having received the second call. The Applicant thus submits that the Panel’s implausibility finding is not reasonable in the light of the jurisprudence.

[77] The Applicant is here mischaracterizing the Decision on this issue which reads as follows:

[11] The claimant testified that he did not go to the police after he received the first threatening phone calls despite the fear that he earlier testified was always with him. The claimant testified that he thought that the first threatening phone call was a bad joke and he

did not place great importance on it. The panel does not find this to be consistent with the claimant's earlier statements. The panel does not find it credible that the claimant who testified to having an ongoing internal fear for his life such that he had attempted to leave Colombia in 2012, would not place importance on a threatening phone call from those whom he perceived to be the very persons who caused his parents to flee Colombia for their lives, especially considering that the claimant indicated that the callers made specific mention of his family and their situation.

[12] When confronted with the panel's concerns, the claimant then changed his testimony. He testified that he did not go to the police after the first threatening calls because he had no confidence in the police. He changed his testimony to indicate that he did not ignore the first calls and that the first calls did in fact cause him fear. This testimony directly contradicts his earlier testimony. The claimant's inability to maintain a consistent story gives the panel serious reasons to doubt the truthfulness of his allegations.

[78] The problem for the Board here is the inconsistency of the Applicant's explanation for his failure to go to the police despite his stated fear. The Applicant changed his story from hoping that the first call was a bad joke to not being confident in the police. The Board does not speculate about what constitutes reasonable behaviour. The problem was, as the Decision makes clear, the "claimant's inability to maintain a consistent story...."

D. *Focus on Minor Inconsistencies*

[79] On this point, the Applicant complains as follows:

16. The Panel makes a negative credibility finding with respect to the Applicant's testimony regarding the identity of the perpetrators of the threatening phone calls. The Panel states that there was a discrepancy in the Applicant's testimony as to whether the AUC or Bacrim identified themselves in the August 2015 phone call. It is submitted that this alleged discrepancy is not one that should have been material to the Panel's determination on credibility. Considering the Applicant's family had previously been targeted by AUC, it is not unreasonable for the Applicant to

have presumed or considered the possibility that they were the perpetrators in this instance as well, causing him to easily misremember whether they identified themselves or not during the first phone call. What should have been salient to the Panel was that the Applicant believed AUC was targeting him again. The Panel's focus on minor, explicable inconsistencies in making an adverse credibility finding is an error as per the jurisprudence: ...

[80] The Applicant is, once again, mischaracterizing the Board's approach to these discrepancies. The Board dealt with this matter as follows:

[15] The claimant was asked who he feared in Colombia. He responded that when he received threats over the telephone, "they identified themselves as AUC." The panel asked the claimant to clarify whether during the first calls he received in August 2015, the callers identified themselves specifically as belonging to the AUC. The claimant responded that they did. This information contradicts what is written in the claimant's BOC narrative. The claimant writes that he received a telephone call in August 2015 from an unknown individual. He writes that he thought that the call could be from someone associated with the paramilitaries but he does not write that the caller specifically identified themselves as belonging to the AUC as he stated in his oral testimony. The claimant did not testify that he perceived the caller to be AUC or that he concluded that the caller was from AUC. He stated that they specifically identified themselves as such. The panel finds this to be a contradiction.

[16] When the claimant was presented with the contradiction between his written story and his oral testimony, the claimant changed his testimony. The claimant testified that the callers did not identify themselves as AUC but rather he perceived them to be AUC because they made mention of forcing his family out of the country which was done by AUC. The panel asked the claimant to explain the inconsistency in his oral testimony, as well as the differences between his oral testimony and his written story regarding whether the alleged callers ever identified themselves as AUC, paramilitary, BACRIM or otherwise. The claimant's explanation was that it was an "oversight" in his written story. He stated that when he wrote his story he was under a lot of pressure, fear and stress. Even if the panel were to accept this explanation as truthful regarding the contradictions between the claimant's written story and oral testimony, it does not account for the

inconsistencies that were inherent in his oral testimony at the hearing.

[81] The Applicant concedes the discrepancies but says they were minor and explicable and should not have mattered. The concern for the Board was that the Applicant testified that the caller had specifically identified himself as AUC while, in his narrative, the Applicant wrote that the identity of the caller was unknown. So the discrepancy was not “whether the AUC or BACRIM identified themselves in the August 2015 phone call,” as the Applicant now alleges. And again, the problem is compounded by a change of testimony which the Applicant characterizes as minor, but the Board makes it clear that the basis of the Decision is cumulative credibility findings and this is yet another inconsistency that was not explained to the Board’s satisfaction.

E. *Technical Rather Than Substantive Discrepancies*

[82] The Applicant once again takes matters out of context in raising the following:

17. The Panel erred in making an adverse credibility finding based in part on technical, rather than substantive, discrepancies which are not material to the foundation of the Applicant’s claims. In the reasons, the Panel writes that “the claimant was untruthful about his highest level of education” and that it “finds that the claimant deliberately attempted to mislead the panel in this regard.” The highest level of education obtained by the Applicant is not material to his claim and the perceived inconsistency also could very easily be the result of meaning and equivalencies being lost in translation. The Panel errs in imputing to the Applicant an intention of deliberately deceiving her. This Court has held that rejecting claims based on non-material, secondary issues without evaluating the substance of the claim is a reviewable error: ...

[83] The concern about the Applicant's educational level is clearly raised by the Board in the context of a possible IFA:

[17] When discussing a possible internal flight alternative in Bogota, the claimant indicated that he did not have a university degree. He stated that he does not have a five year B.A degree as was written in his Port of Entry forms. He testified that he had a three year technical diploma or certificate but not a bachelor diploma or degree. He testified that a B.A is a five year university program but that he only completed a three year program.

[18] The panel asked the claimant to explain the discrepancy between his oral testimony and his port of entry documents. The claimant indicated that it took him five years to complete a three year technical program because the university was continually being shut down due to protests which would delay the academic term making the period in which one would finish one's degree longer. However, when the claimant's brother was called to testify, he testified that the claimant attended university in Colombia where he obtained a Bachelor of Arts or B.A. He testified that this was a five-year degree. The panel accepts the witness' testimony as truthful for the reasons that will be outline [sic] below. The panel finds that the claimant was untruthful about his highest level of education as it was quite apparent that the panel was trying to ascertain whether, based on his level of education, the claimant could easily relocate and re-establish himself in another part of Colombia. The panel finds that the claimant deliberately attempted to mislead the panel in this regard.

[Footnotes omitted.]

[84] Clearly, the Applicant's education level was material to his claim because it could have been relevant to a possible IFA in Bogota. The Applicant's suggestion that "the perceived inconsistency also could very easily be the result of meaning and equivalencies being lost in translation" is pure speculation, and I don't see that this was offered as an explanation by the Applicant. Given the stark contrast between the Applicant's testimony on this point and clear contrary testimony by his brother, in the context of an IFA discussion, it is hardly surprising that the Board concluded that the Applicant had "deliberately attempted to mislead the panel in this

regard.” The Applicant does not say that he didn’t attempt to mislead the Board on this point; he simply invites the Court to speculate that the inconsistency “could very easily be the result of meaning and equivalencies being lost in translation.”

[85] Given the nature of the Applicant’s claim, it was necessary to explore the availability of an IFA in Bogota. In answering the Board’s questions on this issue, the Applicant revealed an approach to giving evidence that was relevant to his general credibility and, in any event, this was only one of the discrepancies relied upon by the Board. The Board, in this claim, did not ignore important parts of the Applicant’s case. This is not a case where the Board relied upon peripheral inconsistencies alone. The Board is entitled to refer to other areas of evidence that illustrate whether the Applicant can be trusted to tell the truth provided there is also a basis for disbelieving the central aspects of the claim. See *Qasem v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1182 at paras 47-48 [*Qasem*].

#### F. *Parents’ Claim*

[86] For similar reasons, the Applicant also complains about the Board’s reliance upon differences in evidence between his claim and his parents’ claim:

The Applicant submits that the Panel also erred in microscopically focusing on a minor discrepancy in how Applicant’s testimony differed from his parents and from his written narrative. The Panel even concedes at paragraph 22 that this discrepancy does not go “to the heart of the claimant’s allegations.” As such, this should not have been a determinative aspect of the Panel’s impugning of the Applicant’s credibility.

[87] The Board's treatment of this issue is as follows:

[19] The claimant's parents made successful refugee claims in Canada in 2007. The claimant submitted the narrative used in those claims. His parents' narrative states, "At the end of December 2001, my son Alexander [the claimant] decided to marry and leave our home. Unfortunately Alexander left in anger over our lack of support for his wedding plans. He has not contact[ed] us since he left."

...

[22] The claimant's written testimony contradicts his oral testimony and parts of the claimant's oral testimony contradicts itself. The panel agrees with counsel's submissions in that these particular areas do not go to the heart of the claimant's allegations but the panel finds that it does speak to the claimant's overall credibility. The panel finds overall that the claimant had difficulty maintaining a consistent story as he attempted to juggle what was true and what was not.

[Footnotes omitted.]

[88] It is one of the grounds for judicial review in this application that the Board was bound to render a positive decision because the RPD had already granted refugee status to his parents and siblings on similar facts.

[89] The Board here provides an explanation as to why this cannot be done. It is clear that these discrepancies are not "minor" as now alleged by the Applicant. And, here again, the Board does not rely upon these discrepancies while ignoring important parts of the Applicant's case, as happened in *Simba*, above, relied upon by the Applicant. This was a miscellaneous issue that, if it does not go to the heart of the Applicant's case, does go to the Applicant's overall approach to giving evidence and his general credibility. See *Qasem*, above, at para 48.



G. *Failure to Duly Consider Other Evidence in Support*

[90] The Applicant complains that, having focussed on “minor details” to find he was not credible, the Board then failed to duly consider:

... the Applicant’s brother’s oral testimony, country conditions evidence, and the Applicant’s own testimony in support of his claim for refugee protection. The Panel relied only on the Applicant’s allegations of past persecution and failed to conduct a forward-looking assessment as to the risk the Applicant will face should he be returned to Colombia. It was incumbent on the Panel, even after having made a negative credibility finding, to still conduct an analysis on the well-foundedness of the Applicant’s fear of future persecution.

[91] As pointed out earlier, it is my view that the Board gives full consideration to the brother’s testimony and explains why it does not alleviate the credibility concerns or establish any future risk.

[92] The Board also explains that, having rejected the Applicant’s own evidence of past persecution as non-credible, “the panel is left with no credible or trustworthy evidence upon which a favourable decision could be made in this claim.”

[93] The Applicant has failed to explain to the Court how, given that his account of AUC threats was not believed, anything in the country documentation places the Applicant at risk if he is returned to Colombia. That being the case, no further analysis of future risk was possible by the Board. The Applicant did not allege before the Board that, apart from the targeting that was rejected by the Board, he also faced other risks if returned to Colombia, and there is nothing in

the general evidence to suggest that the Applicant did face any risk other than the AUC's targeting that was the basis of his claim.

[94] Also, general country documentation that speaks of targeting by terrorist groups in Colombia cannot be used to cure the specific discrepancies in the Applicant's own evidence that were the basis of the negative credibility findings. As the Court pointed out in *Rahaman*, above:

[17] I do not agree. If the credibility of the applicant is so severely eroded that the Board does not believe that the applicant has a well founded fear of persecution, there is no need to look at whether the country conditions can support his claim.

H. *Delay*

[95] Finally, the Applicant says that it was unreasonable for the Board to rely upon his delay in leaving Colombia. The Board addresses this issue as follows:

[7] The panel finds the claimant's delay in leaving Colombia to be egregious and speaks negatively to the credibility of his allegations. The claimant's parents fled Colombia in fear of their lives in 2007. The claimant's siblings left Colombia between 1997 and 1999. The claimant was asked why he did not leave Colombia at the time that his siblings left. The claimant stated that he remained in Colombia to care for parents, however, the panel notes that even after the claimant's parents left Colombia ten years ago, the claimant remained.

[8] The claimant's parents' narrative specifies that three of their children were threatened in 1997 with machine guns. Three of their children fled Colombia between 1997 and 1999. The claimant did not. This leads the panel to question whether the claimant was threaten [*sic*] at all either in the 1990s or now.

[Footnotes omitted.]

[96] The Applicant argues as follows:

20. In the reasons, the Panel states that the Applicant's delay in leaving is "egregious" and "speaks negatively to the credibility of his allegations" considering that his parents and siblings left years earlier than him. This is an error. The Applicant's parents and siblings had been directly targeted by the paramilitary terrorist group between 1997-1999, whereas the Applicant himself had not. The Applicant's parents were targeted again in 2006-2007, which is when they decided to leave Colombia to seek asylum. The Applicant was only directly targeted beginning with the first phone call in 2015.

[97] Here again, we see the Applicant emphasizing differences between his situation and that of his parents in a judicial review application where he also alleges the Board should have decided the two applications in the same way.

[98] That being said, the Applicant relies upon cases such as *Londono Soto*, above, as authority for the position that, "[a]s culminating incidents necessarily take time to culminate, the issue of delay cannot work to prevent a successful claim for protection" (at para 31).

[99] The Applicant says that the "egregious delay" finding is unreasonable because he took evasive action by moving within Colombia and had no reason to leave until the September 2016 threatening phone call.

[100] At the hearing before the Board, the Applicant said that he didn't leave Medellin until "more or less March 2007," after his parents left Colombia. He explains that before then he was living in a different part of Medellin from his parents (Certified Tribunal Record at p 183). He says that in 2007 he moved to Bogota. However, the Port of Entry form lists his city of residence

as Medellin, at different addresses, until 2013 and does not show him ever living in Bogota (Certified Tribunal Record at p 40). His Personal Information Form [PIF] narrative states that his parents “moved to a different area of Medellin and I moved to Bogota” but there are no dates mentioned. The PIF goes on to state “[t]hat move made me very depressed and for some years I lost contact with Medellin and my family, I was merely surviving in Bogota.... I later learned that sometime in 2006 or 2007 my parents were threatened by the paramilitary and they also had left Colombia in 2007.” The Board interprets the PIF as saying that the Applicant moved to Bogota and lost contact with his family before his parents left Colombia. When asked to explain this, the Applicant continues to insist that he worked with his parents in Medellin until they left for Canada and did not lose contact with them until that point. His move to Itagui did not occur until after he started receiving threatening calls in 2015.

[101] The delay in leaving is only one amongst many issues and by “egregious” the Board obviously means the long gap between when his siblings and parents left and when the Applicant left. The Applicant was a member of a family that was targeted and he worked in the family business to pay the AUC demands. Yet he did not leave when his family did and waited until the September 2016 threat. The Applicant may have moved around, and he may have taken evasive action, but this means that despite what had happened to his siblings and parents, he was able to function and did not feel he had to leave for a very long time after his family left. This delay suggests to the Board that he was not threatened in the same way that they were – otherwise he would have left with them – so the delay casts doubt on whether he was ever threatened. The delay in itself is not a deciding factor and is only one issue of concern that had to be looked at in conjunction with other factors, particularly the Applicant’s attempt to leave Colombia for

economic reasons after his family had left for other reasons. The Applicant provided reasons for remaining but the length of the delay suggests he did not feel, for a long time, in serious danger from the people who had threatened his family.

[102] For the Applicant, everything comes down to the September 2016 phone call, but I don't think it is unreasonable for the Board to look back to the whole family history of threat and find that the Applicant's remaining in Colombia for such a long period of time does cast at least some doubt on whether he was ever threatened by the same group who had threatened his other family members. And given the Board's findings on the September 2016 phone call, the long delay then becomes very telling. The Applicant tries to have it both ways. He wants the Board to believe that he always feared the AUC because of his family situation, yet he did not leave until September 2016, long after his family left. He also wants the Board to accept that there was no reason for him to leave until the September 2016 phone call. Yet he provided inconsistent evidence about the phone calls that led up to and precipitated his decision to leave. The hearing transcript reveals that the Applicant explained the delay was the result of his moving to Bogota shortly after his parents left Colombia. This is the story he continually repeats at the hearing. The problem is the confusion the Applicant's answers create when compared to his and his parents' PIF narratives. The Applicant never explains the difference between his hearing testimony and his PIF narrative. As with the concern about not going to the police after the first call, the delay itself may not give rise to a credibility concern, but the inconsistencies in the evidence and the Applicant's inability to explain those inconsistencies are a sufficient basis for the Board to question whether "the claimant was threaten [*sic*] at all either in the 1990s or now." This concern also has to be viewed in the context of the other credibility concerns.

[103] The parties agree there is no question for certification and the Court concurs.

**JUDGMENT IN IMM-1508-17**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

---

Judge

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

**DOCKET:** IMM-1508-17

**STYLE OF CAUSE:** ALEXANDER CASTRILLON GUTIERREZ v THE  
MINISTER OF IMMIGRATION, REFUGEES AND  
CITIZENSHIP

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 1, 2017

**JUDGMENT AND REASONS:** RUSSELL J.

**DATED:** JANUARY 4, 2018

**APPEARANCES:**

John Grice FOR THE APPLICANT

Nadine Silverman FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Davis & Grice FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario