

Federal Court



Cour fédérale

**Date: 20190130**

**Docket: IMM-1086-18**

**Citation: 2019 FC 127**

**Toronto, Ontario, January 30, 2019**

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

**BETWEEN:**

**FABIAN DARIO HOYOS SOTO  
CLARA INES ORTIZ HOYOS  
DANIELA HOYOS ORTIZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of the decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated January 17, 2018 [the Decision] in which the RPD refused the Applicants' claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA].

[2] As explained in greater detail below, this application is dismissed, because, having considered the Applicants' arguments, I have found no basis to conclude that the Decision is outside the range of possible, acceptable outcomes and therefore unreasonable.

## II. Background

[3] The Applicants are Fabian Dario Hoyos Soto, his wife Clara Ines Ortiz Hoyos, and their child, all of whom are citizens of Colombia.

[4] Mr. Soto worked as the Chief Compliance Officer at a public utility company in Santa Rosa, Colombia, called Empocabal. He claims that he heard rumours about corrupt practices at Empocabal during the course of his employment, which prompted him to begin an investigation. Mr. Soto alleges that the investigation confirmed the presence of corruption, involving the mayor of Santa Rosa, who was also the president of the board of Empocabal, diverting company assets to support the mayoral election campaign of a former manager at Empocabal, with whom the mayor was in a romantic relationship. Mr. Soto also alleges that the mayor has connections to a paramilitary group called Rastrojos.

[5] Mr. Soto says that he reported the results of this investigation to Empocabal's management and to the company's union and gave a statement to the National Comptroller General. He alleges that the mayoral candidate who was implicated in the scandal lost the 2015 election as a result, and that Mr. Soto began receiving threatening phone calls, which he believes were made by the Rastrojos.

[6] Mr. Soto also says that, due to the threatening calls he was receiving, he left his employment in February 2016. In March 2016, a story appeared in a Santa Rosa newspaper, alleging that he had left his employment because of criminal charges against him. Mr. Soto believes these allegations were fabricated to discredit him as a result of his efforts to uncover corruption at Empocabal. He initiated slander proceedings against the newspaper.

[7] Mr. Soto claims that, after receiving a number of threatening phone calls, he made a report to the office of the Colombian Attorney General, known as the Fiscalía, on May 5, 2016. However, the authorities took no action as a result of this complaint. The Applicants subsequently left Colombia in May 2016 and, after travelling through the United States, arrived in Canada and claimed refugee protection in June 2016.

### III. Decision under Review

[8] The RPD denied the Applicants' claim for refugee protection, with the determinative issue being credibility.

[9] The RPD noted the presence of material inconsistencies between Mr. Soto's description of the corruption in his Basis of Claim narrative [BOC] and in his oral testimony, as he stated in his BOC that the mayoral candidate was responsible for diverting resources from Empocabal but testified that it was the board's president who was doing so. The RPD was not satisfied with Mr. Soto's explanation for this inconsistency, that the candidate was the beneficiary of the corruption but could not have directed the corruption because she no longer worked for Empocabal.

[10] Additionally, the RPD noted that the BOC did not include any reference to involvement by the president of the board in the alleged corruption. Observing that no responsive explanation was offered for the omission, the RPD found it to significantly undermine Mr. Soto's credibility. The RPD concluded that neither the mayor nor the mayoral candidate was involved in corruption at Empocabal and that Mr. Soto did not play a role in uncovering corruption at Empocabal.

[11] The RPD then considered the omission from Mr. Soto's BOC of the allegation, to which he had testified, that he received a threatening phone call on May 3, 2016. The RPD rejected the explanation, that he mistakenly omitted this fact or omitted it because it was included in the Fiscalia report which he submitted with his claim, as the alleged May 3, 2016 phone call was a central aspect of the claim, which caused Mr. Soto to make the report to the Fiscalia.

[12] In relation to Mr. Soto's testimony that the May 3 caller knew who his wife was and where his daughter went to school, the RPD was again concerned about the omission of this information from the Fiscalia report. Mr. Soto offered the explanation that he did not trust the Fiscalia and did not want to give them too much information, which the RPD rejected as inconsistent with his statement that he went to the Fiscalia for assistance and the fact that he gave them his residential address and phone number.

[13] The RPD found that Mr. Soto's testimony about the alleged phone call evolved in response to being confronted with inconsistencies and omissions, which significantly undermined his credibility. It concluded that he did not actually receive a threatening phone call on May 3, 2016. The RPD also identified inconsistencies and omissions in relation to Mr. Soto's

claim that he received other threatening phone calls, concluding that he did not receive any threatening calls.

[14] The RPD then considered whether anyone in Colombia is still looking for Mr. Soto, noted BOC omissions in relation to his testimony that armed men had visited his family in Colombia while searching for him, as well as the lack of any evidence corroborating this testimony, and concluded that his family had not been visited.

[15] Finally, the RPD considered the supporting documents which Mr. Soto submitted, including correspondence which documented some irregularities that occurred at Empocabal, but it found that none of the documents corroborated Mr. Soto's principal allegation that the corruption was at the direction of the mayoral candidate or the president of the board. The RPD placed little weight on these documents and found that they were not sufficient to overcome its significant credibility concerns.

#### IV. Issues and Standard of Review

[16] The Applicants raise the following issues for the Court's consideration:

- A. Whether the RPD erred by failing to analyse relevant personal supporting documentation which contradicted its findings;
- B. Whether the RPD erred by failing to analyse risk pursuant to section 97 of IRPA;
- C. Whether the RPD erred by conducting a microscopic credibility analysis;
- D. Whether the RPD erred by selectively reviewing the country conditions.

[17] These issues are reviewable on a standard of reasonableness.

V. Analysis

A. *Whether the RPD erred by failing to analyse relevant personal supporting documentation which contradicted its findings*

[18] The Applicants submit that, in concluding that Mr. Soto did not play a role in uncovering corruption at Empocabal, the RPD erred by failing to have regard to personal supporting documentation which supported the contrary conclusion. The Applicants first refer to writs filed by Mr. Soto in the Colombian courts, in response to what he describes as the slanderous news story falsely alleging that he had left his employment because of criminal charges against him. The Applicants note that the evidence before the RPD also included documentation of Mr. Soto's clean criminal record in Colombia. They submit that this documentation supports their allegation that Mr. Soto was being targeted for his efforts to uncover corruption at Empocabal and that it was an error for the RPD to fail to consider this documentation.

[19] The Decision does not expressly refer to this material. However, a decision-maker is presumed to have considered all the evidence before it, unless there is a basis to rebut that presumption, such as evidence which contradicts the decision-maker's conclusion (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (Fed TD)). I do not find the evidence surrounding the news story and Mr. Soto's proceeding in the Colombian courts to contradict the RPD's conclusions and therefore rebut the presumption that it was considered. As the Respondent submits, the only linkage between this evidence and Mr. Soto's claim that he was involved in uncovering corruption is Mr. Soto's own assertion that they are connected. This documentation does not objectively corroborate his claims. I find no error arising from the absence of an express reference to this evidence in the Decision.

[20] The other personal documentation to which the Applicants refer, two pieces of internal correspondence that Mr. Soto authored at Empocabal and a document authored by the president of the company's union, could more easily corroborate the Applicants' allegations. However, the RPD expressly refers to this documentation, footnoting references to where it appears in the record before it, in analysing the role of the supporting documentation in corroborating the Applicants' claim.

[21] Noting that these documents make no reference to the individuals alleged by Mr. Soto to have been involved in corruption at Empocabal, the RPD finds that these documents do not corroborate those allegations, places little weight upon them, and finds that they are not sufficient to overcome its significant concerns about Mr. Soto's credibility. I find nothing unreasonable in this aspect of the RPD's analysis or in its conclusion, based on those credibility concerns, that Mr. Soto did not play a role in uncovering corruption at Empocabal. That conclusion is within the range of possible, acceptable outcomes, based on the evidence before the RPD.

B. *Whether the RPD erred by failing to analyse risk pursuant to section 97 of IRPA*

[22] The Applicants argue that the RPD erred in that it analysed their risk under s 96 of IRPA but failed to conduct an analysis under s 97. They submit that, even where the RPD has credibility concerns, it is still required to address any residual profile and analyse under s 97 whether the claimants are at risk upon return to their country of origin (see *Bouaouni v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211 at para 41). The Applicants' position is that, even taking into account the RPD's negative credibility findings, Mr. Soto still has a

residual profile as a whistleblower which the RPD should have analysed, taking into account country condition evidence, under s 97.

[23] I agree that the Decision does not set out an express s 97 analysis. However, as the Respondent submits, negative credibility findings can obviate the need for the RPD to consider s 97 (see, e.g., *Mejia v Canada (Minister of Citizenship and Immigration)*, 2010 FC 410 at paras 20-21; *Emamgongo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 208 at para 17). In my view, this case is a circumstance where that principle applies. The RPD's findings, based on its negative credibility determinations, include the conclusion that Mr. Soto did not play a role in uncovering corruption at Empocabal. I have found above in these Reasons that such conclusion was reasonable. Therefore, there was no residual profile requiring an express s 97 analysis.

[24] The Applicants' counsel submitted at the hearing of this application that, even if he was unsuccessful in establishing that the finding, that Mr. Soto did not play a role in uncovering corruption at Empocabal, was unreasonable, a s 97 analysis was still required to take into account the evidence surrounding the news story and resulting writs in the Colombian courts, because that evidence was not analysed in the Decision. I find little merit to this submission. As explained earlier in these Reasons, that evidence does not objectively corroborate Mr. Soto's allegations, and I do not consider it to give rise to a residual profile which invoked a requirement for a s 97 analysis.



C. *Whether the RPD erred by conducting a microscopic credibility analysis*

[25] The Applicants submit that the RPD's analysis of Mr. Soto's credibility is characterized by numerous microscopic findings which are indicative of an overzealous consideration of inconsistencies in the evidence, making the Decision unreasonable.

[26] The Applicants refer first to the RPD's concerns that the BOC narrative did not state which individual had been directing the corruption at Empocabal and which individual had benefited. They submit that there is no contradiction between the BOC and Mr. Soto's testimony, merely omissions from the former which were elaborated upon during testimony. The Applicants refer the Court to *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101 at paras 18-19, which explained that, while the failure to mention material or key allegations of persecution in a BOC is a reasonable basis for concern, the omission of peripheral details is not. In my view, the identification of the major players in the alleged corruption and their respective roles cannot be considered peripheral details, and I find no reviewable error in the RPD's adverse credibility conclusions resulting from the omission of that information from Mr. Soto's BOC.

[27] The Applicants raise the same argument in relation to the omission from the BOC of the May 3, 2016 phone threat. However, the RPD provided several reasons for its credibility concerns about this aspect of Mr. Soto's evidence, including his testimony that it was this call which finally made him seek out the assistance of the Fiscalía. The RPD concluded that this was a significant event such that its omission from the BOC undermined Mr. Soto's credibility. I find nothing unreasonable in this analysis.

[28] The Applicants also argue that it was an error for the RPD to reach adverse credibility conclusions surrounding Mr. Soto's amendment of his BOC to add reference to the threatening phone calls in November and December 2015 (the original BOC having stated that he began receiving threatening calls in January 2016). The Applicants refer the Court to *Erduran v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1299 at para 4, holding that it is unfair to reject a claimant's explanation for an amendment to his BOC without providing a reason (see also *Ameir v Canada (Minister of Citizenship and Immigration)*, 2005 FC 876 at para 21). Similarly, *Okoli v Canada (Minister of Citizenship and Immigration)*, 2009 FC 332 at para 28 explained that the role of the RPD is to assess an explanation for amending a BOC and that it may not draw a negative inference from the fact of an amendment which was done in a timely way well before the hearing.

[29] The Applicants refer to Mr. Soto's explanation at the hearing before the RPD that the first BOC was done upon arrival at the Canadian border, that he was in shock, and that some of the details were therefore not very precise. However, the Decision demonstrates that the RPD considered this explanation and provided reasons for its conclusion that Mr. Soto had not reasonably explained the discrepancies between the two BOCs. The RPD found that the discrepancies were significant, as Mr. Soto had given different explanations as to his motivation for moving to a different location in January 2016. His original BOC attributed this to hearing rumours that his life was in danger, and the amended BOC referred to having received direct threats before the move. The case law establishes that the RPD may make negative findings based on inconsistencies between original and amended BOCs (see, e.g., *Xi v Canada (Minister*

*of Citizenship and Immigration*), 2007 FC 174 at para 17), and I find nothing unreasonable in the RPD's analysis to that effect in the case at hand.

D. *Whether the RPD erred by selectively reviewing the country conditions.*

[30] This argument turns on the RPD basing its adverse credibility conclusions, surrounding the May 3, 2016 threatening phone call, in part on the fact that the Fiscalia report two days later did not contain the information, as Mr. Soto testified at the hearing, that the caller stated he knew where Mr. Soto's wife worked and where his child went to school. The RPD was similarly concerned about the earlier phone calls in 2015 not having been referenced in the Fiscalia report. At the hearing, Mr. Soto explained that he had not provided full details to the Fiscalia because he did not trust them. The Applicants submit that the RPD erred by failing to consider country condition documentation showing that a fear of reporting to the Fiscalia is reasonable because public judicial and security institutions in Columbia such as the Fiscalia are known to be corrupt.

[31] I find no merit to this submission. The RPD's analysis was not based on a conclusion that it was unreasonable to fear the repercussions of reporting to the Fiscalia. Rather, it found Mr. Soto's explanation unreasonable and inconsistent with his actions, as he testified that he went to the Fiscalia hoping for assistance and was unable to explain how he expected to obtain assistance if he did not provide a full account of the threats he had received.

VI. Conclusion

[32] Having considered the Applicants' arguments and having found no basis for a conclusion that the Decision is unreasonable, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-1086-18**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

“Richard F. Southcott”

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Judge

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

**DOCKET:** IMM-1086-18

**STYLE OF CAUSE:** FABIAN DARIO HOYOS SOTO, CLARA INES  
ORTIZ HOYOS, DANIELA HOYOS ORTIZ v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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**JUDGMENT AND REASONS  
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**DATED:** JANUARY 30, 2019

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