

Federal Court



Cour fédérale

**Date: 20200423**

**Docket: IMM-4335-19**

**Citation: 2020 FC 549**

**Ottawa, Ontario, April 23, 2020**

**PRESENT: Mr. Justice James W. O'Reilly**

**BETWEEN:**

**SANDRA MILENA GONGORA TORRES  
YURY CAROLINA GONGORA PERILLA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Ms Sandra Milena Gongora Torres and her cousin, Ms Yury Carolina Gongora Perrilla arrived in Canada in 2017 and sought refugee protection on grounds of political persecution in their home country of Colombia. They alleged that the Ejército de Liberación Nacional (ELN), a violent guerrilla group, asked Ms Gongora Torres to disclose confidential information about the

national armed forces with whom she was a civilian employee. She refused. As a result, an ELN member threatened to kill her, her cousin, and the rest of their family. The applicants filed a denunciation against the ELN days before they fled to Canada. They thought the denunciation might result in protection for other family members, but did not believe that state authorities would be able to protect the two of them.

[2] A panel of the Refugee Protection Division (RPD) believed the applicants' account of events, yet dismissed their claims. The RPD found that their claims were corroborated by documentary evidence about the activities of the ELN in Colombia. It concluded that the applicants' claims were, therefore, objectively well-founded.

[3] However, the RPD went on to find that the applicants had not rebutted the presumption that their home state was able to protect them. Since the applicants left Colombia shortly after filing a denunciation against the ELN, they did not give authorities an opportunity to provide them protection. Further, the RPD observed that the applicants had not applied to the Unidad Nacional de Protección (UNP), a body with a mandate and resources to protect persons who, like Ms Gongora Torres, are employed by the military.

[4] On this evidence, the RPD concluded that the applicants had access to adequate state protection.

[5] The applicants argue that the RPD's conclusion on the availability of state protection was unreasonable. They maintain that the RPD overlooked evidence showing that Colombia is not

able to protect citizens from persecution by the ELN and unreasonably faulted them for not remaining in Colombia to await state protection. They ask me to quash the RPD's decision and order another panel to reconsider their claims.

[6] I agree with the applicants that the RPD's conclusion on state protection was unreasonable. It is not clear that the applicants were eligible for protection from the UNP and, even if they were, it is unlikely that they would actually have been protected in the circumstances. Therefore, I will grant this application for judicial review.

[7] The sole issue is whether the RPD's conclusion on state protection was unreasonable.

II. Was the RPD's conclusion on state protection was unreasonable?

[8] The Minister argues that the applicants had a duty to diligently seek out protection in their home country and provide evidence that they had done so (citing *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004). Given those requirements, says the Minister, the RPD's conclusion was not unreasonable on the evidence.

[9] I disagree. The requirements the Minister cites apply where state protection is reasonably available. The documentary evidence on which the RPD relied states that the UNP is available to politicians, human rights advocates, unionists, leaders of trade associations, leaders of ethnic groups, medical personnel, witnesses and victims of human rights violations, journalists, public servants working on human rights, lawyers, educators, and leaders of demobilized militia. It is not clear that either of the applicants would be eligible. While Ms Gongora Torres could be

characterized as a public servant, she was not working on human rights issues. She was a dentist and medical administrator.

[10] Even if the applicants were eligible for the protection provided by the UNP, the evidence states that it takes authorities an average of 101 days just to evaluate the risks posed to individual applicants. Once protection is actually provided, it usually amounts simply to providing applicants with bullet-proof vests and cell phones.

[11] The question that the RPD had to answer was whether, looking at the evidence as whole, including the evidence about the availability of state protection, the applicant had shown that she likely faces a reasonable chance of persecution in her country of origin (*Moczo v Canada (Minister of Citizenship and Immigration)* 2013 FC 734 at para 10).

[12] The evidence shows that the applicants likely faced imminent danger if they remained in Colombia. While they left before state authorities had an opportunity to assess their risk and provide suitable protection, it is unlikely in the circumstances that any forthcoming protective action would have prevented them from experiencing serious harm.

[13] In my view, the documentary evidence supported the applicants' contention that they faced a reasonable chance of persecution and was inconsistent with the RPD's conclusion that state protection was available to them.

[14] Accordingly, the RPD's conclusion was not justified on the facts and the law; it was unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85).

### III. Conclusion and Disposition

[15] Considering the evidence before it and the applicable law, the RPD reached an unreasonable conclusion that the applicants could have availed themselves of state protection in Colombia. I must, therefore, allow this application for judicial review and order another panel of the RPD to reconsider the applicants' claims. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-4335-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed;
2. The matter is returned to another panel of the RPD for reconsideration; and
3. No question of general importance is certified.

"James W. O'Reilly"

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Judge

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

**DOCKET:** IMM-4335-19

**STYLE OF CAUSE:** SANDRA MILENA GONGORA TORRES, YURY  
CAROLINA GONGORA PERILLA v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 27, 2020

**JUDGMENT AND REASONS** O'REILLY J.

**DATED:** APRIL 23. 2020

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