

Federal Court



Cour fédérale

Date: 20200821

Docket: IMM-2400-19

Citation: 2020 FC 846

Ottawa, Ontario, August 21, 2020

PRESENT: Mr. Justice Pentney

BETWEEN:

**JENNY MARCELA PARDO QUITIAN
NICOLAS SANTIAGO FAGUA PARDO
MARIA PAZ PARDO QUITIAN
JUAN CARLOS APACHE AYALA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Jenny Marcela Pardo Quitian, and her common law husband, Juan Carlos Apache Ayala, together with their minor children (a son, born to the Principal Applicant in 2004, and a daughter, born to the Principal Applicant in 2010), are citizens of Colombia who claimed refugee status because of persecution by a criminal organization in Colombia known as the Black Eagles. They say that the Black Eagles engaged in a campaign of

violence and harassment to force them to disclose the location of the Principal Applicant's brother who had refused to join the organization despite their recruitment efforts.

[2] The Refugee Protection Division (RPD) dismissed their claim on March 19, 2019 (the Decision), because it found that they had not established a nexus to a Convention ground, there was adequate state protection in Colombia, and they had an internal flight alternative. The RPD also expressed doubts about the credibility of their narrative, but it did not make negative credibility findings on any specific evidence.

[3] The Applicants seek judicial review of the RPD decision. For the reasons that follow, I am allowing the application, because the RPD's treatment of the Applicants' evidence tainted several of the conclusions that supported its decision, thereby rendering it unreasonable.

II. Context

[4] The Applicants are citizens of Colombia. The Principal Applicant's brother was a schoolteacher in Villavicencio, who participated in political groups and unions and expressed his views about human rights in the community. He lived in a zone where there was conflict between the anti-government Revolutionary Armed Forces of Colombia (FARC) and paramilitary groups. A paramilitary organization known as the Black Eagles tried to recruit him, but he fled Colombia instead.

[5] The problems for the Principal Applicant and her family began in August 2007, when men wearing red armbands invaded their home looking for the brother. The men assaulted the

Principal Applicant, her sister, and mother, and damaged their home. They threatened to kill the family if they reported this to the police.

[6] In October 2007, the Principal Applicant, her sister, and mother were forcibly taken by unknown assailants. They were tied up and asked questions about the location of the brother. The Principal Applicant and her mother were raped, and her sister was physically assaulted. They were left tied up but managed to free themselves and get home. The Principal Applicant reported this incident to the police. The police told her the incident was being investigated and posted a notice about the incident on a community bulletin board, but did not remove her name from the notice.

[7] The threats and harassment continued with a series of incidents that occurred sporadically during 2008 and 2009, including threats and violence directed toward other family members. In October 2009, the Principal Applicant was again kidnapped by men wearing red armbands who asked about her brother. She was raped but was eventually released. She did not report this incident to the police. Following this incident, she moved from Villavicencio to Granada to live with a friend, and lost contact with her family.

[8] In early 2010, the Principal Applicant learned that she was pregnant as a result of the October 2009 rape. She experienced complications, and when she went to a local health centre, the doctor recommended that she go to Villavicencio because it had better medical facilities. The Principal Applicant followed that advice, and her daughter was born there. She immediately returned to Granada.

[9] In 2011, individuals seeking her brother once again threatened to kill the Principal Applicant. This occurred at the home of the friend she was staying with in Granada, and the friend asked her to leave and offered money to pay for her relocation. The Principal Applicant moved to another city, and supported herself and her daughter by cleaning houses and selling pastries at a roadside cart. In December 2012, men set the cart on fire and demanded to know where her brother had gone.

[10] In January 2013, the Principal Applicant moved to a small town where she met her common law partner, Juan Carlos. In October 2014, the Principal Applicant and her partner were attacked, following which her partner was hospitalized for two weeks. In November 2014, the Principal Applicant and her partner moved to a different city. In July 2015, the Principal Applicant returned home from work to find that their residence had been ransacked and a message had been left in red spray paint demanding to know her brother's whereabouts. The message stated the attackers would be back in a week.

[11] The Principal Applicant and her partner immediately moved to yet another city. In April 2016, they learned that men wearing red armbands were looking for them, so they moved to Bogotá, where Juan Carlos' father lived.

[12] Following a period during which the Applicants had not received any threats, they began to feel safe and that the danger had subsided. Around this time, in February 2017, the Principal Applicant reconnected with her brother who had fled Colombia in 2009, and she found out that he had been accepted as a refugee in Canada. She also discovered that her mother and sister had fled to Canada in 2015 and 2016, respectively, and had been accepted as refugees.

[13] In March 2017, the Principal Applicant received two threatening phone calls, and in June 2017, men wearing red armbands attacked them and threatened to kill their children if they did not reveal the location of the Principal Applicant's brother. The attackers were frightened off when Juan Carlos' father shot one of them.

[14] Following this incident, the Principal Applicant reached out to her brother. He sent the Applicants money to help them flee, as did her mother, and they left Colombia in August 2017. The Applicants transited through the United States and entered Canada under an exception to the Safe Third Country Agreement. They immediately claimed refugee status.

[15] The threats against the family continued. In February 2018, the Principal Applicant's brother-in-law received telephone calls asking for the Principal Applicant's brother, and in March 2018, as the brother-in-law was leaving for church, someone threw a grenade into a crowd near him.

[16] The RPD dismissed the Applicants' claims on March 19, 2019. The RPD noted that it had rejected applications to have the Principal Applicant declared a vulnerable witness, but it allowed her counsel to take the lead in questioning her at the second day of the hearing, which it described as "reverse order questioning." The RPD concluded that the Applicants had not established a nexus to any ground protected by the *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS [Convention], because it found that their claims were based on a risk of harm from a criminal group carrying out a vendetta. In addition, the RPD concluded that the Applicants did not establish that state protection was unavailable to them, and there was an internal flight alternative available to them in Medellin and Barranquilla, Colombia.

III. Issues and Standard of Review

[17] The issues in this case are:

- A. Did the gap in the recording of the first day of the hearing give rise to a breach of procedural fairness?
- B. Were the RPD's findings on nexus to a Convention ground, state protection, and internal flight alternatives reasonable?

[18] Questions of procedural fairness require an approach resembling the correctness standard of review that asks “whether the procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[19] The jurisprudence has established that the RPD's findings relating to the availability of state protection, the nexus to a Convention ground, and an internal flight alternative are reviewed on a reasonableness standard (*Jimenez Herrera v Canada (Citizenship and Immigration)*, 2010 FC 499 at para 7 [*Herrera*]). This was established under the *Dunsmuir* framework (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]), and is not changed by the recent decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[20] In view of paragraph 144 of *Vavilov*, there is no reason to request additional submissions from the parties on either the appropriate standard or the application of that standard. This case is similar to the situation in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*], where the Supreme Court stated at paragraph 24 that it was not unfair to decide

that case applying the *Vavilov* framework when it had been argued under the *Dunsmuir* approach, because the standard of review and the results would be the same under both frameworks.

[21] When reviewing for reasonableness, the Court asks “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). The analysis in the decision must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85).

[22] Based on this framework, a decision will likely be found to be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision-maker’s reasoning on a critical point (*Vavilov* at para 103). The burden is on the applicant to show that the decision is unreasonable (*Vavilov* at para 100). Before a decision can be set aside on this basis, the reviewing court must be satisfied that the shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

[23] The *Vavilov* framework “affirm[s] the need to develop and strengthen a culture of justification in administrative decision making” by endorsing an approach to judicial review that is both respectful and robust (*Vavilov* at paras 2, 12-13).

IV. Analysis

A. *Was there a breach of procedural fairness?*

[24] The Applicants claim they were denied procedural fairness because there is a gap in the recording of the first day of the hearing before the RPD. The Principal Applicant states in an affidavit that she remembers being questioned for approximately 40 minutes about the risks that she faced, but there is no recording or transcript of this part of the proceedings. After the Principal Applicant became emotional during her testimony, the RPD suspended the proceedings, and reconvened at a later date. The Applicants submit that the absence of evidence of what transpired during that portion of the hearing affects procedural fairness since it denies them the opportunity to pursue all of their grounds of judicial review, because risks are a core element of an assessment of the nexus, state protection, and internal flight alternative arguments.

[25] In a situation such as this, where the decision-maker is not required to maintain a record of its proceedings, a breach of natural justice can be established where an applicant demonstrates “a ‘serious possibility’ of an error on the record or an error regarding which the lack of recording deprived the applicant of his or her grounds of review” (*Canadian Union of Public Employees, Local 301 v Montreal (City)*, [1997] 1 SCR 793 at 840).

[26] In view of my findings on the other ground of review, it is not necessary to explore this question in any detail. I would simply note that, had I been required to decide the matter, I would not have been persuaded by the evidence before the Court. There is a gap in the recording of the first day of the hearing. However, the RPD interrupted the hearing and reconvened on another day, in order to address the procedural accommodation requested by the Principal Applicant.

When the hearing continued, the Applicants' counsel was permitted to question the Principal Applicant first, and so was provided an opportunity to cover any ground that was felt to be important from the initial hearing. In addition, on the second day, the RPD summarized the evidence from the first day.

[27] Furthermore, the Applicants were unable to identify how the absence of a transcript or recording denied them an opportunity to address the grounds of judicial review that lie at the heart of their claim. The threats against the Applicants, as well as the determinative issues of state protection and internal flight alternative were canvassed in detail during the second day of the hearing, and the Applicants' counsel had a full opportunity to address them at the hearing and in post-hearing submissions.

[28] The case law establishes that a hearing need not be perfect. The onus rests on the applicant to establish how the absence of a transcript has the effect of denying procedural fairness, generally by preventing them from pursuing a line of argument on judicial review (*Huszar v Canada (Citizenship and Immigration)*, 2016 FC 284 at paras 17-19; *Patel v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 804 at para 33; *Antunano Martinez v Canada (Citizenship and Immigration)*, 2019 FC 744 at paras 7-8).

[29] In light of this, I am not persuaded that the absence of a complete transcript or audio recording denied the Applicants the opportunity to pursue any of their grounds of judicial review.

B. *Was the decision reasonable?*

[30] The Applicants submit that the RPD made three errors: (i) in assessing the nexus of their claim to a Convention ground; (ii) in examining state protection; and (iii) in determining they had an internal flight alternative. They argue that these errors flowed from its inadequate assessment of credibility. In view of the interconnected nature of these issues, I will summarize the parties' positions on each one before analysing them together.

(1) Nexus to a Convention ground

[31] The Applicants argue that the RPD erred in finding no nexus to a Convention ground, and in concluding instead that they had simply been victims of a vendetta by a criminal organization. They note that while the RPD made some negative comments calling into question the credibility of certain evidence, it did not make any specific credibility findings.

[32] The Applicants submit that the RPD therefore erred in failing to give credence to their claims that they were targeted for reasons that were partly political, since the Black Eagles only wanted the Principal Applicant's brother to join their organization because of his prior political advocacy. The RPD should have examined the brother's successful refugee claim, which clearly establishes that he was targeted by the Black Eagles because of his political involvement. That was also the basis for the persecution of the Applicants, and this connection is sufficient to support a finding of a nexus to a Convention ground, because the case law establishes that motives for persecution can be mixed (*Shahiraj v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 453).

[33] In addition, the Applicants argue that the RPD failed to consider that the family forms a particular social group that merits Convention protection. They contend that they were persecuted based on imputed political opinion, because the entire family was targeted by the Black Eagles based on their association with the brother. Furthermore, the RPD failed entirely to consider the gender-based claim of the Principal Applicant, arising from the fact that the group seeking to locate her brother raped her on several occasions.

[34] The Respondent submits that the RPD did assess the nexus issue, and simply concluded that the Applicants had not met their onus of establishing that the Black Eagles perceived them as somehow involved in politics. The jurisprudence has long held that generalized threats because of personal vendettas or by criminal gangs do not provide a nexus to a Convention ground (*Salazar v Canada (Citizenship and Immigration)*, 2018 FC 83 at paras 52, 55-56). It is not sufficient for the Applicants to subjectively believe they are being persecuted for belonging to a particular group or expressing a political opinion; they must meet the evidentiary burden of establishing this based on the evidence (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 730-32 [*Ward*]). The RPD's conclusion that they were targeted because of a criminal gang's vendetta is supported in the evidence, and deserves deference from the Court.

[35] Similarly, it is insufficient to find that one member of a family was targeted; the entire family must demonstrate persecution in order to constitute a particular social group (*Mancia v Canada (Citizenship and Immigration)*, 2011 FC 949 at para 11, citing *Rivaldo Escorcia v Canada (Citizenship and Immigration)*, 2007 FC 644 at para 39). In this case, there was no need to explain why this decision is different from those for other family members; each case must be examined on its own merits. Furthermore, there is one important distinguishing element – the

Principal Applicant stayed in Colombia for a decade after her brother fled, and this in itself is a basis for distinguishing the cases (*Uygur v Canada (Citizenship and Immigration)*, 2013 FC 752 at paras 25-30; *Bakary v Canada (Citizenship and Immigration)*, 2006 FC 1111 at para 10).

(2) State protection

[36] The Applicants contend that the RPD's analysis of this issue failed to take into account the Principal Applicant's explanation for not reporting most of the incidents to the police, and that it erred by focusing on Colombia's efforts to address sexual violence and to protect citizens against the Black Eagles. They say the law requires an assessment of the practical effectiveness of these efforts, and the RPD failed to do this.

[37] The Respondent contends that state protection and internal flight alternative findings can be determinative of a refugee claim, separate and apart from any nexus findings (*Begum v Canada (Citizenship and Immigration)*, 2011 FC 10 at paras 55, 58; *Herrera* at para 9). The law requires that a claimant establish with clear and convincing proof that the state is unable to protect its citizens, or that it was reasonable to fail to seek protection (*Ward* at 721-22). Local failures do not automatically translate into a failure everywhere in the country, nor can state authorities be expected to provide protection when the claimant does not pursue it or fails to cooperate (*Canada (Minister of Citizenship and Immigration) v Flores Carrillo*, 2008 FCA 94 at paras 32, 36; *Pacasum v Canada (Citizenship and Immigration)*, 2008 FC 822 at para 27).

[38] The Respondent submits that the Applicants are asking the Court to re-weigh the evidence that was before the RPD. The Principal Applicant only reported the first rape to the police, despite the fact that the other incidents occurred in other locations and over many years.

The RPD reasonably assessed the objective evidence regarding the efforts that Colombia has taken to address conflict-related sexual violence as well as the threat posed by the Black Eagles.

(3) Internal Flight Alternative

[39] The Applicants submit that the RPD's erroneous finding regarding nexus tainted its consideration of the availability of an internal flight alternative. The RPD imposed too high a burden by requiring proof that the Black Eagles would be able to find them elsewhere in Colombia, and it failed to give due consideration to the fact that the organization had, in fact, tracked them down in many different locations. This case is similar to *Quebrada Batero v Canada (Citizenship and Immigration)*, 2017 FC 988 [*Quebrada Batero*], where the Federal Court found the RPD's internal flight alternative determination unreasonable given objective evidence demonstrating the Black Eagles' ability to track its targets in Medellin and Cali.

[40] In addition, the Applicants submit that the RPD failed to consider the psychological evidence about the impact of a return to Colombia on the Principal Applicant, in light of her past experiences there. This evidence showed that she would likely experience a psychological decompensation from which she could not recover.

[41] The Respondent argues that an internal flight alternative determination should receive great deference from a reviewing court (*Ward* at 721-22; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA)). In this case, the evidence shows that the Black Eagles are a decentralized umbrella organization without national scope or reach. The RPD did consider the psychological report, and the *Quebrada Batero* case is distinguishable on

its facts. The RPD reasonably concluded that the Applicants would not face serious social, economic, or other barriers to establishing themselves in places such as Medellin or Barranquilla.

(4) Discussion

[42] I agree with the Applicants that the RPD's comments on the credibility of their claim appears to have lead it astray, and its analysis of the nexus to a Convention ground and its findings on state protection are not reasonable. In light of these conclusions, it is not necessary to examine the issue of internal flight alternative.

[43] The *Vavilov* framework for reasonableness review requires a consideration of two primary elements, summarized in *Canada Post* at paragraph 2: “[the] Court’s role is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints.” The Court explained:

[28] In *Vavilov*, this Court held that “[r]easonableness review aims to give effect to the legislature’s intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law” (para. 82). The Court affirmed that “it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies” (para. 86 (emphasis in original)).

[44] In this case, I find that the RPD's reasons fall short of this standard, and the errors are sufficiently serious to render the decision unreasonable (*Vavilov* at para 100). The RPD's failure to analyze key aspects of the claim, combined with the lack of explanation for findings on

essential issues, renders the decision unreasonable, because its conclusions are not justified in light of the evidence before it and the applicable law.

[45] The starting point is the RPD's credibility analysis. It began with a review of the history of the paramilitary demobilization in Colombia, noting that the Black Eagles were identified as one of the five most powerful groups in the country during the relevant period. The documentary evidence on the group is mixed: it shows that the Black Eagles are comprised of ex-paramilitaries, drug traffickers, and criminals, who are "somewhat politically motivated" in their opposition to the negotiation process with the FARC, and that the group has threatened leftist politicians and displaced persons seeking to have their land returned. It also shows that the Black Eagles are involved in drug trafficking, extortion, kidnapping, and other criminal activities, and that there is some doubt as to whether they are a single organization. There is evidence that local criminal groups have adopted the name Black Eagles, and it "is a brand that different groups or networks use at their convenience" (Decision at para 25). The RPD did not make a specific finding on this question.

[46] Turning to credibility, the RPD noted that it had some concerns with respect to the Principal Applicant's evidence, stating that "it is somewhat incredulous that based on these Claimants' profiles and really, the overall profile of the family, as the prior claims of the Principal Claimant's brother and her mother and sister were put before the Panel that the Black Eagles would continue to continue [*sic*] to target these particular Claimants over such a long duration" (Decision at para 28). The RPD noted the jurisprudence that indicates that implausibility findings must be based on a careful assessment of the evidence, and continued: "[t]hough not necessarily implausible, it is highly questionable, given what the documentary

evidence indicates about the lack of centralization of the Black Eagles, that this family have been targeted over such a long duration by the Black Eagles” (Decision at para 30). Once again, the RPD did not make a specific finding on this question.

[47] The RPD then noted other credibility concerns, including that the Applicants had returned to the place where they had previously experienced persecution. The RPD found that: “[t]he fact that the Claimants moved to a location where the Black Eagles are known to be active, and previously have suffered harm, including being rape [*sic*], is irreconcilable with people who have undergone the intimidation the Claimants allege” (Decision at para 31). The RPD also noted that the credibility of the Applicants was diminished because of their delay in leaving Colombia. They alleged persecution dating from 2007, yet they stayed in the country after the Principal Applicant’s brother left in 2007, and later her mother and sister followed. The RPD noted that the Principal Applicant “did not leave Colombia till much later, in August 2017. Like her mother and siblings, she could have left the country much earlier than August 2017” (Decision at para 32). It is worth noting that the RPD was incorrect in regards to this fact, as the evidence before it was that the Principal Applicant’s mother and sister had left Colombia in 2015 and 2016, respectively.

[48] In the end, the RPD did not find that these credibility concerns were sufficient to warrant dismissal of the claim because “in the context of a credibility assessment, behavioural factors like re-availment and delay are usually an additional reason for finding the claimant not credible, and not a determinative factor, unless egregious” (Decision at para 33). The RPD did not find the Applicants’ conduct to be egregious and therefore did not dismiss their claims on the basis of credibility.

[49] As will be discussed in more detail below, the problem with the RPD's credibility analysis is that it failed to make any specific findings, it simply noted a series of concerns that cast doubt on the Applicants' credibility. I find that some of these concerns influenced the RPD's findings on nexus and state protection, or at least appear to have done so. The absence of explanation on some key questions leaves the Court to have to speculate, and this is why I find the decision to be unreasonable.

[50] Turning to the question of a nexus to a Convention ground, the RPD's key finding is set out in the following passage:

[18] In this case, given that the Claimants' fear are of being harmed by a criminal group because the Principal Claimant [*sic*] has information they want, the Panel finds that their fears are not linked to any of the five Convention grounds as it is a fear of harm from a criminal group borne out of a vendetta. As a result, this claim fails under section 96 of the *Act*.

[51] The problem with this analysis is that the RPD failed to consider the Principal Applicant's consistent evidence that the attackers stated that they wanted to know where her brother was, and that this continued over a number of years and in different locations. The uncontradicted evidence was that her brother was wanted by the Black Eagles because of his prior political involvement; indeed, this was the basis on which the brother's refugee claim was accepted. The RPD failed to analyze whether this supported their claim based on imputed political opinion, nor did it consider the documentary evidence that shows that these organizations targeted teachers and those involved in unions.

[52] There are two other flaws in the RPD's reasoning on this point. First, it did not discuss the refugee claims of the Principal Applicant's brother, mother, or sister, despite their similarity to the claim advanced by the Applicants. While each claim must be assessed on its own merits, and the acceptance of the claims of other family members does not automatically lead to success for a claimant, the decision-maker must give some explanation for treating the claims differently (*Vavilov* at para 131; *Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at paras 24-25).

[53] Second, the RPD failed to consider the Principal Applicant's gender-based claim. Although the Principal Applicant did not clearly express such a risk in the claim forms, it clearly arose as a distinct basis of claim from her narrative. It bears repeating that the Principal Applicant stated that she was raped twice by groups of men who said they wanted her to reveal the location of her brother. Again, it bears repeating, the uncontradicted evidence is that the Black Eagles were searching for her brother because of his prior political involvement, and thus her claim is based, in part, on imputed political opinion.

[54] If her evidence is accepted, these were targeted acts of political violence, which go beyond what is needed to form the basis for a claim of gender-based persecution under the Convention (*Dezameau v Canada (Citizenship and Immigration)*, 2010 FC 559; *Spencer v Canada (Citizenship and Immigration)*, 2011 FC 397). The documentary evidence confirmed that sexual violence has been an unfortunate feature of the conflict in Colombia. Even if it was not expressly articulated, this aspect of the claim clearly arose from the facts and had to be considered by the RPD (*Ward; AB v Canada (Citizenship and Immigration)*, 2018 FC 373). The RPD's failure to consider this aspect of her claim is not rehabilitated by its discussion of efforts

by Colombia to combat sexual violence in the context of its state protection analysis. This conclusion is not based on any analysis of this element of the claim, and there is no explanation as to why the RPD does not accept the Principal Applicant's allegations in this regard.

[55] Turning to state protection, the RPD found that the Applicants had failed to rebut the presumption of state protection. It noted that the Principal Applicant reported the first rape to the police, and found that the evidence showed that the police acted on that information and investigated the matter as well as taking steps to warn other potential victims in the area. It further found that Colombia had "taken efforts aimed at addressing conflict-related violence" including developing a legal framework for addressing this issue (Decision at para 38). In relation to the Black Eagles, the RPD found that "there is some evidence that the Colombian government has taken measures to protect citizens against the Black Eagles" and that the police have had "some success in arresting members" of the organization (Decision at paras 39, 41). Based on this, the RPD concluded that the Applicants had not met their onus of rebutting the presumption that state protection was available to them. Two major flaws in this analysis make it unreasonable.

[56] First, the RPD noted that the Principal Applicant only reported the first incident to the police, and it found that her failure to seek police assistance following other incidents supported its conclusion that the Applicants had not rebutted the presumption of state protection. The problem with this analysis is that it failed to consider the Principal Applicant's explanation for her reluctance to go to the police.

[57] The RPD found that the police had acted on the first report and had investigated the matter and taken steps to warn other potential victims in the area. However, the evidence showed that the police had included the Principal Applicant's name in this warning, and her evidence was that she had always lived in that area so everyone knew she had been raped, which left her feeling "ashamed, alone and helpless" (Basis of Claim form, CTR at p 203). There was also no substantive evidence of the nature, scope, or results of any police investigation. The RPD did not explain why it found the Principal Applicant's explanation of her reluctance to report subsequent incidents, including another rape, to the police, to be unreasonable. In the circumstances, the failure to analyze such key evidence is a significant flaw in the analysis.

[58] Second, the RPD's analysis of state protection focused on the efforts of the government of Colombia to address the threats posed by organizations such as the Black Eagles, and to combat conflict-related sexual violence. This Court has repeatedly found that state protection analysis must go beyond a consideration of efforts, and it must consider whether these efforts translate into effective protection for victims or potential victims in a real-world context (*Nti v Canada (Citizenship and Immigration)*, 2020 FC 595 at para 37, citing *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at paras 21, 26).

[59] For these reasons, I find the RPD's analysis of the issue of state protection to be unreasonable. It failed to engage with the key evidence regarding the Principal Applicant's explanation for her reluctance to report incidents to the police, which is relevant to the assessment of whether there was a reasonable basis to fail to seek protection (*Ward* at 724-25). The RPD also failed to apply the correct legal test in assessing the reality of state protection rather than simply considering the efforts that Colombia had made.

V. Conclusion

[60] The *Vavilov* framework for conducting judicial review on the standard of reasonableness seeks to “develop and strengthen a culture of justification in administrative decision making” (*Vavilov* at para 2). One of the ways it does this is by focusing on the reasons provided by the decision-maker, assessed against the relevant facts and law, which set the boundaries for the decision (*Vavilov* at para 90). Another way it seeks to achieve this goal is by requiring that the reasons for decision “justify” the result to the parties affected by it (*Vavilov* at para 127).

[61] I find the RPD’s decision in this case to fall short on both counts. It has failed to consider key aspects of the claim, including the mixed motives the Black Eagles may have had for harassing and attacking the Applicants because they wanted them to reveal the location of the Principal Applicant’s brother. The RPD also failed to analyze the Principal Applicant’s gender-based claim, which arose directly from the evidence she presented. In addition, the RPD failed to consider the evidence on why the Principal Applicant did not seek state protection after her experience reporting the first attack, and it did not apply the governing law regarding the assessment of the practical effectiveness of the state’s efforts to provide protection.

[62] For all of these reasons, the application for judicial review is allowed. The Applicants’ claims for refugee status are remitted back to the RPD for reconsideration by a different panel.

[63] There is no question of general importance for certification.

JUDGMENT in IMM-2400-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The Applicants' claims for refugee protection are remitted back to the Refugee Protection Division of the Immigration and Refugee Board, for reconsideration by a different panel.
3. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2400-19

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