

Federal Court



Cour fédérale

Date: 20210401

Docket: IMM-7272-19

Citation: 2021 FC 285

St. John's, Newfoundland and Labrador, April 1, 2021

PRESENT: The Honourable Madam. Justice Heneghan

BETWEEN:

**PAULA ANDREA ALZATE RAMIREZ
MARTINA BURGOS ALZATE
SARA BURGOS ALZATE
TOMAS BURGOS ALZATE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Paula Andrea Alzate Ramirez (the “Principal Applicant”) and her minor children Martina Burgos Alzate, Sara Burgos Alzate and Tomas Burgos Alzate (collectively the “Applicants”) seek judicial review of the decision of the Immigration and Refugee Board , Refugee Appeal Division (the “RAD”), dismissing their appeal from a decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). The RAD confirmed

the decision of the RPD, finding that the Applicants are not Convention refugees nor persons in need of protection within the meaning of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Principal Applicant is a citizen of Columbia, her children are citizens of Argentina.

[3] The Principal Applicant based her claim for protection on the grounds of domestic violence perpetrated by her former husband, a citizen of Argentina, both during and after her marriage, and alleged that state protection in Argentina was not available to her. The RAD determined that the Principal Applicant had failed to rebut the presumption that state protection was available and noted the evidence of such protection as demonstrated by government programs.

[4] In support of her appeal, the Principal Applicant submitted letters from two lawyers in Argentina, addressing the unavailability of state protection. These letters were accepted by the RAD as “new evidence” within the meaning of subsection 110(4) of the Act.

[5] The Applicants argue that the decision is unreasonable and among other things, that the RAD failed to consider all the evidence submitted relative to the ineffectiveness of state protection.

[6] The Minister of Citizenship and Immigration (the “Respondent”) submits that the Applicants are merely seeking reassessment of the evidence and that judicial intervention is unwarranted.

[7] Further to the recent decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.), the standard of reasonableness presumptively applies to administrative decisions, including decisions made under the Act, except where legislative intent or the rule of law suggests otherwise; see *Vavilov*, *supra* at paragraph 23.

[8] In considering reasonableness, the Court is to ask if the decision under review “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”; see *Vavilov*, *supra* at paragraph 99.

[9] The Principal Applicant did not seek protection because she feared the consequences from her former husband and considered the attempt to be pointless.

[10] The RAD addressed the objective evidence about state resources for protection against domestic violence. It also considered the personal circumstances of the Principal Applicant. It concluded that she had not shown that state agencies and actors would not provide protection against her former husband.

[11] The RAD did not accept the Applicants' argument that asking for state protection would be useless; it considered the objective evidence provided about state protection, as well as the new evidence submitted. It is not the role of the RAD to show that state protection is not available or is ineffective; see the decision of the Federal Court of Appeal in *Mudrak v. Canada* (2016), 485 N.R. 186 (F.C.A.).

[12] While the failure of a person to seek state protection is not determinative of a claim for protection, it is a relevant fact in determining a claim for protection; see the decision in *Sandoval v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 868. The decision of the Supreme Court of Canada in *Ward v. Canada (Minister of Employment & Immigration)*, [1993] S.C.R. 689 (S.C.C.) remains applicable, that a person seeking Convention refugee status carries the burden of meeting both a subjective and objective standard of proof that he or she is at risk.

[13] I am not persuaded that the Principal Applicant has discharged her burden to show that, objectively, she cannot receive protection from the government of Argentina. That legal burden is hers; see the decision in *Novak v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 9.

[14] I am not satisfied that the RAD ignored the new evidence, that is the legal opinions about the availability of state protection in Argentina, against domestic violence. The legal opinions are more in the nature of advocacy than "evidence" about the unavailability of state protection.

[15] I am satisfied that the decision of the RAD meets the applicable standard of reasonableness, and that its conclusion falls within a range of acceptable outcomes that is defensible upon the law and the facts.

[16] In the result, the application for judicial review is dismissed, there is no question for certification arising.

JUDGMENT in IMM-7272-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7272-19

STYLE OF CAUSE: PAULA ANDREA ALZATE RAMIREZ, MARTINA BURGOS ALZATE, SARA BURGOS ALZATE, TOMAS BURGOS ALZATE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

HEARING HELD BY VIDEOCONFERENCE ON FEBRUARY 22, 2021 FROM ST. JOHN'S, NEWFOUNDLAND AND LABRADOR (COURT) AND TORONTO, ONTARIO (PARTIES)

JUDGMENT AND REASONS: HENEGHAN J.

DATED: APRIL 1, 2021

APPEARANCES:

Michael Loebach FOR THE APPLICANTS

Nadine Silverman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Loebach FOR THE APPLICANTS
Barrister and Solicitor
London, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario