

Federal Court



Cour fédérale

Date: 20210929

Docket: IMM-661-21

Citation: 2021 FC 1006

Ottawa, Ontario, September 29, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**JULIAN ANDRES FRANCO GARCIA
STEPHANNY RODRIGUEZ JIMENEZ
SANTIAGO FRANCO OCAMPO
LUISA FERNANDA SAAVEDRA
RODRIGUEZ
LUCIANA FRANCO RODRIGUEZ**

Applicants

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are Stephanny Rodriguez Jimenez [Female Applicant], her partner, and their three children they are raising together. They are all citizens of Colombia.

[2] The Applicants seek judicial review of the decision of the Refugee Appeal Division [RAD] dated September 3, 2020 [Decision] dismissing their appeal and confirming the decision of the Refugee Protection Division [RPD] that the Applicants are neither Convention refugees nor persons in need of protection pursuant to paragraph 111(1)(a) of the *Immigration and Refugee Protection Act, SC 2001, c 27* [IRPA].

[3] For the reasons below, I am not satisfied that the RAD committed any reviewable error in reaching its findings. The application for judicial review is accordingly dismissed.

II. Facts

A. *Background Facts*

[4] The Applicants' claims for refugee protection are based on a common narrative drafted by the Female Applicant, and are neatly summarized in the RPD's decision.

The claimants fear that they will be hurt or killed by the Rastrojos if they were to return to Colombia.

In September of 2017 the claimants, who resided in Bogota, went to Velez Santander to look for the (Female Applicant's) father as he had left the family and they had not heard from him for many years. When they attended the farm owned by the (Female Applicant's) father looking for him, the people currently living there did not know him or his whereabouts. When the family returned to Bogota a few days later they went to the land registry and began making inquiries into the status of the (Female Applicant's) father's land to determine if he had sold the farm land.

A few days after making these inquiries the claimants received a call from a woman who identified herself as a paramilitary and demanded money that was owed by the (Female Applicant's) father and told them if they did not pay there would be consequences. They were also warned not to return to Velez Santander.

The claimants retained a lawyer to file a legal petition to begin the land restitution process regarding the farm of the (Female Applicant's) father in an attempt to find out what had happened to him.

At the end of January 2019, after further steps had been made by the claimants in the land restitution case, the claimants received a call from a man. The man identified himself as a member of the Rastrojos, reminded them they have to pay the debt of the (Female Applicant's) father and warned them not to get involved in the restitution of land process for the father's farm or the family would pay the consequences. The claimants went to the police to make a complaint and based on recommendations of the police, the family changed their phone numbers and travelled to Armenia to wait for the investigation to happen.

In March and April of 2019, despite changing their phone number, the claimants were contacted by phone twice by someone from Los Rastrojos and warned that no one can escape or stop paying the paramilitaries. The claimants reported this to the police but nothing was done.

The claimants abandoned the land restitution process, left Colombia for the USA and then came to Canada to claim refugee protection as they believe they would be hurt or killed by Los Rastrojos if they returned to Colombia.

Two months prior to the hearing in this matter, Los Rastrojos contacted the (Female Applicant's) mother and sister in Colombia by phone looking for money that the (Female Applicant's) father owes them.

B. *Decision of the Refugee Protection Division*

[5] The RPD found that the harm the Applicants feared was based on criminality and not related to any of the five grounds enumerated in the Convention refugee definition under section 96 of the IRPA. It therefore proceeded to consider the claims under section 97.

[6] The RPD accepted the veracity of the Applicants' narrative regarding Los Rastrojos making harassing phone calls related to the Female Applicant's father's debt and more specifically against the Applicants with respect to their claim for land restitution of the farm in Velez Santander. However, it found that the Applicants' fears that Los Rastrojos could find them anywhere in Colombia was speculative.

[7] The determinative issue for the RPD was whether the Applicants had a viable Internal Flight Alternative [IFA] in Tunja and Paz de Rio. The RPD found that if the Applicants were to relocate in one of the two cities, they would not face persecution or a risk to their life. It concluded that there was insufficient evidence proving that Los Rastrojos would have the means and motivation to find them there.

[8] Moreover, the RPD found that it would not be unreasonable for the Applicants to relocate to the proposed IFA locations given that the adult Applicants possess the education, skills, and experience necessary to find work in the proposed locations, and have demonstrated their ability to move and adapt to a new location.

C. *Decision of the Refugee Appeal Division*

[9] The RAD agreed with the RPD's finding that the Applicants' claims of risk or harm did not fall under section 96 of the IRPA and proceeded to consider the claim under section 97. The RAD noted that the burden was therefore on the Applicants to prove that they would be, on a balance of probabilities, personally subjected to a risk to life, or a risk of cruel and unusual

treatment or punishment, or a danger of torture upon their return to Colombia. The Applicants do not challenge these findings on this application.

[10] The RAD identified the determinative issue as whether a viable IFA exists in Tunja and Paz de Rio. It agreed with the RPD's conclusion that the Applicants would not be personally subjected to a section 97 risk in the proposed IFAs. It noted that the Applicants were never approached by Los Rastrojos in person and only received phone calls, which suggested an absence of motivation to search and track them in the IFA locations.

[11] The RAD also concluded that the Applicants' allegations that Los Rastrojos would be motivated to locate and track them to the IFA locations was speculative and not grounded in evidence. It observed that Los Rastrojos had other contacts to approach for repayment of the debt in question and the Applicants had not demonstrated that the agents of harm would be willing to use its time, resources, and money to locate and track them to the IFA locations in order to seek repayment of this debt.

[12] The Applicants made no argument regarding the RPD's findings on the reasonableness of the IFA. The RAD accordingly found that the Applicants failed to demonstrate any conditions in the IFA such that it would not be unreasonable, in all the circumstances, including those particular to them, for them to seek refuge there.

[13] The RAD dismissed the appeal and confirmed the decision of the RPD that the Applicants are neither Convention refugees nor persons in need of protection.

III. Issue to be Determined

[14] It is well established that there is a two-prong test to be applied in determining whether there is an IFA: (i) there must, on the balance of probabilities, be no serious possibility of the individual being persecuted in the IFA area; and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there.

[15] Given that the second prong of the IFA analysis conducted by the RAD is not being challenged by the Applicants, the only issue to be determined is whether the RAD committed a reviewable error in concluding that the Applicants failed to prove, on a balance of probabilities, that they face a risk to their lives, or a risk of cruel and unusual treatment or punishment, or a danger of torture if they relocate to Tunja or Paz de Rio.

IV. Standard of Review

[16] The review of an IFA analysis is primarily a factual inquiry attracting deference from reviewing courts. I agree with the parties that the standard of review in this case is one of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[17] In assessing the reasonableness of a decision, *Vavilov* states that a court must consider the outcome of the administrative decision in light of its underlying rationale, in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15. Further, the

reviewing court must be satisfied that there is a “line of analysis” in the reasons that could reasonably lead from the evidence to the conclusion, *Vavilov* at para 102.

V. Analysis.

[18] The Applicants submit that the RAD misconstrued, ignored, and incorrectly stated the evidence in its analysis and that it erred by speculating and making unreasonable implausibility findings.

[19] By way of example, the Applicants claim that the RAD mischaracterized the facts to find that the Applicants had abandoned their land restitution proceedings. The Applicants maintain that they never legally ended their land restitution proceedings. Rather, they had merely left the country. The Applicants further claim that the RAD improperly speculated that because the Applicants had left the country without seeing through their land restitution proceedings, Los Rastrojos would no longer be interested in them. I disagree with both arguments.

[20] Dealing first with the RAD’s factual finding, I note that the RPD recorded the Applicants’ testimony as follows at paragraph 21 of its decision:

When asked, the claimants indicated that they are not certain that Los Rastrojos are still motivated to find them now that they have abandoned the land restitution process.

[21] Similarly, the RAD noted in its decision that the Applicants testified that they had abandoned the land restitution process and they did not have any intention to follow through the process further.

[22] The Applicants have not adduced any evidence to suggest that the factual finding of the RPD and the RAD is incorrect, such as an affidavit or a copy of the transcript of the hearing establishing that their testimony was misquoted, misunderstood or mischaracterized. The Court is left with a summary of the evidence as reported in the RPD's decision, which must be taken as accurate and reliable.

[23] It follows that the RAD cannot be faulted in finding that the land restitution proceedings had been abandoned based on the Applicants' own admissions at the hearing before the RPD. I should add that, in any event, the distinction the Applicants seek to make between "legally" ending the land restitution process and leaving the country without taking further steps in the process is nothing more than semantics.

[24] As for the Applicants' claim that the RAD engaged in improper speculation or mental gymnastics about the motivation of Los Rastrojos in pursuing the Applicants, this is simply not borne out by the evidence. In fact, to the extent that there may be any speculation in this case, it is on the part of the Applicants, who assert, without any evidence, that Los Rastrojos would still be interested in tracking them down across Colombia if they return to Colombia. I agree with the Respondent that the Applicants are essentially asking this Court to get into the minds of the agents of harm, speculating as to their next move against the Applicants.

[25] It is important to remember that it is up to a claimant to prove that a proposed IFA is untenable. Section 97 of the IRPA requires the claimant to establish that removal would "more likely than not" subject them to risk of life or cruel and unusual treatment or punishment, rather

than the “serious possibility” standard applicable to section 96: *Tapambwa v. Canada (Citizenship and Immigration)*, 2019 FCA 34 at para 4.

[26] The Applicants testified that the contact between Los Rastrojos and the Applicants began in 2017, shortly after they inquired about the farm, and they were not contacted again until January 2019 when the land restitution process began progressing further. It was therefore reasonable for the RAD to conclude, having found that the Applicants had abandoned the land restitution process, that the motivation of Los Rastrojos had likely diminished such that they would not be motivated to spend the time, money, and resources necessary to locate and track them to the IFAs on this basis. The RAD laid out a rational connection that based on these facts, Los Rastrojos’ interest in the Applicants was directly related to the land restitution process of the farm.

[27] Moreover, the Applicants have failed to establish any error by the RAD in relying upon the information in the National Documentation Package [NDP] that indicated that Los Rastrojos are not present in Tunja or Paz de Rio. As noted by Mr. Justice Robert Barnes in *Gamboa Velasquez v. Canada (Citizenship and Immigration)*, 2021 FC 486, it is not unreasonable for the RAD to accept the detailed country condition reports, as was done in the present case, in preference to the inconclusive evidence relied upon by an applicant.

[28] It was certainly open to the Applicants to present credible evidence to the RAD that the agents of harm had established a presence in either of the two IFAs which would put them at a heightened risk. In my view, it is open to the RAD to conclude that the Applicants failed to do

so. I can find no error in its finding that the Applicants have not provided sufficient credible and reliable evidence that Los Rastrojos would become aware of their presence if they were to move to one of the proposed IFAs.

[29] Finally, the Applicants submit that the RAD speculated that the Applicants are no longer at risk if they are to move to Tunja or Paz de Rio because the agents of harm would not attempt to find the Female Applicant if they return and that it ventured into the minds of Los Rastrojos in doing so. I disagree.

[30] The Applicants take issue with the RAD's finding that because Los Rastrojos has other contacts to approach for repayment of the debt, they would not be motivated to commit the time, resources, and money required to launch a search for the Applicants throughout Colombia and track them to the IFA locations. I agree with the Applicants that this would not be a proper inference to make if it simply ended there.

[31] However, the RAD added that while Los Rastrojos managed to obtain the Applicants' phone number after they relocated within Colombia and changed their number, the Applicants had only been contacted by them by phone, they had never visited the Applicants in person and, based on the Applicants' own evidence, they had turned their attention to the Female Applicant's mother and sister, without making any inquiry about the Applicants or stating that they were looking for them specifically.

[32] In light of the empty threats made against the Applicants by Los Rastrojos and their apparent lack of interest in the Applicants after they abandoned the land restitution process, I see no error in the RAD's finding that "the Applicants' allegations that Los Rastrojos would be motivated to locate and track them to the IFA locations are speculative and are not grounded in evidence." In my view, the RAD decision contains a rational chain of analysis of the facts, or absence thereof.

[33] The RAD simply considered, on the one hand, assertions by the Applicants of "many scenarios that could be true" and, on the other hand, objective and reliable NDP information. There was no speculation on the part of the RAD into the *modus operandi* of Los Rastrojos. The Applicants simply did not put forth any actual and concrete evidence before the RAD, other than speculation, that Los Rastrojos are or would still be in pursuit of them two years after the last communication in April 2019.

[34] The Applicants have not persuaded me that the RAD's determination that Los Rastrojos' operations were negligible in the two IFA's is unreasonable in light of the evidence before it. There is therefore no basis for me to interfere with that determination. It follows that the application for judicial review must be dismissed.

[35] Neither party proposed a question for certification.

JUDGMENT IN IMM-661-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-661-21

STYLE OF CAUSE: JULIAN ANDRES FRANCO GARCIA, STEPHANNY RODRIGUEZ JIMENEZ, SANTIAGO FRANCO OCAMPO, LUISA FERNANDA SAAVEDRA RODRIGUEZ, LUCIANA FRANCO RODRIGUEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 26, 2021

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: SEPTEMBER 29, 2021

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