Federal Court  Cour fédérale

Date: 20220406

Docket: IMM-4912-20

Citation: 2022 FC 493

Ottawa, Ontario, April 6, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

DANIELA RENTERIA BONILLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Daniela Renteria Bonilla, is a citizen of Colombia who fears persecution or harm by the man who killed her father and/or by members of a criminal gang. She believes her father's assailant is associated with the gang, and that he killed her father in an act of retaliation. Consequently, she fears that she would be at risk if she returns to Colombia. On this application for judicial review, Ms. Bonilla challenges a September 15, 2020 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada. The RAD

dismissed Ms. Bonilla's appeal of an October 23, 2019 decision of the Refugee Protection Division (RPD), and confirmed the RPD's determination that she is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because she has a viable internal flight alternative (IFA) within Colombia, in Tunja.

[2] The RAD's September 2020 decision is the third RAD decision related to Ms. Bonilla's refugee claim, and the RPD's October 2019 decision is the second RPD decision. After the first RAD decision, the matter was remitted for redetermination by an order of this Court that was made on consent. The second RAD panel remitted the matter back to the RPD, resulting in the October 2019 RPD decision that Ms. Bonilla then appealed to the RAD.

[3] Ms. Bonilla submits the RAD unreasonably determined that Tunja is a viable IFA. In this regard, she submits the RAD unreasonably assessed the risk that her father's assailant or gang members will track her down in Tunja, by imposing an impossible burden of proof to establish that they have the means and motivation to find her, and by requiring corroborative evidence that would not be reasonably available to her. Furthermore, she submits the RAD did not properly consider the combination of factors that contribute to her cumulative risk profile as a young, single woman whose family has been targeted and victimized by gang violence.

[4] For the reasons below, I find Ms. Bonilla has established that the RAD's decision is unreasonable.

II. **Issue and Standard of Review**

[5] A refugee claimant bears the onus of establishing that a proposed IFA is not viable, and can discharge the onus by defeating at least one prong of the two-pronged IFA test. The first prong of the test asks whether the claimant would face a serious possibility of persecution under section 96 of the *IRPA*, or a risk of harm under section 97, in the proposed IFA. The second prong asks whether it would be unreasonable in all the circumstances for the claimant to relocate to the proposed IFA.

[6] The issue on this application for judicial review is whether the RAD unreasonably assessed Ms. Bonilla's risk of persecution or harm in the proposed IFA of Tunja, under the first prong of the IFA test. Ms. Bonilla does not raise any errors in the RAD's analysis under the second prong.

[7] The parties agree that the merits of the RAD's decision are reviewable according to the reasonableness standard. The reasonableness standard requires a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. A reviewing court must determine whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. **Analysis**

[8] Ms. Bonilla divides her arguments under two headings: (i) whether the RAD imposed an impossible burden of proof and unreasonably expected corroborative evidence not available to her; and (ii) whether the RAD failed to assess her cumulative risk profile, which arises from a combination of factors.

[9] Under the first heading, Ms. Bonilla alleges a number of specific errors that relate to the overarching error of imposing an impossible burden of proof. In this regard, she states that the RAD (i) misinterpreted her arguments about how the RPD had erred in assessing her risk of being found in Tunja, and failed to engage with her actual arguments; (ii) applied the wrong standard of proof to the IFA test; (iii) dismissed her evidence as speculation; (iv) engaged in its own speculation about the motives of the agents of persecution, who are not rational actors; (v) applied a double standard to factual findings from prior jurisprudence, by relying on findings about risks faced by victims of crime generally, while distinguishing findings about risks faced by victims of Colombian gang crime specifically, on the basis that each case turns on its own facts.

[10] Ms. Bonilla claims that her father's death was linked to events that happened months earlier, after her father learned that he had unwittingly taken on a member of a powerful criminal gang as a business client. The client threatened Ms. Bonilla's father in a dispute over payment, and her father reported the incident to the police and filed a complaint. About a week later, members of the criminal gang went to the family's house and threatened to kill or harm the

family if Ms. Bonilla's father did not retract his complaint. The family took precautions to avoid harm. Ms. Bonilla left Colombia to study in Canada.

[11] While in Canada, Ms. Bonilla received a call that her father had died. He had been stabbed while walking to her grandparents' home, where he was staying to avoid the criminal gang, and died in hospital shortly thereafter. Ms. Bonilla believes her father's killer is associated with the gang who had previously threatened the family, and that he was murdered in an act of retaliation.

[12] Ms. Bonilla's uncle was instrumental in securing a conviction in her father's murder case. The assailant served time in prison but he has since been released.

[13] After her father's death, Ms. Bonilla's mother and brother received further threats and were extorted by men who claimed to be associated with the same criminal gang who had threatened her father.

[14] Credibility was not the determinative issue before the RPD (IFA was the determinative issue); however, the RPD stated it "had some issues" with Ms. Bonilla's credibility regarding the identity of the agent of persecution. The RPD acknowledged Ms. Bonilla's evidence that men who identified themselves as members of the gang went to her house and threatened to kill the family if her father did not retract his police complaint, but stated that "nothing in the evidence" linked the assailant to that gang. Ms. Bonilla gave evidence that this was the only gang that had threatened the family, and the family assumed the assailant was a member, but the RPD

described this as “speculative affirmation”. The RPD went on to note, “the fact remains that the claimant’s father has been threatened by this group”, and assessed Ms. Bonilla’s refugee claim by considering whether she would be at risk from this gang or the assailant in the proposed IFA of Tunja.

[15] Before the RPD, Ms. Bonilla had argued that she would not be safe in the proposed IFA because violence from criminal gangs (also referred to as new armed groups) was ubiquitous in Colombia, including violence perpetrated by the successor gangs to the gang she fears (the original gang had disbanded, and successor gangs emerged from it). She relied on country condition documentation stating that criminal gangs have the ability to trace and target individuals anywhere in Colombia, regardless of territorial control, and that there have been documented cases of individuals being tracked down after fleeing to other parts of the country. She also relied on evidence that the activity of the successor gangs was increasing. In view of this evidence, Ms. Bonilla urged the RPD to give consideration to the fact that the gang members would have reason to target her as an individual.

[16] The RPD concluded that Ms. Bonilla would not face risk in Tunja, largely based on a lack of evidence that the successor gangs are active in Tunja.

[17] In her appeal memorandum before the RAD, Ms. Bonilla criticized the RPD’s finding that there was only speculation of a link between the assailant and the feared gang. Ms. Bonilla pointed out that the RPD had accepted that her father was murdered after he reported the gang’s threats to the police, and that the family was threatened and extorted a number of times after his

death. She also pointed out that the RPD had acknowledged that successor gangs emerged after the original gang disbanded, and appeared to acknowledge these gangs have the ability to find people of interest across the country. She noted that credibility was not the determinative issue before the RPD, and that the RPD had described the murderer as "the assassin of the claimant's father". Accordingly, the RPD's conclusion that there was no objective basis for the assailant's interest in retaliating against Ms. Bonilla or her family did not flow from the evidence.

[18] The RAD memorandum also stated that the RPD's reasons suffered from a fatal flaw in logic. The RPD found that Tunja would be safe based on a lack of evidence that the successor gangs are active there; however, a lack of evidence that Tunja is a centre for gang activity is not the same as evidence that the gang has no presence or alliances there. Ms. Bonilla argued she had relied on country condition evidence in the national documentation package (NDP) for Colombia stating that the successor gangs she believes to be affiliated with her father's killer are able to trace individuals and carry out attacks anywhere in the country, regardless of their territorial control. She pointed out that she had pleaded an individualized risk, as a member of a family who had been targeted by members of the predecessor gang. Ms. Bonilla argued that the most relevant question was whether the assailant and the gang would have reason to target her, not whether they are generally present in the proposed IFA. Evidence of a gang's activity in Tunja is irrelevant when members of the gang have reason to pursue an individual.

A. *Whether the RAD misinterpreted Ms. Bonilla's arguments on appeal*

[19] Ms. Bonilla argues that the RAD misinterpreted her arguments about the flaw in the RPD's logic to be: "the RPD erred in concluding that the lack of evidence of the presence of

criminal gangs in Tunja was positive evidence of the absence of those gangs", and "the RPD should base its conclusions on positive evidence of an absence". The RAD then rejected the mischaracterized arguments on the basis that such evidence is unlikely to be found, and that Ms. Bonilla had misapprehended the burden of proof. Without addressing the arguments that she did make, the RAD found no error in the RPD's conclusion that the groups she fears do not have the ability to find her in Tunja, based on a lack of evidence that the successor gangs are active in Tunja.

[20] I agree with Ms. Bonilla that the RAD misinterpreted her arguments. The RAD's restatement of the arguments was incomplete, and missed what Ms. Bonilla had called "the most relevant question". Furthermore, while the RAD noted that the RPD was required to consider the pleaded grounds of risk because those grounds dictate the potential risks in a proposed IFA, the RAD did not do so. Instead, the RAD reached the same conclusion as the RPD based on similar reasoning, using maps that show the territories controlled by Colombian gangs, without addressing Ms. Bonilla's argument that the RPD had failed to consider her individualized risk as someone the gang has reason to target.

[21] The RAD further noted that "the objective evidence cited by [Ms. Bonilla] refers to the need to consider the ability of the armed groups to find people as part of the analysis", but the RAD did not consider that ability as part of the analysis, apart from making a bare assertion that the cited sources "do not contain factual conclusions that people can be found". That assertion cannot stand without an explanation as to why statements in the cited sources about nation-wide

networks and the ability of criminal gangs to trace and target individuals anywhere in the country were not "conclusions that people can be found".

B. *Whether the RAD applied the wrong standard of proof to the IFA test*

[22] Turning to the second alleged error, Ms. Bonilla submits the RAD misstated or misconstrued the burden of proof when it stated, "I am guided by the Federal Court who have indicated that the standard of proof of adverse conditions in the IFA is very high and requires [Ms. Bonilla] to produce actual and concrete evidence of adverse conditions." The context for this statement, which was part of the RAD's analysis under the first prong of the IFA test, is as follows:

> [15]…I have also reviewed the maps available in the NDP about the territories controlled by the most powerful gangs in Columbia, in particular the information about [the successor gang]. This information indicates that this powerful organization does not have a presence in Tunja.[9] I note that the objective evidence cited by [Ms. Bonilla] refers to the need to consider the ability of the armed groups to find people as part of an analysis: these sources do not contain factual conclusions that people can be found.[10] Finally, I am guided by the Federal Court who have indicated that the standard for proof of adverse conditions in the IFA is very high and requires [Ms. Bonilla] to produce actual and concrete evidence of adverse conditions.[11] I find that the RPD made no error in reviewing the evidence in the NPD about the areas where these criminal groups are active and concluding, based on the lack of evidence of their activity in Tunja, that those groups she fears do not have the ability to find her in Tunja.
>
> [Footnote references omitted.]

[23] Ms. Bonilla states that both prongs of the IFA test are determined on the civil standard of proof, which is a balance of probabilities. With respect to the second prong, the jurisprudence establishes a "high threshold" that applies to the unreasonableness test: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 2118 at para 15, 266 NR 380

[*Ranganathan*]. However, that does not change the standard of proof. It is the definition of "unreasonable" that has a high threshold, requiring nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in the IFA or travelling to the IFA: *ibid*.

[24] As a result of this error, Ms. Bonilla states the RAD unreasonably expected her to provide corroborative, positive evidence that the agents of persecution will track her down in Tunja, in order to establish her risk under the first prong of the IFA test. She argues this expectation was unrealistic, and it imposed an impossibly high evidentiary burden to meet.

[25] The respondent contends the RAD did not err by referring to a "very high" threshold of proof under the first prong of the IFA test, because the jurisprudence establishes that a "high threshold" applies to both prongs of the test: *Iyere v Canada (Minister of Citizenship and Immigration)*, 2018 FC 67 at para 35 [*Iyere*]; *Adebayo v Canada (Minister of Immigration, Refugees and Citizenship)*, 2019 FC 330 at para 53 [*Adebayo*].

[26] I note that at the outset of its analysis, the RAD correctly stated that "the onus remains on [Ms. Bonilla] to establish, on balance of probabilities, that those she fears have the motivation and ability to locate her in Tunja". However, I would agree with Ms. Bonilla that the RAD's later statement calls into question whether it applied the correct standard of proof.

[27] In this regard, the RAD's reasons lack transparency as to how the RAD was guided by the stated principle that "the standard of proof of adverse conditions in the IFA is very high and requires [Ms. Bonilla] to produce actual and concrete evidence of adverse conditions" to

conclude, under the first prong of the IFA test, that the gang Ms. Bonilla fears does not have the ability to find her in Tunja. Both of the Federal Court cases that the RAD cited in support of this statement (*Singh v Canada (Minister of Citizenship and Immigration)*, 2013 FC 98 [*Singh*] and *Ranganathan*) refer to a "high threshold" in the context of the second prong of the IFA analysis, and the threshold relates to the kind of conditions that would render an IFA unreasonable despite being "safe" from a section 96 or 97 risk under the first prong of the IFA analysis. Ms. Bonilla's claim that the assailant (or a member of his associated gang) would track her down and exact revenge is not related to the second prong of the IFA test, nor to adverse conditions in Tunja. It appears that the RAD either applied a higher standard of proof than "balance of probabilities", or it expected some type of further evidence without explaining what it expected.

[28] I do not see how *Iyere* and *Adebayo* assist to shed light on the RAD's reasoning. In those cases, the Court did state that the high threshold set in *Ranganathan* ("nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area") applies to both parts of the test. However, like *Singh* and *Ranganathan*, *Iyere* and *Adebayo* were focused on the second prong of the IFA test. Those decisions recite the correct tests under both prongs (*Iyere* at paras 30-34, 39, 42; *Adebayo* at paras 49-52, 58-59) and do not relate a "high threshold" to the standard of proof. Furthermore, contrary to the respondent's argument, the RAD did not simply refer to a high threshold under its first prong analysis. Rather, the RAD relied on an absence of gang activity in Tunja and was guided by a "very high" standard of proof requiring actual and concrete evidence of adverse conditions (without considering country condition evidence about the ability of criminal groups

to track individuals outside their sphere of activity) to conclude that the groups Ms. Bonilla fears do not have the ability to find her in Tunja.

[29] In summary, I am persuaded that the RAD committed a reviewable error, either by applying a higher standard of proof than the civil standard or by expecting further evidence without adequate explanation.

C. *Whether the RAD erred by dismissing Ms. Bonilla's evidence as speculation*

[30] Ms. Bonilla submits that another example of the RAD's unreasonable expectation of corroborative evidence relates to her evidence about the assailant's motivation and means to find her in Tunja. The RAD found that she had speculated that the man convicted of murdering her father will be motivated to find her, and she had speculated about his association with a criminal gang that has the means to find her. The RAD stated she had provided "very little detail" about the mechanisms through which he would be able to search for her in Colombia. The RAD concluded that Ms. Bonilla had not offered sufficient persuasive evidence to establish that this man has the means to locate her in Tunja.

[31] Ms. Bonilla states it was unreasonable for the RAD to dismiss her evidence as speculation when it included, among other things, oral testimony (her own and her mother's) or documentary evidence demonstrating that: (i) her father was threatened by a criminal gang and murdered after he reported the threat to the police, (ii) her uncle was instrumental in securing the assailant's conviction, and (iii) her mother and brother were targeted and had been extorted by this gang. She also provided evidence that the assailant has since been released from prison, and

she referred to country condition evidence of criminal gang activity in Colombia, demonstrating that criminal gangs have national reach. According to Ms. Bonilla, to require more—such as positive evidence of gang activity or the assailant's presence in Tunja, proof that she or her family were tracked to another city in Colombia, or proof beyond the country condition evidence to demonstrate these agents of persecution have the ability to track her—would set an impossibly high and unrealistic burden that she cannot meet.

[32] Ms. Bonilla contends the RAD failed to follow the principles in *Senadheerage v Canada (Minister of Citizenship and Immigration)*, 2020 FC 968 [*Senadheerage*]. A decision maker should provide reasons for requiring corroborative evidence, and before drawing a negative inference from a failure to provide it, there must be a reasonable expectation the evidence would be available and the applicant must have an opportunity to explain why it was not obtained: *Senadheerage* at para 36.

[33] I agree with Ms. Bonilla that the RAD unreasonably rejected her evidence as speculation.

[34] As noted above, Ms. Bonilla had challenged the RPD's finding that the link between the assailant and the gang was speculation. In the RAD memorandum, she noted her credibility was not the determinative issue before the RPD. She argued the RPD had reviewed her testimony that her fear of the assailant is connected to his association with criminal gangs, accepted that her father was killed following threats by men identifying themselves as members of the gang, and accepted that the assailant was "the assassin of the claimant's father". The RAD, in its decision, notes that Ms. Bonilla's father unwittingly took on a member of a criminal group as a client,

went to the police when the client threatened him, as a result, the client threatened to kill the family, the father was "subsequently" murdered and the family feared for their lives, and after the father's death, Ms. Bonilla's mother and brother received threats and extortion attempts for a number of months in 2015 and 2016. It therefore appears the RAD accepted much of the same evidence that was accepted by the RPD. At least, the RAD did not reject any of these points or make any credibility findings of its own.

[35] The only statement in the RAD's decision that appears to be directed to Ms. Bonilla's arguments about the link between the assailant and the gang is the following:

> While I agree that the specific identities of the agents of persecution need not be established by the Appellant (whether [any of the successor gangs]), the onus remains on the Appellant to establish, on balance of probabilities, that those she fears have the motivation and ability to locate her in Tunja.

[36] While this statement is ambiguous, it seems that it can only be understood as an agreement with Ms. Bonilla's argument that the RPD's finding of "speculative affirmation" was made in error. Otherwise, the RAD failed to address a central point, namely, whether or not the assailant was "an assassin" who murdered Ms. Bonilla's father as a retaliatory act. Either way, the RAD erred when it relied on the same reason as the RPD—that Ms. Bonilla was speculating about the link—to conclude that the assailant would not have access to the means of a criminal gang to find her. If the RAD agreed that the RPD's finding was an error, then this was contradictory finding. If the RAD was not agreeing about the RPD's error, then the RAD failed to address a central argument before it concluded that the assailant would not have the means of a criminal gang to track Ms. Bonilla because the evidence of his link to the gang was no more than speculation.

D. *The errors identified above amount to a sufficiently serious shortcoming so as to render the RAD's decision unreasonable*

[37] The respondent argues that, apart from the lack of evidence of the criminal gang's activity in Tunja, there was other support for the RAD's conclusion that Ms. Bonilla would be "safe" in Tunja. This included evidence that the gang was becoming increasingly fragmented and localized, and evidence that Ms. Bonilla's family had not received any threats since 2016.

[38] In my opinion, the RAD's additional findings cannot independently support the RAD's decision to reject Ms. Bonilla's refugee claim. Consequently, I find that the errors described in sections A, B and C above constitute sufficiently serious shortcomings to render the RAD's decision unreasonable.

[39] First, the RAD's decision does not refer to fragmentation or localization of the feared gang. If the RAD did rely on country condition evidence of fragmentation or localization of gang activity to support its conclusion, the RAD should have first acknowledged and addressed Ms. Bonilla's arguments and evidence to the contrary—that the activity and vigour of the feared gangs was on the rise.

[40] Second, although the RAD did conclude that the lack of new threats since 2016 indicated a lack of motivation (Ms. Bonilla contends this was speculation, and the respondent contends it was a reasoned inference), the RAD did not state that this finding alone was sufficient to reject Ms. Bonilla's claim. Means and motivation can be interrelated, and it is not clear the RAD would have reached a different conclusion on motivation if, for example, the RAD had found the

assailant would have ready access to the means to find and harm Ms. Bonilla due to his affiliation with a criminal group. Even assuming that the RAD did not speculate as Ms. Bonilla contends, the RAD's decision remains unreasonable.

[41] In view of my reasons above, it is unnecessary to consider Ms. Bonilla's remaining arguments. Nonetheless, I will address them briefly below.

E. *Whether the RAD applied a double standard to factual findings from prior jurisprudence*

[42] Ms. Bonilla contends that the RAD applied a double standard to factual findings from prior jurisprudence when it relied on findings about risks faced by victims of crime generally, while distinguishing findings about risks faced by victims of Colombian gang crime specifically, on the basis that each case turns on its own facts. Ms. Bonilla states the RAD used a "statistical" assessment of findings from prior jurisprudence to support its conclusion that victims of crime generally fail to establish a fear of persecution based on a Convention ground (that is, under section 96 of the *IRPA*). At the same time, she says the RAD distinguished factual findings from an RPD decision (TB8-07027) and a Federal Court decision (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 2018 FC 665 [*Sanchez*]) that would support her argument that Tunja is unsafe.

[43] I am not persuaded by this argument. The RAD did not conduct a "statistical" assessment but rather, referred to a general rule recognized in the jurisprudence that a familial relationship with a victim of crime is generally insufficient to satisfy a claim for protection based

on a Convention ground of persecution, under section 96 of the *IRPA*. The RAD did not apply a double standard when it distinguished the prior RPD decision and *Sanchez*.

F. *Did the RAD fail to assess Ms. Bonilla's cumulative risk profile, which arises from a combination of factors?*

[44] Ms. Bonilla contends that the RAD considered elements of her risk profile in isolation to conclude that each represented a generalized risk. She states this was an error because her profile comprises a combination of risk factors: (i) she is a single, young woman; (ii) her father was killed by man affiliated with a powerful gang; (iii) her family has been extorted in the past; (iv) successor groups of the gang have presence throughout the country; and (v) her father's assailant has an objective reason to pursue her.

[45] Ms. Bonilla acknowledges that the RAD considered whether she would face a risk due to her gender alone because she had alleged that the RPD erred by failing to consider gender-based risk as a separate, "residual" risk profile. However, she states that her RAD memorandum also argued that she would face a risk of gender-based violence as one aspect of the risk from the feared agents of persecution. Her gender adds to that risk profile, as she would be at risk for kidnapping and sexual violence by the feared agents due to her gender.

[46] The respondent states that the RAD did not misapprehend Ms. Bonilla's risk profile, and its analysis was responsive to the arguments she had raised on appeal. I agree. The RAD considered whether the alleged risk from the criminal gangs or the father's assassin pointed to an element of risk that was gender-based, and found that they did not. Although the harm that Ms. Bonilla might suffer could be a form of gender-based violence, the RAD found that her

underlying risk remains a risk as a victim of crime or as a member of a family victimized by crime. Ms. Bonilla had not demonstrated that any persecution she would face would be "by reason of" her gender under section 96 of the *IRPA*, and she had not demonstrated that her risk for gender-based violence would be any different from any other single woman in Colombia under section 97 of the *IRPA*. In my view, the RAD was alert to the allegation of an independent gender-based risk as well as the allegation that gender affected the risk at the hands of the feared agents, and conducted the IFA analysis accordingly.

IV. **Proposed Question for Certification**

[47] Subsection 74(d) of the *IRPA* provides that an appeal to the Federal Court of Appeal may only be made if this Court certifies a serious question of general importance. In order to be properly certified under section 74 of the *IRPA*, a proposed question must be dispositive of the appeal, must transcend the interests of the parties, and must raise an issue of broad significance or general importance: *Lewis v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36 [*Lewis*]. The question must have been dealt with by this Court and must necessarily arise from the case itself, as opposed to the way in which the Court may have disposed of the case: *Lewis* at para 36.

[48] At the oral hearing of this application, Ms. Bonilla identified a possible question for certification arising out of the respondent's arguments that a "high threshold" applies to both prongs of the IFA test, according to *Iyere* and *Adebayo*. I invited the parties to provide post-hearing submissions.

[49] Ms. Bonilla's post-hearing submissions propose the following question for certification:

> In considering the viability of an Internal Flight Alternative ("IFA") and the disjunctive two-part test set out in *Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), [1992] 1 FC 706, 140 NR 138 (CA) at 711 [*Rasaratnam*] if a "high threshold" applies to both parts of the test (*Adebayo v Canada (MCI)*, 2019 FC 330, at para 53; *Iyere v Canada (MCI)*, 2018 FC 67, at para 35), does a claimant bear a proportionately elevated burden of proof that there is more than a serious possibility of persecution on balance of probabilities in the proposed IFA, under the first prong of the test?

[50] This question arises from the case because of the RAD's statement that it was "guided by the Federal Court who have indicated that the standard of proof for adverse conditions in the IFA is very high".

[51] According to Ms. Bonilla, while the *Adebayo* and *Iyere* decisions both state that the "high threshold" applies to both prongs of the IFA test, the cases do not actually deviate from the law as established in seminal cases such as *Ranganathan* and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FC 589, 109 DLR (4th) 682 (FCA). Alternatively, if *Adebayo* and *Iyere* deviate from established jurisprudence by importing a "high threshold" into the burden of proof, rather than the nature of the circumstances that would render an IFA unreasonable under the second prong of the IFA test, then this point should be clarified as a question of general importance because it renders the law unsettled.

[52] The respondent objects to the proposed question for certification on the basis that it should have been raised at least five days prior to the hearing: *Federal Court Practice Guidelines for Citizenship, Immigration and Refugee Law Proceedings* (November 5, 2018); *Ait Elhocine v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1068 at para 38. I do not reject the

proposed question on this basis, because it arose from the nuances of the respondent's position that only became apparent during oral argument.

[53] The respondent also argues that the proposed question is not one of general importance as it has been previously settled by the jurisprudence in this area. Although the language used in each case may vary, the evidentiary burden has not shifted. The onus imposed on a refugee claimant to provide objective evidence to prove that there is a serious possibility of persecution does not alter the evidentiary burden that was previously established. The Court's commentary in *Ranganathan* did not elevate the burden beyond the balance of probabilities, but simply emphasized that the evidence provided must objectively show that there is a serious risk to the safety or life of a refugee claimant in the IFA, and the Court's commentary in *Iyere* and *Adebayo* emphasizes the same requirement. Furthermore, any argument regarding the correct applicability of the IFA test based on statements made by the RAD are factually driven, and do not form the basis for a certified question.

[54] In my view, the proposed question for certification does not meet applicable test.

[55] Neither party has presented jurisprudence that casts doubt upon the settled, two-prong test for determining whether an IFA is viable, or the standard of proof that applies to that test. Furthermore, the post-hearing submissions clarify that the respondent's position on the meaning of "high threshold" is more closely aligned with Ms. Bonilla's position than it appeared to be during oral argument.

[56] Also, I agree with the respondent that this issue is factually driven. Because of the RAD's statement and the context in which it was made, the RAD appeared to apply a higher standard of proof than "balance of probabilities", or it appeared to require corroborative, positive evidence without adequate explanation.

[57] I decline to certify the proposed question.

V. **Conclusion**

[58] For the reasons above, Ms. Bonilla has established that the RAD's decision is unreasonable. Accordingly, this application for judicial review is allowed.

JUDGMENT in IMM-4912-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The RAD's September 15, 2020 decision is set aside and the matter shall be re-determined by a different panel of the RAD.
3. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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