

Federal Court



Cour fédérale

**Date: 20220718**

**Docket: IMM-4852-21**

**Citation: 2022 FC 1054**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, July 18, 2022**

**PRESENT: Mr. Justice Pamel**

**BETWEEN:**

**EDUAR DURAN VARGAS  
MARY LUZ DIAZ CABRA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicants, Mr. Eduar Duran Vargas and his spouse, Ms. Mary Luz Diaz Cabra, are citizens of Colombia who are seeking judicial review of a decision of the Refugee Appeal Division [RAD] dated June 25, 2021, confirming a decision of the Refugee Protection Division

[RPD] rejecting their claim for refugee protection. The RPD and the RAD found that the determinative issue in this case was the applicants' credibility.

[2] Like the RPD, the RAD found that the applicants' credibility was undermined by inconsistencies, omissions and contradictions in the evidence and their testimony. The applicants are challenging all the RAD's credibility findings, believing that their testimony was credible and arguing that the RAD's decision was based on erroneous findings of fact that were made in a capricious and perverse manner and without regard to the evidence.

[3] In my opinion, the applicants are asking the Court to reconsider the evidence. It is trite law that reviewing courts must refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125 [Vavilov], citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). For the reasons that follow, I am of the opinion that the application for judicial review should be dismissed.

## II. Background

[4] The applicants were married in May 2015 and settled in the city of Palmira, Colombia. Mr. Vargas was a draftsman, and Ms. Cabra was working as a bank teller.

[5] On May 10, 2016, Ms. Cabra was allegedly physically assaulted and threatened with death by two men on motorcycles who approached her as she was walking home alone. One of the men held a gun to her head, identified himself as a member of the Urabeños and demanded

that she cooperate with them by disclosing information to which she had access through her job at the bank. The applicants went to the Office of the Inspector General in Palmira the following morning to file a complaint. The Office issued a document setting out protection measures, which they were to take to their local police station. They gave the document to the police, and the police commander assured them that police patrols would be conducted around their house.

[6] The following day, May 12, 2016, the applicants were still worried about their safety and allegedly moved to Villagorgona, approximately 30 kilometres from Palmira. Mr. Vargas returned to work a day later, and Ms. Cabra resumed her duties at the bank on May 19, 2016. Her boss agreed to modify her schedule and transfer her to a different position, for her safety and that of her clients, until the Office of the Inspector General completed its investigation.

[7] On June 2, 2016, two members of the Urabeños allegedly approached Mr. Vargas in a van as he was leaving work on his motorcycle to go back to Villagorgona. An armed man threatened to come after him and his wife, but Mr. Vargas managed to lose them on his motorcycle. The following day, the applicants decided to contact a lawyer. She advised them to go to the Office of the Ombudsperson in Cali—Mr. Vargas testified that this is an organization that acts as an ombudsperson—which could help them obtain protection from the National Protection Unit [UNP]. The applicants went to the office the same day and filed an application for protection that their lawyer had prepared.

[8] On June 4, 2016, the applicants allegedly decided to move to Girardot. They made numerous follow-ups with the Office of the Inspector General in Palmira regarding their

complaint, as well as with their lawyer and the Office of the Ombudsperson in Cali regarding their application for protection.

[9] On July 29, 2016, the applicants' lawyer allegedly stopped representing them, after she herself had been threatened by the Urabeños for taking on this case.

[10] On August 9, 2016, the applicants were allegedly the victims of a murder attempt by a member of the Urabeños in the streets of Girardot. According to them, the gun jammed, and they managed to escape after a physical confrontation between Mr. Vargas and the attacker. They went immediately to the Office of the Inspector General in Girardot to file a new complaint. An assistant to the Inspector General advised them to leave Colombia because it would take time to process their complaints. Later that day, the applicants learned from the owner of their home in Girardot that armed men had gone to their address and threatened her to find out where they were.

[11] The applicants then allegedly hid in a motel in Bogotá, more than 100 kilometres from Girardot. That is when they decided to leave Colombia. The applicants held visas for the United States. However, they spoke on the telephone with an employee of the Office of the Ombudsperson, who advised them not to travel to the United States to seek asylum but suggested that they travel to Canada instead. In the following days, the applicants took steps to obtain Canadian visas.

[12] On August 17, 2016, the applicants allegedly learned from their former landlady in Girardot that a leaflet had been slipped under her door stating that Mr. Vargas and Ms. Cabra were military objectives of the Urabeños.

[13] On September 2, 2016, the applicants allegedly learned that their visa applications had been rejected. They therefore decided to travel to the United States and enter Canada through the Saint-Bernard-de-Lacolle border crossing. They left Colombia on September 28, 2016, arrived in Canada on October 2, 2016, and claimed refugee protection.

[14] Four years later, the RPD rejected their claims in a decision dated October 28, 2020. The RPD raised two important elements in the applicants' story that undermined their credibility. First, the RPD pointed out that, as indicated in the National Documentation Package [NDP], the general public may refer to the alleged agents of persecution as the Urabeños, but members of the group refer to themselves as the Autodefensas Gaitanistas de Colombia [AGC]. However, when the RPD questioned the applicants about the fact that, on the leaflet stating that they were military objectives, the group had identified itself as "Los Urabeños" rather than AGC, Mr. Vargas replied that [TRANSLATION] "the group identified itself as the Urabeños", [TRANSLATION] "the government had given them another name" and [TRANSLATION] "from what [he understands], [AGC] is the name they gave themselves in their early days, when they began." The RPD was not satisfied by the answer and did not believe that the applicants had had problems with the Urabeños; in the eyes of the RPD, this contradiction seriously undermined their credibility.

[15] Secondly, the RPD was not persuaded by the applicants' explanations as to why they did not leave Colombia until September 28, 2016, despite being chased from city to city. They also stated that they had decided to flee Colombia on August 9, 2016, the very day of the alleged murder attempt, but still took time to apply for Canadian visas even though they had American visas. The RPD believed that the applicants would not have stayed in Colombia for so long if their story were true; their behaviour was inconsistent with the expected behaviour of people who are truly fearing for their lives.

[16] Moreover, the RPD identified other credibility issues that were less critical but that informed the overall assessment of applicants' credibility. For example, the RPD noted that the applicants did not fit the profile of the "military objectives" usually targeted by criminal groups. The objective documentary evidence indicates that these groups usually target members of human rights organizations or people engaged in political activities.

[17] Moreover, the RPD was not satisfied that an application for assistance from the UNP had been made on behalf of the applicants. Indeed, the objective documentary evidence shows that the individuals who are likely to be assisted by the UNP are engaged in political activities or are human rights defenders. Moreover, the RPD considered it to be unlikely that a lawyer and an employee of the Office of the Ombudsperson would have assisted the applicants in obtaining UNP protection when they were not eligible for it in the first place.

[18] Like the RPD, the RAD found that the applicants' credibility was undermined by inconsistencies, omissions and contradictions in the evidence and their testimony. After listening

to the recording of the hearing, the RAD found that the RPD's credibility findings raised sufficient doubt about key aspects of their claim to rebut the presumption of truthfulness of testimony set out in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) [*Maldonado*].

[19] Specifically, the RAD found that the applicants' explanations—that members of the Urabeños do not identify themselves as such but rather as members of the AGC—were imprecise and inconsistent with their account of being threatened and assaulted by that group to the point of fleeing Colombia. Like the RPD, the RAD was of the opinion that the applicants had failed to provide a reasonable explanation for their delay in leaving Colombia and that their behaviour was inconsistent with the expected behaviour of people fearing for their lives.

[20] The RAD also agreed with the following conclusions of the RPD. First, the applicants did not provide enough details on their designation as military objectives. Second, they did not fit the profile of persons who are usually targeted as military objectives, according to the objective documentary evidence. Third, they were not eligible for UNP protection—usually available only to those engaged in political or human rights activities. Fourth, they did not provide documentary evidence that they had approached the UNP. Fifth, their reluctance to file a complaint following the assault on Mr. Vargas on June 2, 2016, is inconsistent with their conduct following the incident on May 10, 2016.

[21] The applicants also argued before the RAD that the RPD had failed to observe the principles of procedural fairness. In their opinion, the panel had failed to be attentive and

sensitive to their real reasons for coming to Canada and had failed to obtain the clarifications and information necessary to make a negative credibility finding. The applicants also argued that the summary of events in the RPD's reasons for decision lacked rigour. The RAD found that the RPD had shown a clear understanding of the facts and that its conclusions were based on an analysis of the applicants' testimony, their explanations and the evidence in the record. Although the RAD was of the opinion that the RPD erred in referring to similar implausible claims from Colombia, the RAD concluded that the remark was not a determinative error and that the panel had observed the principles of procedural fairness by acting in a competent, impartial and professional manner.

### III. Issues and standard of review

[22] This application for judicial review raises a single issue: is the RAD's decision unreasonable?

[23] I agree with the parties that the RAD's conclusions as to the applicants' credibility should be reviewed on a standard of reasonableness (*Vavilov* at paras 16–17). The role of the Court is therefore to assess the RAD's decision and determine whether it is based on “an internally coherent and rational chain of analysis” and whether the decision as a whole is transparent, intelligible and justifiable (*Vavilov* at paras 85–86).

### IV. Analysis

[24] To begin with, the applicants present the same arguments as they did before the RAD. They argue that the panel did not appear to be attentive and sensitive to their real reasons for



coming to Canada. They state that it failed to act in accordance with the principles of natural justice to which it is bound because it failed to seek the clarification and information required to clarify doubts as to the credibility of the applicants. I disagree. The applicants have not referred to any evidence that the RAD fundamentally misapprehended or failed to account for (*Vavilov* at para 126).

[25] In assessing whether the RPD had observed the principles of procedural fairness, the RAD acknowledged that the RPD erred when it referred to information from other claims without disclosing it to the applicants in accordance with subrule 21(1) of the *Refugee Protection Division Rules*, SOR/2012-256. However, it concluded that this error was not determinative and that the RPD had observed the principles of procedural fairness. I am not persuaded that this conclusion is unreasonable.

[26] Second, relying on the UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status*, HCR/1P/4/Eng/REV.1 [UNHCR Handbook], the applicants submit that they gave credible testimony and that the RAD and RPD should have given them the benefit of the doubt, unless there were good reasons not to do so. It is true that the testimony of an applicant must be presumed to be true unless there are valid grounds to rebut this presumption (*Maldonado* at 305). The UNHCR Handbook also states that the "benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility" (UNHCR Handbook at para 204). In this case, the RAD doubted the truthfulness of the applicants' testimony as a result of inconsistencies, omissions and contradictions in the evidence and their testimony, and it was therefore not

required to give them the benefit of the doubt. Again, I see nothing unreasonable in the RAD's conclusions.

[27] The applicants also argue that the RAD's decision is based on erroneous findings of fact that were made in a capricious and perverse manner and without regard to the evidence.

According to the applicants, the RAD failed to consider all the objective documentary evidence that clearly shows that the Urabeños and the AGC are the same group, that the name "Urabeños" is still in use, and that there is no evidence that the group refers to itself solely as the AGC. The applicants cite several passages from the NDP in which the name "Urabeños" refers to the same criminal group. However, the applicants' argument misses the point. The RAD did not deny that it was the same group. Rather, it raised the fact that, according to objective documentary evidence, the members of this criminal group refer to themselves not by the name "Urabeños" but rather by the name "AGC". Therefore, the NDP was in direct contradiction with the fact that the criminal group identified itself as the Urabeños on the leaflet. The RAD drew a negative inference as to the credibility of the applicants because of their poorly detailed explanation regarding the name of the group that allegedly threatened and attacked them. It concluded that "the imprecise and poorly detailed explanation regarding the names of this group is not consistent with the alleged fact that [the applicants] were threatened and attacked by this group to the point of fleeing Colombia because they fear for their lives".

[28] The applicants argue that the RPD did not raise the issue of the criminal group's name on the leaflet until the end of the hearing. Therefore, the RPD did not sufficiently deal with the issue, and the RAD did not correct this error. I disagree with the applicants. The RPD clearly

asked why the group identified itself in the leaflet as the Urabeños, when the NDP indicates that, despite being known by different names by other people, the group members themselves refer to themselves as the AGC. The applicants' response left a great deal to be desired in the RPD's mind, and the RAD agreed. I am not persuaded that their conclusion was unreasonable.

[29] Moreover, contrary to the applicants' assertion, the RPD was not required to advise them of the weight it gave to the criminal group's name (*Solis Morales v Canada (Citizenship and Immigration)*, 2011 FC 1239 at para 24). Moreover, the RAD may make independent credibility findings where credibility is at the heart of the RPD's decision and the grounds for appeal before the RAD (*Corvil v Canada (Citizenship and Immigration)*, 2019 FC 300 at para 13).

[30] The applicants also argue that their credibility should not have been undermined by their delay in leaving Colombia, since the time between their decision to leave Colombia on August 9, 2016, and their departure on September 28, 2016, is not excessive. However, the applicants fail to explain why they applied for visas for Canada and waited a number of weeks for a response to their applications when they had visas for the United States. Consequently, I am not persuaded that the RAD's conclusion was unreasonable.

[31] The applicants also challenge the other findings of the RAD, namely that they failed to establish that they were designated as military objectives, that no steps were taken to obtain protection from the UNP, and that their reluctance to file a complaint following the assault on Mr. Vargas on June 2, 2016, is inconsistent with their conduct following the incident on May 10, 2016. The applicants state that they presented compelling evidence that they were designated as

military objectives and that the panel has no valid reason not to believe the events they experienced; they point out that their lawyer was threatened with death for representing them and that the application to the UNP may not have been made because they applied to the Office of the Ombudsperson, a body that could arrange for the applicants to be included in the UNP register, and that the applicants filed a complaint the day after the attack of June 2, 2016. The applicants are simply asking me to reconsider the evidence presented to the RAD and to reach a different conclusion, which I will not do.

[32] I am of the opinion that the applicants' arguments are insufficient because they are merely arguing their case *de novo* and trying to present the same arguments they made before the RAD. They do not in any way explain how the RAD's conclusions on this point are unreasonable (*Laguerre v Canada (Citizenship and Immigration)*, 2021 FC 701 at paras 42–43). Consequently, I am not persuaded that the RAD's conclusions based on the evidence were unreasonable.

## V. Conclusion

[33] I dismiss the application for judicial review.

**JUDGMENT in IMM-4852-21**

**THIS COURT'S JUDGMENT is as follows:**

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

“Peter G. Pamel”

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Judge

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

**DOCKET:** IMM-4852-21

**STYLE OF CAUSE:** EDUAR DURAN VARGAS, MARY LUZ DIAZ  
CABRA v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 16, 2022

**JUDGMENT AND REASONS  
BY:** PAMEL J

**DATED:** JULY 18, 2022

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