

Federal Court



Cour fédérale

Date: 20220719

Docket: IMM-4636-21

Citation: 2022 FC 1073

Ottawa, Ontario, July 19, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**NARDA DOMENICA ESTRADA
ALEJANDRO**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Narda Domenica Estrada Alejandro, is a 30-year-old citizen of Ecuador. She claims refugee protection because she has been targeted by government officials on account of her participation in student protests. She seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated June 22, 2021, which confirmed a decision of the Refugee Protection Division [RPD] dated September 4, 2020, and in which the RAD found that

Ms. Estrada failed to rebut the presumption of adequate state protection in Ecuador. I find nothing unreasonable in the RAD's decision, and for the reasons set out below, I dismiss the present application.

II. Background and underlying decisions

[2] On October 28, 2013, Ms. Estrada obtained a student loan from the Ecuadorian Institute of Educational Credit and Scholarships [IECS] to study nutrition, dietetics and aesthetics at the Santiago de Guayaquil Catholic University. She received her last deposit in December 2015, shortly before the Ecuadorian government implemented a series of economic reforms; the government then closed and merged several financial institutions, including the IECS. Students receiving financial aid from the IECS were informed that the Institute for the Promotion of Human Talent [IPHT] would henceforth manage their loans. Unfortunately, the IPHT was not able to provide any information to the students regarding their loans and advised students to expect further notice by email with more information. In the meantime, Ms. Estrada was not able to continue her studies or pass her exams. A month later, Ms. Estrada received an email from Mr. Roger Arnold Rada Tamayo, a regional manager with the IPHT, informing her that she had to start repaying her loan, with interest, in the next two months.

[3] Ms. Estrada participated in a student demonstration outside of the IPHT's offices to protest what the students saw as the IPHT's abuse of power. The demonstration resulted in a confrontation with the police, and student leaders were arrested. One of them filed a complaint against the police to the national prosecutor's office, which seems to have resulted in

intimidation and threats against him and his family. Fearing retaliation, Ms. Estrada withheld the complaint that she was going to file against the police, and never filed it.

[4] Although Ms. Estrada's parents made the monthly payments on her loan, Mr. Rada at the IPHT intervened and withdrew funds directly from her bank account. Ms. Estrada filed a complaint with her bank but to no avail, so she closed her bank account. Weekly visits from a bill collector to their home started to take place, so Ms. Estrada's parents were forced to move, while Ms. Estrada cancelled all contracts which identified her home address. At the beginning of 2016, Ms. Estrada sought psychiatric help because of constant threats that she and her family received from the national police, especially from a Lieutenant Jorge Augusto Morocho Cadenas.

[5] On September 30, 2016, Ms. Estrada visited her sister in Toronto and extended her stay because of her sister's poor health. She returned to Ecuador on July 3, 2017, thinking that she would have no problem from the authorities as her parents kept making her loan payments on time. However, she was detained at the airport for more than two hours without explanation. Her parents informed her that the threats had not ceased while she was in Canada and that the police had started to intimidate them so that she would not file any complaint against the police officers in relation to the student protests. Fearing for her life, Ms. Estrada decided to return to her sister's house in Canada on July 21, 2017.

[6] On October 13, 2017, Ms. Estrada returned to Ecuador with the hope that the threats had subsided; however, she was approached by police officers close to her house asking for her identification and the reason why she left the country. She did not answer their questions and

was able to enter her house without further incident. Ms. Estrada tried to contact fellow student protesters, but their families either informed her that they were in prison or that police officers who were injured during the protest had sued them for large amounts of money. A week after returning to Ecuador, Ms. Estrada was informed by one of her community security guards that two police officers were looking for her. Concerned for her safety, she decided to return to Canada; she left on October 30, 2017, and claimed refugee protection.

[7] In a decision dated September 4, 2020, the RPD found that Ms. Estrada was not a credible witness as she omitted to mention any active involvement with the student protests, and gave vague answers during her testimony. The RPD further found that Ms. Estrada failed to rebut the presumption of adequate state protection in Ecuador. According to the RPD, although the objective documentary evidence mentions significant human rights issues in Ecuador, including torture and abuse by the police, Ecuador is nonetheless considered a democratic country. The government in Ecuador is in control of its territories and has taken steps to curtail abusive police conduct, including by imposing more robust training programs for police officers. Complaints against the police were available remedies against abusive police behaviour; however, as noted by the RPD, none of the threats reportedly received by Ms. Estrada or other family members were ever reported to the police.

[8] Before the RAD, Ms. Estrada submitted a news article as new evidence. Since it was dated after the RPD's decision and appeared credible and relevant, the RAD admitted the news article in accordance with subsection 110(4) of the *Immigration and Refugee Protection Act, SC* 2001, c 27, but denied Ms. Estrada's request to an oral hearing.

[9] The RAD found that the RPD erred in its credibility findings; Ms. Estrada did not express a fear of the police on account of being a leader in the student protests, but rather on account of the fact that she was perceived as a leader by the authorities and other protesters. The RAD accepted that Ms. Estrada demonstrated a subjective fear because of her participation in student protests. However, the RAD determined that the RPD was correct in finding that Ms. Estrada failed to rebut the presumption of adequate state protection in Ecuador.

[10] Ms. Estrada argued before the RAD that there is no adequate state protection for her in Ecuador as the agent of persecution is the state. The RAD disagreed and stated:

[17] In considering the adequacy of state protection for this particular Appellant, I note that she fears persecution or risk of harm from Roger Arnold Rada Tamayo, the manager of the Institute for the Protection of Human Talent, who sent her an email telling her to pay her outstanding loan. She also fears members of the police because of her participation in student protests.

...

[23] The Appellant is of the view that as the state is the agent of persecution, it is not reasonable to believe that the state can provide the Appellant protection. I find this proposition incorrect. The assessment of state protection requires a consideration of the objective documentation, and the particular circumstances of this case. Given the objective documentation I have reviewed and the fact that her parents reported police misconduct to the Specialized Prosecution Officer, I find the evidence leads me to conclude that there is adequate state protection in Ecuador. Here, the Appellant did not make any effort to file a report with the police, or more specifically, with other state actors who are involved in protection of citizens, such as the Attorney General and the Ombudsperson.

[Emphasis added.]

III. Issue and standard of review

[11] The sole issue that Ms. Estrada raises in the present application is whether the RAD's state protection finding is reasonable.

[12] I agree with the parties that the appropriate standard of review is reasonableness, as this case does not engage any of the exceptions to the presumptive standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]). To determine whether the decision as a whole is reasonable, the reviewing court must ask "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 paras 99-101).

IV. Analysis

[13] Although Ms. Estrada was originally represented by counsel, she represented herself at the hearing before me, with the assistance of a friend. Ms. Estrada submits that the RAD erred in its assessment of the country conditions and her personal circumstances in determining the availability of state protection. She argues that it is not reasonable to conclude that state protection is available when the state is the agent of persecution. She relies on the objective documentary evidence from the National Documentation Package [NDP] to demonstrate that the Ecuadorian police are using excessive force and torturing and abusing suspects and prisoners.

[14] I cannot agree with Ms. Estrada. The RAD determined that she feared Mr. Rada, a regional manager with the IPHT, and members of the police because of her participation in

student protests. In addition, after assessing the most recent objective documentary evidence from the NDP dated April 23, 2021, the RAD found that Ecuador is moving forward with efforts to hold police accountable. In fact, both of her parents filed complaints with the public prosecutor's office in January and February 2020 regarding incidents involving police abuse, with no retaliation for their actions. The RAD concluded that Ms. Estrada's parents availed themselves of state protection but that Ms. Estrada had not made any effort to file a report with the police or with any other state authority involved in the protection of citizens.

[15] Before me, Ms. Estrada asserts that she did not file a complaint against the police at the time of the student protests in 2016 because she feared the fate which befell the student leaders who had filed such complaints – they were tortured and beaten. She explained that since she returned from her last trip to Ecuador, the situation has gotten worse and she now sees no life for herself in that country. She claims that the police are still looking for her and will find her if she returns. Although her student loan has since been fully paid, Ms. Estrada claims that Mr. Rada continues to block her from opening up a bank account; although there is no evidence of this in the record. She also claims before me that her mother continues to be extorted by the local police, who continue to look for her. However, when I asked her why the police are extorting her mother for money, she answered that she thought it was the police, but she did not seem to be certain. In any event, there is no evidence of this in the record.

[16] All in all, I find no reviewable error in the RAD's finding that Ms. Estrada failed to rebut the presumption of the availability of state protection in Ecuador. Refugee protection is meant to be a form of surrogate protection when protection is unavailable in the home state for the

claimant (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at p 709 [*Ward*]; *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 41 [*Hinzman*]). The burden to rebut the presumption of state protection lies with the claimant (*Ward* at p 725-26; *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paras 25, 38).

[17] After taking into consideration the human rights issues in Ecuador, the RAD determined as follows:

[21] In addition, I find the objective documentation indicates that the state is making efforts to hold police who use excessive force to account. For example, a special prosecutorial unit was set up in 2010 to investigate and prosecute cases documented by a truth commission. While I agree with the Appellant that 68 extrajudicial executions between 1984 and 2008 is concerning, the fact that a special unit is making some headway in prosecuting individuals for these crimes indicates that the state is making efforts for accountability. The RPD highlights other successes mentioned in the NDP for Ecuador of March 31, 2020 in paragraphs 28 to 31 of its decision. For example, the administration is conducting better training programs for police on human rights, citizens can file complaints against the police to a number of places, including the the [*sic*] Public Prosecutor's office, and the Ombudsman.

[22] I have reviewed the most recent NDP for Ecuador dated April [23], 2021. I find it by and large provides similar information as the NDP Package considered by the RPD. It confirms that Ecuador is a democratic country and not a broken or fragile state. Like many countries, it has issues with police corruption, police response to protests and demonstrations and with the police use of excessive force. Objective evidence indicates that Ecuador is making efforts to keep the police in check. The mere fact that the state's efforts are not always successful does not, on its own, rebut the presumption of state protection.

[18] Ms. Estrada failed to submit clear and convincing evidence to establish that she has unsuccessfully sought the protection of the state (*Hinzman* at para 44, citing *Ward* at p 724). The evidence must go further than merely showing that state protection is not perfect or not always

effective (*Canada (Minister of Employment and Immigration) v Villafranca*, 1992 CanLII 8569 (FCA) at para 7); I find that it was reasonable for the RAD to conclude that Ms. Estrada has not met the onus that was upon her. The RAD found that there are various mechanisms available to persons in Ecuador to bring complaints against members of the police. Ms. Estrada's subjective perception that protection would not be forthcoming does not constitute compelling or persuasive evidence unless she had been previously failed by state protection on multiple occasions (*Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 51); this she did not do, not even once.

[19] Moreover, the RAD acknowledged the human rights issues in Ecuador, including reports of torture and abuse by the police, and found that the evidence did not amount to clear and convincing evidence of Ecuador's inability to provide Ms. Estrada with state protection. I am afraid that what Ms. Estrada is asking the Court to do is to reweigh evidence, something that I will not do (*Vavilov* at para 125). The RAD is presumed to have taken into consideration the totality of the evidence and is not required to refer to every piece of evidence in its reasons unless it is shown that the RAD had fundamentally misapprehended or failed to account for the evidence (*Vavilov* at para 126; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 16-17). Ms. Estrada did not refer to contrary objective evidence that the RAD has failed to account for. I see nothing unreasonable in the RAD's decision.

V. Conclusion

[20] I would dismiss the application for judicial review.

JUDGMENT in IMM-4636-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Peter G. Pamel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4636-21

STYLE OF CAUSE: NARDA DOMENICA ESTRADA ALEJANDRO v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 2, 2022

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