

Federal Court



Cour fédérale

**Date: 20220728**

**Docket: IMM-2061-20**

**Citation: 2022 FC 1142**

**Toronto, Ontario, July 28, 2022**

**PRESENT: The Honourable Madam Justice Furlanetto**

**BETWEEN:**

**JOSE LUIS LOPEZ AREVALO  
ANDREA PAOLA PACHON CASTILLO  
MARGARITA LOPEZ PACHON  
ANDREINA LOPEZ PACHON**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The principal Applicant, his wife and two minor children [collectively the Applicants] seek judicial review of a February 24, 2020 decision [Decision] of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. The RAD found the Applicants had failed to rebut the presumption of Colombian state protection and were not Convention refugees

or persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, I find the RAD failed to demonstrate that it considered the relevant evidence from the National Documentation Package [NDP] and accordingly provided insufficient justification for its conclusion. The application will therefore be allowed.

I. Background

[3] The Applicants are citizens of Columbia who arrived in Canada on September 3, 2017. They seek protection due to a fear of persecution and threats made by the *Clan del Golfo* criminal group in Colombia.

[4] In January 2016, the principal Applicant took a position as the head of the Legal Office and Office of Disciplinary Supervision in a hospital in Santa Marta. In March 2017, he was informed that a number of the hospital's self-employed nursing auxiliary staff had provided falsified documents pertaining to mandatory payments for healthcare, pension, and professional risk administration. Payments to those individuals were suspended until the deficits were recovered. The contracts for the staff expired on June 30, 2017 and were not renewed. A rumour circulated that the principal Applicant was responsible for the loss of the contracts.

[5] The principal Applicant alleges that he received threatening phone calls and texts from *Clan del Golfo* on July 14, 2016, August 16, 2017 and August 18, 2017, asserting that his life

would be ruined or he would be killed if he did not get the staff their jobs back. He also alleges that an individual on a motorcycle threatened him on August 22, 2017 while he was in his car.

[6] The principal Applicant filed police reports on August 20, 2017 and on August 23, 2017. On August 24, 2017, the Applicants left the country for the US and while in the US decided not to return to Colombia, but to make a claim for refugee protection in Canada. They arrived in Canada on September 3, 2017 and filed their claim for refugee protection on September 9, 2017.

[7] On March 1, 2019, the RPD rejected the Applicants' claim. The RPD concluded that the Applicants had failed to rebut the presumption that Colombian state protection was available. Although the Applicants' had informed the police and sought protection, they did not give the state a sufficient opportunity to enact protective measures and failed to follow-up on their police reports. Alternatively, the RPD found that the Applicants had a viable internal flight alternative [IFA] in Tunja, Colombia.

[8] The Applicants appealed the RPD decision to the RAD on the issues of state protection and the IFA. On February 24, 2020, the RAD denied the Applicants' appeal. The RAD agreed with the RPD and held that the Applicants had not rebutted the presumption of state protection. In view of its finding on state protection, the RAD did not address the IFA analysis.

## II. Issue and Standard of Review

[9] The Applicants raise the following two questions:

1. Did the RAD fail to apprehend key evidence in the record?
2. Did the RAD err by applying the wrong legal test for state protection?

[10] As I am of the opinion that the first question is dispositive, these reasons will deal with that issue only.

[11] The standard of review of the Decision is reasonableness: *Giraldo v Canada (Citizenship and Immigration)*, 2020 FC 1052 at para 11; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17 and 25. None of the exceptions that would rebut a presumption that the standard of reasonableness would apply to all administrative decisions are applicable here: *Vavilov* at para 17.

[12] A reasonable decision is “based on an internally coherent and rational chain of analysis” that is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at paras 85-86. A decision will be reasonable if when read as a whole and taking into account this administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

### III. Analysis

[13] In this case, I agree with the Applicant, the RAD did not demonstrate that it considered all of the relevant evidence from the NDP when coming to its conclusion on state protection.

[14] In the Decision the RAD acknowledged the argument made by the Applicants that the RPD had erred in its analysis of the documentary evidence relating to available state protection and refers to the Applicants’ reliance on the April 19, 2016 article by Stephen Gill, “*Columbia*

*State Ties to Paramilitary Groups Alive and Well: Report*". However, it concludes that it could not find the document in the record.

[15] The RAD goes on to state that even if it were to consider the 2016 report as establishing a link between the Colombian security forces and criminal groups formed as a result of dismantling the AUC (United Self-Defense Forces in Colombia), it is not sufficient to rebut the presumption of state protection. It states that this is because other documents in the NDP that are referenced by the RPD indicate that: "many members of those criminal groups were arrested in Colombia." I find the RAD's analysis insufficient.

[16] First, I find it unreasonable that the RAD did not identify the 2016 report in the NDP when it was identified by its date, title and name. While I agree that reference to the location of the report within the NDP would have assisted the RAD, with the other identifying information provided, in my view, it was unreasonable for the RAD to find that it could not identify the document through the NDP index. The circumstances here are distinguishable from the cases cited by the Respondent where a claim was rejected because the evidence itself was inadequate: *Cao v Canada (Citizenship and Immigration)*, 2019 FC 231 at para 56; *Dag v Canada (Citizenship and Immigration)*, 2017 FC 375 at paras 14-15. It is common practice for the RAD to rely on documents found in the NDP even when the claimant does not specifically refer to them: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 79. There was no reasonable basis for the RAD to conclude that the 2016 report could not be found.

[17] Further, as argued by the Applicant, the RAD cannot both disregard the 2016 report because it cannot be found and then postulate on what it might say if it were identified based on the excerpt provided in the Applicant's submissions. This chain of analysis is inconsistent.

[18] Moreover, in arriving at its conclusion, the RAD does not sufficiently grapple with the documents from the NDP (*Vavilov* at para 128). The RAD states that the 2016 article would not be sufficient to rebut the presumption of state protection because the other documents in the NDP that are referenced by the RPD indicate that "many members of those criminal groups were arrested in Colombia." In making this statement, the RAD relies on its summary of the conclusions made by the RPD provided earlier in the Decision, which state:

[26] The RPD analyzed the documentary evidence provided and consider that Colombia is a democracy where the government is in effective control of its territory and where there is an independent judicial system and security forces to enforce the law.

[27] The RPD then notes that the Colombian state makes serious efforts to combat crime and points to the fact that, in 2015, 1,453 members of criminal groups were arrested.

[19] The RAD does not conduct its own analysis of the NDP documents in compliance with the requirements in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paragraph 103; nor does it address the discussion in those documents relating to Colombian state corruption. It does not relate the statistics quoted in the passage from paragraph 26 above to the *Clan del Golfo*, or to the Applicant's situation. The analysis of the documentary evidence is insufficient and selective: *Castillo Garcia v Canada (Citizenship and Immigration)*, 2019 FC 347 at para 36. In my view, this does not provide adequate justification for the RAD's finding.

[20] As stated in *Vavilov* at paragraphs 127-128, “[t]he principles of justification and transparency require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties”. As applied here, in my view, this includes providing more than a cursory explanation as to the evidence in the NDP. This is particularly so where, as in this case, the Applicants allege that the NDP provides evidence that the availability of effective state protection for victims of the *Clan del Golfo* is virtually nil, and such allegations are contradictory to the interpretations of the NDP the RAD seeks to rely upon.

[21] The RAD’s reasons provide insufficient justification, which in my view renders the Decision unreasonable.

#### IV. Conclusion

[22] The application is accordingly granted and the matter will be referred back to the RAD for redetermination.

[23] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-2061-20**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted and the matter is referred back to the RAD for redetermination.
2. No question of general importance is certified.

"Angela Furlanetto"

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Judge



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

**DOCKET:** IMM-2061-20

**STYLE OF CAUSE:** JOSE LUIS LOPEZ AREVALO, ANDREA PAOLA PACHON CASTILLO, MARGARITA LOPEZ PACHON, ANDREINA LOPEZ PACHON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 4, 2022

**JUDGMENT AND REASONS:** FURLANETTO J.

**DATED:** JULY 28, 2022

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