

Federal Court



Cour fédérale

Date: 20221219

Docket: IMM-7502-21

Citation: 2022 FC 1754

Toronto, Ontario, December 19, 2022

PRESENT: Madam Justice Go

BETWEEN:

Jorge Josmer Duvan ECHAVARRIA QUINONES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Jorge Josmer Duvan Echavarría Quinones [Applicant] seeks judicial review of the Refugee Protection Division [RPD]'s decision dated September 28, 2021 to refuse his claim for refugee protection [Decision].

[2] The Applicant's claim was heard jointly with that of his father, Jorge Humberto Echavarría Chacon [Mr. Chacon] and mother, Ruth Janeth Quinones Castillo [Ms. Castillo]. The Applicant and his parents are dual citizens of Colombia and Venezuela. Their claim for refugee protection was brought under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* against Colombia and Venezuela.

[3] In the Decision, the RPD accepted Mr. Chacon and Ms. Castillo's claims against Venezuela under section 96 of *IRPA* and against Colombia under subsection 97(1) of *IRPA*. However, the RPD did not find that the Applicant is a Convention refugee or a person in need of protection pursuant to section 96 and subsection 97(1) of the *IRPA* and denied his claim. The RPD found the Applicant could return to Colombia where he would not face serious risks of persecution or harm and found it unnecessary to consider the Applicant's claim against Venezuela.

[4] I find the RPD adopted a flawed framework of analysis that failed to recognize the alleged interconnectedness between the Applicant's claim against Venezuela and that against Colombia, as well as the alleged collaboration among the various agents of persecution cited in the Applicant's claim. As a result, the Decision was unreasonable. I grant the application and refer the matter back for redetermination.

II. Background

A. *Factual Background*

[5] Mr. Chacon was a police officer in Colombia between 1984 and 2002. For many years, Mr. Chacon worked in the department of Santander, where the National Liberation Army [ELN], a leftist guerilla force, was prevalent. Mr. Chacon then became part of the security team for the then-president of Colombia and worked closely with the president between 1998 and 2002.

[6] After retiring from his job, Mr. Chacon was threatened by the ELN in Colombia for his past work as a police officer and as part of the ex-president's security team. The local police force was unable to provide assistance to Mr. Chacon. In 2002, the Applicant's family moved to Venezuela for safety. They eventually settled down in Tumeremo and opened a restaurant.

[7] The Applicant was born in Venezuela in 1996 while his mother was on a trip. The Applicant resided with his parents in Colombia until the family moved to Venezuela in 2002.

[8] In 2013, Venezuelan police agencies Bolivarian National Intelligence Agency [SEBIN] and Criminal and Scientific Investigation Corps [CICPC] began extorting money from the restaurant of the Applicant's family, using threats if their demands were not complied with. The local SEBIN office in Tumeremo did not provide assistance. The Applicant's family continued to pay extortion to the officers out of fear for their safety.

[9] In 2016, the Applicant and his parents became active members of a human rights NGO called Foundation for Guarantees, Prevention and Defense of Human Rights [the Human Rights NGO]. The Human Rights NGO's president started a political party that was part of the

Venezuelan political opposition, called the Nationalist New Generations Democratic Movement of Venezuela [the Party]. The Applicant was an informal member of the Party.

[10] During the time when the Applicant's family was living in Tumeremo, the ELN began to extend its presence from Colombia into Venezuela, due in part to the collaboration between the ELN and the Maduro regime. In around 2018, ELN members also began extorting the Applicant's family at their restaurant.

[11] In November 2019, a group of approximately 10 ELN members came to the restaurant, and one militant recognized Mr. Chacon as a former police officer and member of the ex-president's security team in Colombia. During this encounter, Ms. Castillo was present, and the ELN demanded extortion and made threats. The Amended Basis of Claim [BOC] narrative states that the ELN threatened to kill Mr. Chacon, his wife, and children (namely the Applicant and his sister who also lived with them), if they did not leave Venezuela.

[12] The Amended BOC narrative also states that in November 2019, National Guard officers attacked and threatened the Applicant. The claimants believe the Applicant was targeted by Venezuelan officials for his involvement in the Human Rights NGO and support for the Party.

[13] On November 24, 2019, the Applicant fled to Colombia, and eventually reached the United States. The Applicant's sister also fled Venezuela to Canada at this time.

[14] The Applicant arrived at the Canadian border at Buffalo, New York, to make a refugee claim on December 9, 2019.

[15] After their children had left Venezuela, Mr. Chacon and Ms. Castillo faced escalating threats. SEBIN and National Guard officers came to their restaurant and threatened them in early 2020 for having been involved in a high-profile matter concerning the Human Rights NGO. Mr. Chacon and Ms. Castillo left the country shortly thereafter.

B. *The RPD Decision*

[16] The Applicant's and his parents' refugee protection claims under section 96 and subsection 97(1) of the *IRPA* were based on the following allegations:

- A. Fear of the ELN in Colombia due to Mr. Chacon's work as a former police officer;
- B. Fear of government agents in Venezuela, including the National Guard and the SEBIN, due to the claimants' deemed political opinions; and
- C. Fear of the ELN in Venezuela.

[17] The RPD noted that all three claimants testified in a straightforward manner regarding the central elements of their refugee claim and found that the testimonies were largely credible.

RPD's findings with respect to the claims by Mr. Chacon and Ms. Castillo

[18] The RPD found that Mr. Chacon and his family were targeted by the ELN in Colombia because of Mr. Chacon's past employment in law enforcement, and not because of their imputed political opinions against the ELN. As such, the RPD found no serious possibility of persecution

by reason of race, nationality, political opinion, religion, or particular social groups in Colombia, so as to establish a nexus to a Convention ground under section 96 of *IRPA*.

[19] The RPD similarly found no nexus to a Convention ground concerning the allegations of fear of the ELN in Venezuela. Therefore, the RPD conducted its analysis for the alleged fear of the ELN in both Colombia and Venezuela under subsection 97(1) of *IRPA*.

[20] The RPD accepted the relevant facts summarized above based on the testimonies of Mr. Chacon and Ms. Castillo, including the threats Mr. Chacon received after retiring from the police force in both Colombia and Venezuela. The RPD also accepted the account of the November 2019 encounter, when the ELN militants entered the restaurant, recognized Mr. Chacon, and made threats while Ms. Castillo was present. The RPD concluded that the criteria for a subsection 97(1) refugee protection claim against Colombia were satisfied, making reference to the Colombia NDP and country condition evidence.

[21] For the alleged fear of being targeted by agents of the Venezuelan government, the RPD did find a nexus to a Convention ground based on Mr. Chacon's and Ms. Castillo's deemed political opinion.

[22] Specifically, the RPD accepted that Mr. Chacon and Ms. Castillo received threats in Tumeremo from the National Guard for being involved in the Human Rights NGO and that they received escalating threats by the ELN at their restaurant. The RPD concluded that Mr. Chacon and Ms. Castillo's claim against Venezuela under section 96 of *IRPA* was satisfied, finding that

they had a well-founded subjective fear supported by country condition evidence, which highlighted the pervasive corruption and impunity amongst state officials in Venezuela.

RPD's findings with respect to the Applicant's claim

[23] The RPD determined that there is “no serious possibility of risk of persecution and no personalized risk of harm for the [Applicant] in Colombia.”

[24] The RPD found that the Applicant was a target of the ELN when he left Colombia for Canada but noted that the Applicant has not lived in Colombia for around 20 years. Accordingly, the RPD doubted whether the ELN would target or recognize the Applicant as being the son of Mr. Chacon, and therefore face personalized risk in Colombia.

[25] The RPD also found that there was no evidence that the Applicant was ever targeted by the ELN directly, or that he was ever recognized by them after leaving Colombia. Notably, the RPD emphasized that the Applicant was not present during the November 2019 incident when the ELN militant recognized Mr. Chacon at their restaurant in Venezuela and threatened him. The RPD distinguished the situation of the Applicant from that of his mother, who was present.

[26] Finally, the RPD pointed out that the Applicant's parents no longer live in Colombia, and found on a balance of probabilities that the “ELN would lack the motivation to locate and target the [Applicant] given his absence from Colombia for almost 20 years and that he was a peripheral target by virtue of his association with his father.” As such, the RPD determined that

there is “no forward-facing risk of serious possibility of persecution or likelihood of harm for the [Applicant] in Colombia.”

[27] The RPD denied the Applicant’s refugee protection claim for Colombia and consequently for Venezuela as well, concluding as follows:

[41] The panel finds that the [Applicant] has not established that he would face a serious possibility of persecution in Colombia, nor has he established that, on a balance of probabilities, he would be personally at risk of torture, at risk for his life or at risk of cruel and unusual treatment or punishment in Colombia on a forward-looking basis. As such, the panel finds the principal claimant, Jorge Josmer, can safely return to Colombia.

[42] As the panel has found the principal claimant can safely return to Colombia, the panel has not considered the [Applicant’s] allegations as it relates to his claim in Venezuela.

III. Issues and Standard of Review

[28] The issue before me is whether the Decision to deny the Applicant’s claim for refugee protection under section 96 and subsection 97(1) of *IRPA* was reasonable. The Applicant frames his arguments under three issues:

1. Whether the RPD erred by refusing to consider the reasons why the Applicant was at risk in Venezuela;
2. Whether the RPD erred by failing to consider and address testimony, submissions and documentary evidence; and
3. Whether the RPD erred by finding there was no nexus to the Refugee Convention.

[29] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[30] The Applicant submits that transparent justification requires that the reasons provided offer justification not just in the abstract, but for the individual before the decision-maker:

Farrier v Canada (Attorney General), 2020 FCA 25 [*Farrier*] at para 14, citing *Vavilov* at para 95.

[31] The Respondent argues that the Applicant has not raised a reviewable error and that the RPD's finding that the Applicant could safely return to Colombia is reasonable and determinative of the refugee claim.

[32] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85. The onus is on the Applicant to demonstrate that the RPD Decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov* at para 100.

IV. Analysis

[33] Before addressing the specific issues raised by the Applicant, let me first make two overarching comments about this application.

[34] First, I observe that the claims before the RPD involved three related claimants who alleged fear of persecution in two countries against both state and non-state agents of persecution, who allegedly work in support of each other based on a shared political ideology

and/or political goal. The interconnectedness of the alleged forces of persecution, in my view, set this case apart from many of the cases cited by the parties. Instead of acknowledging the various interconnections as alleged, the RPD adopted a compartmentalized approach when it assessed the allegations of persecution vis-à-vis the Applicant's countries of citizenship, as well as the various agents of persecution who were allegedly working collaboratively in targeting the Applicant and his parents. As I will elaborate further below, the errors now raised by the Applicant can all be traced back to this flawed analytical framework adopted by the RPD.

[35] Second, while the Respondent urged at the hearing that I should focus solely on the RPD's findings regarding the Applicant, and not the findings regarding his parents, I must respectfully decline to do so. The RPD's analysis of the Applicant's claim flowed directly from its findings with respect to his parent's claims, which is logical given the similarity of the facts underlying the claims: *Tobar Toledo v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 226 at para 55. As such, I find that the RPD's findings regarding the Applicant's parents not only form part of the contextual background of this application, but they are essential to my review of the RPD's findings with respect to the Applicant's claim.

[36] With these two comments in mind, I will now examine the three issues raised by the Applicant, *albeit* in a different order than set out by the Applicant.

Issue 1: Did the RPD err by failing to consider and address testimony, submissions and documentary evidence

[37] The Applicant submits that decisions must be set aside when decision-makers fail to consider relevant testimony: *Gilles Michel v Canada (Citizenship and Immigration)*, 2010 FC 159 [Gilles] at paras 31-33; *Makala v Canada (Minister of Citizenship and Immigration)*, [1998] 152 FTR 233 at para 28; *Osarogiagbon v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 855 at paras 9-10; and *Thambiah v Canada (Minister of Citizenship and Immigration)*, 2004 FC 15 at paras 25-26.

[38] The Respondent, on the other hand submits that the RPD “is not obligated to comb through every document listed in the [NDP] in the hope of finding passages that may support the Applicant’s claim and specifically address why they do not, in fact, support the Applicant”:
Simolia v Canada (Citizenship and Immigration), 2019 FC 1336 at para 22, citing *Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 19.

[39] Accordingly, the Respondent argues that it would be “overwhelmingly burdensome” for the RPD to cite every point in the evidence running contrary to its determinations, and that the RPD reasonably reviewed the evidence and grounded its findings in the materials before it:
Kakurova v Canada (Citizenship and Immigration), 2013 FC 929 at para 18; *Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at paras 37-41.

[40] I agree with the Respondent that the RPD need not refer to every piece of evidence, particularly evidence that is not central to the claims before it. Having reviewed the materials, including the audio recording of the RPD hearing, however, I find that the RPD disregarded

relevant testimonial and documentary evidence, while ignoring submissions made by counsel on behalf of the Applicant, both orally and in writing.

[41] First, I agree with the Applicant that the RPD's finding that the ELN would only know about Ms. Castillo but not the Applicant was made without regard to the evidence. The evidence before the RPD suggests that ELN members became part of the group that would routinely come to the restaurant in 2018. Yet the RPD focused solely on the Applicant's absence during the incident in November 2019 when his father was recognized by the ELN, to conclude that the ELN would not know the Applicant. This finding ignored the previous interactions that the ELN may have had with the Applicant at the restaurant when they came to collect extortion payments.

[42] Besides, I note that the RPD accepted as credible that the ELN made threats on November 2019 after recognizing Mr. Chacon. The Amended BOC clarifies that the threats were made against Mr. Chacon, as well as his wife and children – including the Applicant. The Decision did not refer to the Amended BOC nor did it reject this narrative on credibility concerns. Instead, the RPD's analysis of the November 2019 incident focused solely on who was present at the restaurant, and not on the threats that were actually made. It found that because Ms. Castillo was by Mr. Chacon's side when he received threats from the ELN, she would also be recognized and become a target of ELN should she return to Colombia. The RPD's silence with respect to the threats being made to everyone in the family played a key role in its rejection of the Applicant's claim. The RPD ought to have dealt with that evidence, and explained why if it rejected it.

[43] Second, I find that the RPD erred in failing to consider the Applicant's allegation that the ELN would persecute him in Venezuela and Colombia because of his human rights activism against the Venezuelan regime. This error, in my view, was connected to the RPD's failure to consider relevant testimonial and documentary evidence addressing the alliance between the Maduro regime and the ELN, as well as counsel's written submissions dated August 20, 2021 relating to all three claimants [Written Submissions].

[44] Starting with the testimonial evidence, both the Applicant and his father testified during the RPD hearing about the connections between the ELN and the authorities in Venezuela, in addition to the ELN's presence throughout Colombia.

[45] The Applicant testified that the Venezuelan authorities were hostile to him because he was involved with the Human Rights NGO. The Applicant also stated that the ELN has the Venezuelan government's full support, that he was at risk in light of the collaboration between the ELN and the Venezuelan authorities, and that such risk would extend to Colombia since the ELN is present in both countries. The Applicant's father made similar statements attesting to ELN's working relationship with the National Guard of Venezuela on extortions. As the Applicant's father explained, the ELN worked with the Maduro regime because they are "left wing." The Decision made no mention of such testimonial evidence.

[46] The RPD also disregarded testimony regarding the Venezuelan security force's collaboration with the ELN, which the Applicant argues is clear from the series of events recalled during the testimony: extortion by the Venezuelan police; extortion by the ELN;

Venezuelan police targeting the Applicant and his family for their activism; and the ELN returning to look for the Applicant's parents.

[47] The Decision did not address any of the above-cited testimony connecting the ELN to the Venezuelan authorities. I acknowledge that it is not my role to "reweigh" evidence as the Respondent suggests. In this case, however, the RPD did not mention the testimonial evidence at all, let alone determine what weight, if any, it should be given.

[48] While the RPD did assess the Applicant's parents claim against Venezuela in the context of their involvement with the Human Rights NGO, the RPD made no mention of the connection to the ELN in that context, despite evidence by the claimants suggesting otherwise.

[49] Similar errors can be found with respect to the RPD's failure to consider the Written Submissions, which were not mentioned anywhere in the Decision.

[50] Citing the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia [UNHCR Guidelines], counsel for the Applicant stated in the Written Submissions: "persecution for failure to pay extortion to the ELN and similar groups in Colombia has a nexus to 'imputed' political opinion as non-cooperation is viewed as implying an opposition to the group's aims."

[51] The Written Submissions also pointed out that ELN is known to target members of human rights organizations, quoting from the International Federation for Human Rights Reports

[Federation Reports] that stated: “The perpetrators of attacks against defenders include state agents, members and dissidents of the FARC-EP and members of the ELN.”

[52] As the Applicant notes and I agree, the Decision made only one reference to the UNHCR report concerning the ability of the government of Colombia to provide protection in areas controlled by the ELN. The rest of the Decision did not refer to the UNHCR Guidelines or the Federation Report, and failed to grapple with the central allegations of the claimants against the ELN as a Venezuelan government-allied organization that targets individuals based on imputed political opinion.

[53] I reject the Respondent’s argument that the RPD did not ignore the evidence regarding the ELN as the Decision acknowledged that the ELN is present in both countries. In my view, merely noting that the ELN is present in both countries was insufficient. The RPD never addressed the core of the Applicant’s allegations connecting the ELN and the Venezuelan authorities, and whether that connection would increase the risks that the Applicant could face in Colombia.

[54] As this Court has done in *Gilles*, I infer from the silence in the RPD’s consideration of key arguments and evidence that the Decision was made “without regard for the material before it”: *Gilles* at paras 39 and 41. Like *Gilles*, the RPD in this case failed to consider not only specific testimonial and documentary evidence, but also ignored critical legal arguments made in support of the Applicant’s claim.

[55] The Applicant points to *Zuniga v Canada (Citizenship and Immigration)*, 2016 FC 1252, where the decision was set aside because the member failed to consider the UNHCR recommended guidelines for the assessment of refugee claims from a specific country: at paras 3-4. The Applicant also relies on *Saalim v Canada (Citizenship and Immigration)*, 2015 FC 841 [Saalim] for the proposition that this Court will set a decision aside when the RPD fails to address documentary evidence that contradicts its conclusions or assumptions: at paras 26-28.

[56] While the facts are different, I adopt the following comment from Justice Southcott in *Saalim*, namely that the “outcome of this sort of analysis cannot be known if the relevant country condition documentation has not been considered”: at para 26.

[57] I agree with the Applicant that the Decision has a significant impact on him. In this case, the RPD failed to discharge the heightened responsibility to demonstrate that it considered the consequences of the Decision, and that those consequences are justified in light of the facts and law, contrary to *Vavilov* at para 135. The RPD did not provide transparent justification in its Decision, as the reasons failed to address what the Applicant and his parents testified and what counsel submitted.

Issue 2: Did the RPD err by refusing to consider the reasons why the Applicant was at risk in Venezuela?

[58] Having found that the RPD failed to grasp the Applicant’s central allegations connecting the risks he would face from ELN in both Colombia and Venezuela, I find that the RPD also

erred in refusing to consider the Applicant's alleged fears with respect to Venezuela on the basis that it found that the Applicant would be safe in Colombia.

[59] The Applicant argues that the RPD put "the cart before the horse" in doing so, as the Applicant's fears in Colombia cannot be understood alone without considering the events leading up to the Applicant fleeing Venezuela.

[60] The Applicant submitted that the RPD ignored the following:

- evidence confirming that the ELN knew about the Applicant's association with his parents;
- evidence of ELN collaborating with the Venezuelan police;
- the ELN's threats against the parents as well as the Applicant during the November 2019 incident;
- evidence that the National Guard is aligned with the ELN; and
- the targeting of the Applicant for his involvement with the Human Rights NGO.

[61] As I have already indicated, I find that the RPD ignored all of the above-cited evidence.

[62] I also agree with the Applicant's submission that the RPD did not consider any of the testimony about what took place in Venezuela and evidence connecting the Maduro regime with the ELN. Consequently, the RPD failed to consider "the grounds the Applicant raised for his fears, that the ELN would share the leftist Maduro regime's hostility to him as a human rights defender."

[63] The Applicant argues that the failure to consider an aspect of the grounds relied on in a refugee claim renders the Decision reviewable: *Magham v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 116 at paras 13 and 16. I concur.

[64] The Applicant submits that the RPD erred conceptually by structuring its reasons in a manner that precluded it from weighing and considering all the relevant evidence. I would further add that the conceptual error is compounded by the RPD's compartmentalization of the claims before it into discreet components without examining the connections among them.

[65] The Respondent reiterates the findings of the RPD and submits that they are reasonable.

[66] In addition, the Respondent submits that claimants with citizenship in multiple countries must show that there is a reasonable fear of persecution in each of the countries in which they have citizenship, citing *Canada (Minister of Citizenship and Immigration) v Williams*, 2005 FCA 126 at paras 20 and 22; *Becirevic v Canada (Citizenship and Immigration)*, 2015 FC 447 at para 11; and *Canada (Public Safety and Emergency Preparedness) v Bafakih*, 2022 FCA 18 at para 33.

[67] In my view, the cases cited by the Respondent can all be distinguished on the facts. In none of these cases were there allegations of persecution made against all of the applicant's countries of nationality, where the agents of persecution were alleged to have a sphere of influence covering both countries, and where the allegations against one country were tied to those against the other.

[68] The Respondent also contends that the RPD adequately explained its finding that the ELN would lack motivation to target the Applicant in Colombia and that the Court cannot reweigh this evidence. As such, the Respondent argues that the Applicant's argument that the RPD ought to have assessed the ground of persecution relating to the fear that the ELN would target him in Venezuela because of his human rights activism is not reviewable.

[69] I am not persuaded by this argument. As noted above, I conclude that the RPD erred in this respect by ignoring relevant evidence and submissions when it found that the Applicant would not be recognized or targeted by the ELN in Colombia. Further, since the RPD never addressed the ground of persecution based on the Applicant's human rights activism, the argument that the Applicant is seeking a reweighing of the evidence has no merit.

[70] In conclusion, given the Applicant's claim against Colombia is connected to his claim against Venezuela, it was incumbent on the RPD to first examine the events in Venezuela, and their implication, if any, on the risks that the Applicant would face in Colombia. The RPD's failure to consider the Applicant's claim against Venezuela rendered the Decision unreasonable.

Issue 3: Did RPD err by finding there was no nexus to the Refugee Convention?

[71] The Applicant submits that the RPD erred in finding that the ELN's targeting of the family was because of Mr. Chacon's past employment rather than perceived political opinion, which resulted in the RPD concluding that there is no nexus to the Refugee Convention.

[72] The Applicant raises several points in support of his argument. I need not address all of them.

[73] As noted above, the Applicant's counsel provided Written Submissions and evidence describing the nature of the ELN. In particular, the Applicant asserts that had this evidence been considered, Mr. Chacon's involvement in the police force and on the ex-president's security team would suggest that he believes in the legitimacy of the Colombian state, which the ELN opposes. The Applicant argues accordingly that the ELN's perception of the family, or the risk that the Applicant could face due to the ELN's retaliation against Mr. Chacon, would amount to a nexus to perceived political opinion or membership in a particular social group.

[74] The Respondent argues that deference is owed to the RPD's factual finding that the Applicant's fear of the ELN lacked nexus to the Refugee Convention under section 96 of *IRPA*: *Flores Romero v Canada (Citizenship and Immigration)*, 2011 FC 772 at para 8 and *Sabogal Riveros v Canada (Citizenship and Immigration)*, 2012 FC 547 at para 27.

[75] The Respondent submits that the Decision was internally coherent, as the RPD has determined that the Applicant did not have forward-looking risk in Colombia, and unlike his mother, would not be recognized by the ELN.

[76] The Respondent's submission, in my view, amounts to circular reasoning. In any event, the Respondent's proposed reasoning was not the basis for which the RPD found a lack of nexus regarding the Applicant's fear of the ELN.

[77] Having reviewed the Decision, I conclude that the RPD never explained why it found the claims with respect to ELN do not have a nexus to a Convention ground. The RPD noted, at para 7 of the Decision, that counsel submitted that the family has a nexus on imputed political opinion. The RPD then summarized in one paragraph the objective evidence regarding the ELN at para 21:

The objective evidence indicates that the ELN is a smaller leftist guerilla force of approximately 2500 armed combatants, continued to commit crimes and acts of terror throughout the country, including bombings, violence against civilian populations, and violent attacks against military and police facilities.

[78] The RPD provided detailed reasons for concluding that Mr. Chacon would be targeted because he was a former police officer. What was completely missing, however, was the basis of the RPD's finding that Mr. Chacon and his family were *not* targeted because of imputed political opinion.

[79] Individuals fleeing persecution can be, and often are, targeted by their agents of persecution for more than one reason. The RPD in this case accepted one reason, yet offered no explanation why it rejected another reason provided by the Applicant and his family.

[80] The Respondent submits that the RPD's finding that the parents were at risk due to Mr. Chacon's work as a former police officer, and not because of their imputed political opinion, was justified based on the incident in November 2019 where Mr. Chacon was recognized for his past work, and where Ms. Castillo was physically present.

[81] I reject the Respondent's argument in this regard for two reasons. First, the RPD did not in fact rely on the November 2019 incident, but instead on the entire employment history of Mr. Chacon, to reach its conclusion that Mr. Chacon was at risk as a former police officer. Second, the RPD simply never explained why it rejected that the risk faced by the Applicant and his family could also be based on imputed political opinion.

[82] The Applicant asserts that assessing the Applicant's claim through subsection 97(1) promoted the RPD's ignorance of evidence about political opinion, resulting in much of the evidence submitted being disregarded. That might well have been the case. It is equally likely that the RPD's failure to give due regard to the relevant evidence is what led to its finding that nexus to a section 96 ground has not been established.

[83] Either way, I conclude that the RPD's finding that the Applicant's claims regarding the ELN lacked nexus to a Refugee Convention ground was not internally coherent, did not follow a rational chain of analysis, and was therefore unreasonable.

V. Remedy

[84] The Applicant made further submissions dated October 24, 2022, asking this Court to set aside the Decision and refer it back for redetermination specifically with the direction that the credibility findings made in favour of the Applicant in the Decision be retained.

[85] The Applicant argues that such a direction is appropriate in the circumstances since the RPD has found the testimonial evidence credible and has accepted the Applicant's parent's refugee claims.

[86] The Applicant cites the following cases to demonstrate that the Court has found such a direction appropriate: *Garcia v Canada (Minister of Citizenship and Immigration)*, 2007 FC 79 [Garcia] at para 31 and *Mugugu v Canada (Citizenship and Immigration)*, 2012 FC 409 [Mugugu] at paras 1 and 4.

[87] *Garcia*, in my view, can be distinguished, as the respondent in that case had consented to the redetermination before the matter was heard at the Court on the basis that two factual findings in the RPD's decision were not supported by the evidence on record. The matter before the Court was related to the issue of how the RPD assessed state protection, which the Court agreed to assess so that the RPD could properly determine the contended state protection issue on its "inevitable re-determination": *Garcia* at para 2.

[88] The Respondent opposes the Applicant's request, citing several cases in support of their position: *Rafuse v Canada (Pension Appeals Board)*, 2002 FCA 31 [Rafuse] at paras 13-14; *Vavilov* at paras 140-141; *Canada (Public Safety and Emergency Preparedness) v LeBon*, 2013 FCA 55 [LeBon] at paras 13-14; *Camargo v Canada (Citizenship and Immigration)*, 2015 FC 1044 [Camargo] at paras 42-44; and *Freeman v Canada (Citizenship and Immigration)*, 2013 FC 1065 at paras 75-81; *Nikwo v Canada (Citizenship and Immigration)* 2022 FC 1616.

[89] I note that all but one of the cases cited by the Respondent dealt with “directed verdicts”, which the Court described to be an exceptional power that should be exercised only in the clearest of circumstances, as opposed a direction relating to credibility.

[90] *Camargo* is more on point in this context because it discusses a direction relating to credibility. The Court however found that the reconsideration would involve the engagement of issues of fact and law, and that the outstanding issue “should be evaluated in its totality”: *Camargo* at para 44. As such, the Court did not exercise its discretion to limit the scope of the Board’s reconsideration: *Camargo* at para 44.

[91] Here, the Applicant is not seeking a directed verdict. I also note that there are some similarities between this case and *Mugugu*, cited by the Applicant, where the Court found that the RPD made no mention of key pieces of evidence, which constituted a reviewable error: *Mugugu* at paras 2-3. The Court in *Mugugu* ordered that the redetermination be made with certain directions, including that no credibility issue arises from the evidence.

[92] Having said that, I am not convinced that this is an appropriate case to make the direction the Applicant seeks.

[93] While I acknowledge that the RPD did, by-and-large accept as credible, the evidence of the Applicant and his parents, I also note that the RPD’s credibility findings were mostly related to the Applicant’s parents. Further, the RPD did not engage with the Applicant’s allegations against Venezuela, including evidence with respect to his involvement with the Human Rights

NGO. Indeed, it was in part due to the RPD's failure to assess such portions of the Applicant's claim that rendered the Decision unreasonable.

[94] Given that there are still factual findings that have yet to be determined, I am of the view that it would not be appropriate to constrain the new panel's determination by issuing any specific direction regarding credibility.

VI. Conclusion

[95] The application for judicial review is granted and the matter is returned for redetermination by a different member of the RPD.

[96] There is no question to certify.

JUDGMENT IMM-7502-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is returned for redetermination by a different member of the RPD.
3. There are no questions to certify.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7502-21

STYLE OF CAUSE: Jorge Josmer Duvan ECHAVARRIA QUINONES v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 28, 2022

JUDGMENT AND REASONS: GO J.

DATED: DECEMBER 19, 2022

APPEARANCES:

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