

Federal Court



Cour fédérale

**Date: 20230413**

**Docket: IMM-9117-21**

**Citation: 2023 FC 536**

**Ottawa, Ontario, April 13, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**GUSTAVO MAURICIO MEJIA  
GUTIERREZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This Applicant seeks judicial review of the decision of the Refugee Protection Division (RPD), dated November 22, 2021, finding that he is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this application for judicial review is allowed.

## II. **Background**

[3] The Applicant is a citizen of Colombia who operated an import-export business. He claims that in 2009 he obtained a large loan from a black-market lender. The Applicant had trouble repaying the loan and he was subsequently threatened by the lender on numerous occasions.

[4] In one instance, the Applicant was approached by armed gunmen who detained and threatened him with death in relation to the outstanding debt. This went on until 2012 when the Applicant's father gave him some land to settle the debt.

[5] From 2013 to 2019, the Applicant had no further contact or issues with the lender or his associates.

[6] In March 2020, the Applicant claims that he was approached by a man who told him that his debt was not in fact settled, and that he still owed interest on the loan. This led to threats via anonymous phone calls and on October 7, 2020, an individual attended the Applicant's home warning him that he would be harmed if he did not settle the debt.

[7] The Applicant reported these threats to the Attorney General's department (Fiscalia) just prior to leaving Colombia.

[8] The Applicant fled Colombia in November 2020, first to the US and then to Canada where he initiated a claim for refugee protection.

III. **Decision under Review**

[9] The RPD accepted the Applicant's testimony and allegations as credible.

[10] The RPD found that the determinative issues in the Applicant's claim were the availability of state protection and a viable Internal Flight Alternative (IFA) in Tunja.

[11] With respect to state protection, the RPD noted the Applicant's failure to follow up with the report to the Fiscalía, and found that he failed to exhaust the protection that may be available to him in Colombia. The RPD found the Applicant's explanation for not availing himself of state protection was unreasonable. Though the evidence indicated that state protection was inadequate in many cases, the RPD found that the Applicant's profile was not one that "would invalidate the protection of the state".

[12] The RPD also considered the two-pronged test to establish an IFA. With respect to the first prong, the RPD found it was more probable than not that the claimant's profile was not one that would attract the attention of a "concerted effort" to find him and subject him to death or cruel and unusual punishment.

[13] Under the second prong, the RPD noted the fact that the Applicant testified he once lived in Tunja and if he were not concerned with his safety there would be no reason he could not live

there. The RPD found that the Applicant is a young single man who has different types of work experience and concluded it would not be unreasonable, in all the circumstances, for him to relocate there.

#### IV. Issues and Standard of Review

[14] The Applicant submits that the Decision is unreasonable. He challenges both the RPD's state protection and IFA findings. Specifically the Applicant argues that the RPD ignored critical evidence and made speculative and incoherent findings upon which it drew its conclusions.

[15] The parties agree, as do I, that the appropriate standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[16] On a reasonableness review, the Court considers the reasons provided to determine if they are based on an internally coherent and rational chain of analysis and are justified in relation to the facts and the law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: (*Vavilov* at para 85).

#### V. Analysis

##### A. *The RPD's state protection analysis*

[17] The Applicant asserts the Board's state protection analysis as set out at paragraphs 18-20 of the Decision is unreasonable as it lacks justification, transparency, and relies on irrelevant considerations.

[18] Specifically, the Applicant submits that the RPD arrived at its conclusion by relying on a section of a document in the National Documentation Package (NDP) highlighting profiles of persons regularly targeted by gangs and paramilitary organizations. These profiles include human rights activists and social leaders, Indigenous leaders, women community leaders, demobilized FARC members, journalists, government officials, and security forces. The Applicant states the RPD did not adequately explain why the Applicant's failure to fit into one of the listed categories means that state protection is not "invalidated" in his circumstances.

[19] The Applicant also submits that the RPD ignored contradictory evidence in the NDP at item 7.37, which makes clear that adequate state protection from armed groups is typically not available to those who lack a sufficiently high profile. Specifically, the document states: "According to the Senior Analyst, it is "really hard" for those targeted by criminal groups to access state protection due to a "very high threshold" for eligibility; a "certain" amount of "public exposure" is required, such as for "known leaders"".

[20] The Respondent counters that the RPD's state protection analysis was reasonable, submitting that the Applicant bears the burden of rebutting the presumption of state protection with clear and convincing evidence and failed to do so in this case.

[21] I agree with the Applicant.

[22] The RPD's state protection analysis is difficult to follow due to significant gaps in reasoning. The evidence at 7.37 of the NDP, cited specifically by the RPD, contradicts its own

findings on state protection. On the one hand, the RPD relied on the document to conclude that the Applicant did not face a heightened risk because he did not fit the profiles of those most at risk from armed groups. On the other, the RPD ignored the evidence in the very same document that states only those with a certain amount of “public exposure” would likely be able to access state protection.

[23] Further complicating the analysis is that the RPD finds the Applicant’s allegations credible, including the fact that he was the target of a sustained campaign of threats by armed gunmen from 2009 to 2012 and was once, detained and threatened with death in relation to the outstanding debt. The RPD concluded however, that it was speculative for the Applicant to suggest that the lender was a member of, or associated with, a gang or a paramilitary organization.

[24] It may have been open to the RPD to find the Applicant’s evidence that the lender was associated with a gang or paramilitary group was speculative. However, it is difficult to reconcile that finding with the RPD’s reliance on the portions of the NDP that speak specifically to risk from gangs and paramilitary groups, using what appears to be a selective review of portions of that evidence to undermine the Applicant’s explanation for not availing himself of state protection. This also makes it difficult, from the Court’s perspective, to discern what risk profile the RPD had accepted upon which to base the state protection analysis.

[25] After a careful review of the record, including the Decision and submissions of both parties, I find the RPD's state protection findings to be lacking in justification, transparency, and intelligibility.

B. *The RPD's IFA analysis*

[26] The Applicant also argues the RPD's findings under the first prong of the IFA test, that the agents of persecution lacked the motivation to harm the Applicant in Tunja, are speculative and lack justification.

[27] I agree.

[28] In arriving at a conclusion that the Applicant would not be at risk in Tunja, the RPD relied on a number of speculative findings not supported by the evidence.

[29] As one example, the RPD found the fact that the Applicant was still living in Bogota where he was first targeted by the lender between 2009 and 2012 was demonstrative of a lack of effort required to locate him in 2020. Specifically, the RPD stated that this "does not show that any significant effort was necessary to find him". This is purely speculative reasoning by the RPD and it ignores the Applicant's evidence that he was located at a home not previously known to the agents of persecution, in a large metropolis, after 8 years had passed.

[30] In another instance, the RPD found that the 2020 threats were in relation to unpaid interest that is "presumably less" than the amount of the original loan, therefore reducing the

motivation to the track down the Applicant. In this instance, the RPD speculated twice. The Applicant had testified that the agent of persecution did not specify how much he owed in 2020, but the RPD determined, without an evidentiary basis, that it was less than before. The RPD then compounded this speculation with another by finding this lesser amount to correlate with a reduced interest in tracking him to Tunja. Without more, this reasoning lacks justification and transparency, rendering the entirety of the IFA analysis unreasonable.

[31] While the RPD is entitled to make reasoned inferences, this Court has repeatedly held that it is unreasonable for the Board to speculate, without any basis, “as to the agents of persecution’s motives, means and future intentions”: *Soos v Canada (Citizenship and Immigration)*, 2019 FC 455, at paras 12–16, *Builes v Canada (Citizenship and Immigration)*, 2016 FC 215 at para 17, *Ifeanyi v Canada (Citizenship and Immigration)*, 2018 FC 419.

## VI. **Conclusion**

[32] For the foregoing reasons, I find the RPD’s Decision is unreasonable.

[33] This application for judicial review is allowed.

[34] The Decision is set aside and this matter is to be returned to a different member of the RPD for redetermination.

[35] Neither party raised a serious question of general importance for certification, nor does one arise on these facts.



**JUDGMENT IN IMM-9117-21**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is allowed.
2. The Decision is set aside and this matter is to be returned to a different member of the RPD for redetermination.
3. There is no serious question of general importance to certify.

"E. Susan Elliott"

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Judge

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

**DOCKET:** IMM-9117-21

**STYLE OF CAUSE:** GUSTAVO MAURICIO MEJIA GUTIERREZ v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 11, 2023

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** APRIL 13, 2023

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