

Federal Court



Cour fédérale

Date: 20230721

Docket: IMM-9373-21

Citation: 2023 FC 1007

Ottawa, Ontario, July 21, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**RONALD ENRIQUE MANJARRES CHAVEZ
YOSWALL ANDRES MANJARRES GUTIERREZ
VIVIANA CARRILLO ALZATE
CHRISTOPHER MANJARRES CARILLO
JACOB JOSE MANJARRES CARRILLO
ROGER JUNIOR CARRILLO ALZATE
JANES CARRILLO ALZATE
LUISA MARGARITA HINCAPIE GARCIA
MONICA INES VEGA CAMACHO
YULIETH MARGARITA CARRILLO VEGA
HELEN TATIANA CARRILLO VEGA, AND
JANYS SOFIA CARRILLO VEGA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. **Overview**

[1] The Applicants seek judicial review of a November 23, 2021 decision [Decision] of the Refugee Protection Division [RPD] rejecting their claims for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this application will be dismissed.

II. **Background**

[3] The Applicants, Ronald Enrique Manjarres Chavez, his wife Viviana Carrillo Alzate, and 10 members of their family, including their children, are all citizens of Colombia.

[4] In August 2014, Ms. Alzate, who held a security position at the international airport in Santa Marta, conducted a seizure of packages identified to be narcotics. These narcotics belonged to Los Pachencas, a local and regional narco-paramilitary group that controls drug trafficking routes in the Caribbean.

[5] Ms. Alzate began receiving threats and demands from Los Pachencas to conspire with them by allowing future narcotic packages to be trafficked through the airport. In March 2016, she fled Colombia with her husband, Mr. Chavez, and their children to the United States (US).

[6] In March 2018, Mr. Chavez' nephew was approached by Los Pachencas demanding to know where Ms. Alzate was, and he soon fled Colombia to the US as well.

[7] In October 2018, Los Pachencas began threatening Ms. Alzate's brothers, one of whom worked in security at the Santa Marta Port Authority, to conspire with them. Both brothers fled with some of their immediate family to the US in November 2018.

[8] The Applicants arrived in Canada between January and April 2019 and sought refugee protection.

[9] The children and stepchildren of Ms. Alzate's brothers who remained in Colombia have continued to be threatened and extorted by Los Pachencas in Santa Marta.

III. **Decision under Review**

[10] The RPD accepted the Applicants' claims as largely credible and found that they were targeted by Los Pachencas as alleged.

[11] The RPD concluded that the Applicants are not persons in need of protection under subsection 97(1) of *IRPA* on the basis that they have a viable Internal Flight Alternative (IFA) in Tunja, Colombia.

[12] Based on the country condition evidence in the National Documentation Package (NDP) for Colombia, the RPD found that Los Pachencas mostly operate out of Santa Marta and their sphere of influence is limited to the same area. The RPD did not find objective evidence to show that Los Pachencas have the means to locate a target in Tunja, which is located 815 kilometres

away from Santa Marta, nor that they would expend their limited connections with authorities to locate the Applicants in Tunja.

[13] The RPD also found that Los Pachencas are no longer interested in locating Ms. Alzate or Mr. Chavez' nephew, since several years have passed since they last received threats. While the RPD acknowledged that Los Pachencas' motivation to locate Ms. Alzate's brothers may be stronger based on the continued threats against their children and stepchildren, the RPD did not find that the brothers' relocation to Tunja would amount to a subsection 97(1) risk.

[14] As such, the RPD found on a balance of probabilities, that Los Pachencas do not have the means or motivation to locate the Applicants in Tunja such that they face a section 97(1) risk should they return to Colombia.

IV. **Issues and Standard of Review**

[15] The Applicants submit that the RPD's IFA analysis is unreasonable.

[16] First, the Applicants argue that the RPD erred in finding that Los Pachencas do not have the ability to track the Applicants to Tunja.

[17] Second, the Applicants argue that the RPD erred in assessing Los Pachencas' interest in the Applicants.

[18] The parties agree that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23.

[19] 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. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

[20] The onus is on the Applicants to demonstrate that the Decision suffers shortcomings such that it no longer bears the hallmarks of reasonableness, namely justifiability, transparency, and intelligibility: *Vavilov* at paras 99-100 and 125.

V. Analysis

A. *IFA Test*

[21] The two-prong test for determining whether refugee claimants have a viable IFA is well-established: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*].

[22] The Applicants only challenge the RPD's assessment of the first prong of the IFA test.

[23] The first prong of the IFA test requires the RPD to be satisfied on a balance of probabilities that there is no serious possibility of the claimants being subject to persecution in

the proposed IFA: *Thirunavukkarasu* at para 9. Once the RPD identifies a proposed IFA, claimants bear the burden of showing the IFA does not exist by establishing that they face a serious possibility of persecution on a balance of probabilities: *Henao v Canada (Citizenship and Immigration)*, 2020 FC 84 at paras 10 and 16.

B. *Did the RPD err in finding that Los Pachencas do not have the ability to track the Applicants to Tunja?*

[24] The Applicants argue that the RPD erred in finding no serious possibility of persecution in Tunja by misconstruing or ignoring the country condition evidence for Colombia.

[25] The RPD acknowledged the Applicants' claim that Los Pachencas would use their connections with authorities to track targets to areas outside of Santa Marta, their primary area of operation. The RPD noted that the articles submitted by counsel specifically mentioning Los Pachencas and their connections with authorities were limited to the area of Santa Marta or the Department of Magdalena, or when connections to authorities were used to access high-level information about counter-narcotics activities. However, the RPD found that "the NDP is silent on Los Pachencas' connections with the authorities". The RPD also found that there was "no evidence" of Los Pachencas using any connections to track low-level targets, such as the Applicants, across Colombia to areas outside of their usual operations.

[26] The RPD similarly found that while evidence demonstrated that criminal groups are able to track victims across the country through alliances, the evidence did not support that Los

Pachencas specifically have a criminal network in Tunja. The RPD noted that the only documented alliance between Los Pachencas and another national criminal group had ceased.

[27] Finally, the RPD pointed to instances of some of the Applicants or their family members relocating to other areas of Colombia, during which they continued to receive threats from Los Pachencas but were not found by them, as indicative of Los Pachencas' lack of ability to track the Applicants outside their area of influence.

[28] The Applicants quote extensively from documentary sources in the NDP, which detail the collusion between paramilitary groups or new armed groups and Colombian authorities. The Applicants also emphasize an excerpt from a Response to Information Request [RIR] stating "criminal groups are 'definitely' able to track targeted individuals" across the country, and another document stating that alliances between paramilitaries are in constant flux.

[29] The Applicants argue that the RPD engaged in a pattern of unreasonably discounting the general evidence detailing the ability of criminal, paramilitary, or new armed groups to track their targets to areas outside of their influence. The Applicants submit that since Los Pachencas fall within the definitions of criminal, paramilitary, or new armed groups, the RPD ought to have considered the evidence specific to Los Pachencas in the context of the general evidence about these groups' means.

[30] The Applicants take particular issue with the RPD's statements that the NDP is "silent" on Los Pachencas' connections with authorities and that there is "no evidence" that they would

use connections to pursue low-level targets across Colombia. With respect to the latter statement, the Applicants also argue that the RPD imported an “unreasonable standard”, asserting that the abundance of homicides in Colombia results in only high-level cases being newsworthy.

[31] The Applicants submit that these statements clearly demonstrate a misunderstanding or ignorance of the evidence. The Applicants rely on *Chauhdry v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8322 (FC) [*Chauhdry*] to argue that the RPD cannot find a viable IFA in the absence of sufficient evidence solely on the basis that a claimant has not fulfilled their onus of proof.

[32] The Respondent counters that it was open for the RPD to find insufficient evidence of Los Pachencas’ relationship with Colombian authorities or of any criminal network in Tunja through which they could track the Applicants based on the evidence.

[33] The Respondent asserts that the Applicants’ reliance on the RPD’s specific statements to demonstrate that evidence was ignored is misplaced, noting that none of the evidence pointed to by the Applicants was either critical or contradictory to the RPD’s conclusions. Further, the Respondent challenges the Applicant’s reliance on specific NDP evidence, such as the general statement that criminal groups are “definitely” able to track targets across the country. The Respondent points out that this statement was an introduction to more group-specific information, which the RPD did consider regarding Los Pachencas.

[34] Reviewing the Decision as a whole and the evidence that was before the RPD, I find that the RPD conducted a reasonable analysis of the documentary evidence.

[35] It was open to the RPD to weigh the evidence specific to Los Pachencas, or lack of, to draw an inference that they do not have the means to track the Applicants to Tunja, or that they would not use their connections to authorities to track the Applicants as low-level targets.

[36] As the Respondent submits, decision-makers benefit from the presumption that they considered all the evidence before them and need not cite every piece of evidence: *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 38-39, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 (FCTD) at paras 16-17.

[37] While I agree that the RPD's statement that the NDP was "silent" on Los Pachencas' lacks nuance, as the Applicants themselves point out, technically this statement is not incorrect. Further, the Applicants have not persuaded me that the evidence they cite squarely contradicts the RPD's finding with respect to Los Pachencas' connections with authorities being limited to the areas of Santa Marta or the Department of Magdalena.

[38] I have considered the RIR excerpt relied on by the Applicants states that criminal groups are "definitely" able to track targets across Colombia specifically contained information about Los Pachencas on this topic. The RIR goes on to state:

The Senior Analyst stated that Los Pachenca are "very focused" on the Atlantic Coast and in urban centres such as Barranquilla, Cartagena, and Medellín, and they can "easily" track targets in those areas (Senior Analyst 8 July 2021). The same source

indicated that it is "not known" whether Los Pachenca have a "particular network" in Bogotá but added that this would not be a barrier to finding someone, since it is "relatively easy" to hire a tracker in the capital city (Senior Analyst 8 July 2021). Further and corroborating information about Los Pachenca's ability to track their targets could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

[Emphasis added]

[39] Again, the RPD's conclusion that there was "no evidence" that Los Pachencas could or would use their connections to track their targets to Tunja does not contradict the aforementioned NDP evidence.

[40] Based on a holistic review of the reasons, I find the RPD's IFA analysis was linked to and consistent with the documentary evidence. The analysis is transparent and intelligible and the RPD's conclusions were reasonably available to it. Though the Applicants understandably disagree with those conclusions, that alone is not sufficient to warrant this Court's intervention on judicial review.

[41] The onus was on the Applicants to prove their specific claim that there is a serious risk they would face persecution in Tunja by Los Pachencas' ability to track them there through their connections with authorities. The RPD simply found insufficient evidence to support this specific allegation. It is not the function of this Court to re-weigh the evidence before the RPD.

[42] In their Reply, the Applicants submitted that the RPD unreasonably imported a higher burden of proof by requiring specific evidence of the particular agent of persecution using their

connections in the ways feared by the Applicants. As acknowledged above, I agree that the RPD's reasons on their face appear to apply a strict approach to the assessment of evidence by using statements such as "silent" and "no evidence". However, my reading of the reasons does not suggest that the RPD applied a heightened burden of proof.

[43] I find this Court's analysis in *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 [*Adeleye*] instructive on this point. In *Adeleye*, the refugee claimant similarly advanced specific allegations that the existence of bribery allowed their agents of persecution to track her personal information. In upholding the Refugee Appeal Division's [RAD] finding that the claimant did not adduce sufficient evidence to support this specific claim, the Court stated:

29 In this case, Ms. Adeleye was not alleging that corruption in Nigeria generally was a concern. She specifically claimed that bribery had allegedly allowed her agents of persecution to trace her banking transactions, her mobile phone history and her driver's licence in order to find her. Ms. Adeleye herself focused her allegations on these particular incarnations of bribery and corruption in Nigeria. It was thus amply reasonable for the RAD to look, in the country documentary evidence, for materials relating to these particular uses of bribery and corruption to access information to which a requester is not entitled. It found none, and determined that Ms. Adeleye's assertions that her banking transactions, mobile phone or driver's licence could be reliably used to track her were speculative. It was Ms. Adeleye's burden to provide sufficient evidence to support her claim on the bribery front, but she failed to do so.

[Emphasis added]

[44] For the reasons set out above, I find that it was similarly reasonable for the RPD to find insufficient evidence establishing the Applicants' specific allegations.

C. *Did the RPD err in assessing Los Pachencas' interest in the Applicants?*

[45] The Applicants also argue that the RPD unreasonably found that Los Pachencas' are no longer interested in the Applicants to an extent that amounts to a subsection 97(1) risk.

[46] In arriving at the conclusion that Los Pachencas are no longer interested in Ms. Alzate, the RPD relied on the fact that six years had passed since they threatened her and that she would no longer work at the Santa Marta airport, which would reduce their motivation in targeting her. The RPD also noted that Ms. Alzate's parents were forcibly displaced from their farmland to Santa Marta, allegedly by Los Pachencas, but found no allegation that these actions were connected to Los Pachencas' past interest in Ms. Alzate. The RPD also noted over three years have passed since Mr. Chavez' nephew last received a threat from Los Pachencas, and that his parents have continued to live in Santa Marta without incident.

[47] With respect to Ms. Alzate's brothers, the RPD considered that their children and stepchildren in Colombia continue to pay extortion to Los Pachencas. However, the RPD noted in light of its findings about Los Pachencas' means that they lived in Cali without being found by Los Pachencas in 2019. The RPD also placed weight on how the children and stepchildren have not moved from Santa Marta despite these threats. Similar to Ms. Alzate, the RPD found that her brother who worked at the Port would no longer do so upon return, hence reducing Los Pachencas' motivation to target him.

[48] The Applicants argue that the RPD made a plausibility finding based on speculation when it found that Los Pachencas are no longer interested in the Applicants since their parents in Santa Marta have not been approached. The Applicants explain that Los Pachencas' pattern of threats revolve around family members who live with the Applicants or who were present during threats, rather than extended family members like parents, who have never been approached.

[49] The Applicants submit that the level of Los Pachencas' interest in Ms. Alzate and her brothers was evident by the threats the Applicants and their family members received, which continued over many years. The Applicants also take issue with the RPD's characterization of the Applicants as "low-level" targets, highlighting that Los Pachencas' interest in Ms. Alzate and her brother who worked at the Port Authority stemmed from their interest in surpassing counternarcotic activity.

[50] The Applicants also challenge the RPD's reliance on the instances where family members relocated to other areas of Colombia and were not found by Los Pachencas, stressing that it was due to Los Pachencas' cyclical level of interest in the Applicants.

[51] The Applicants further assert that the proposed IFA of Tunja in this case is unrealistic, as it would require the Applicants to hide their whereabouts from family members, namely the children and stepchildren of Ms. Alzate's brothers, who remain targets of Los Pachencas in Santa Marta. The Applicants submit that an IFA is not viable under the first prong of the test if claimants are required to hide their whereabouts from their family: *Zamora Huerta v Canada*

(Citizenship and Immigration), 2008 FC 586 at para 29 [*Huerta*]; *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 at para 49 [*Ali*].

[52] The Respondent disputes that the RPD made any plausibility findings. The Respondent maintains that the RPD's assessment was based on the sufficiency of evidence and that its findings stemmed from reasonable inferences based on the facts before it. The Respondent argues that the Applicants seek to have the Court reweigh evidence.

[53] With respect, I am not persuaded by the Applicants' submissions. Before the RPD, beyond their Basis of Claim narratives that cite their continued fear, there was no evidence contradicting the RPD's specific findings about Los Pachencas' interest in the Applicants since their departure from Colombia.

[54] I note that these narratives claim that Los Pachencas continue to threaten Ms. Alzate's brother's children and stepchildren in Colombia with extortion demands, and that these threats began as a result of Los Pachencas' interest in Ms. Alzate's brothers. However, based on my findings above with respect to the RPD's assessment of Los Pachencas' means, and the evidence on the record, it was not unreasonable for the RPD to place weight on the children and stepchildren's temporary move to Cali without being found.

[55] I note also that the Applicants mischaracterize the RPD's finding in this respect, as the reliance on the children and stepchildren's move to Cali pertained more so to the RPD's conclusions about Los Pachencas' means, rather than their interest in the Applicants. It was also

reasonable for the RPD to note they have not left Santa Marta despite the resumption of these threats upon their return from Cali.

[56] Based on the record, the arguments the Applicants now raise were not before the RPD. For example, the Applicants did not explain in their submissions that Los Pachencas' interest in the Applicants or their family members was cyclical. The Applicants' written submissions also do not purport that the Applicants would have to hide their whereabouts from their family members in Colombia if they returned to Tunja.

[57] This distinguishes the case at bar from *Ali*, where there were submissions before the RAD that the claimants would be unable to safely contact their family members if they returned to Pakistan: at para 48. I also find *Huerta* distinguishable because the RAD in that case specifically found that an IFA existed "provided [the claimant] took reasonable precautions and not reveal her new location to relatives and friends": at para 29. The RPD made no such statement here.

[58] I agree with the Respondent that the Applicants' arguments amount to asking the Court to reweigh evidence. I do not find that the Applicants have raised a reviewable error. The Applicants cannot fault the RPD for failing to address certain possibilities or failing to make certain inferences from the evidence when these allegations were not part of the record: see *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at paras 57-58.

[59] Finally, with respect to the Applicants' two main arguments before this Court, I turn back to *Adeleye*, which reminds reviewing courts of the importance of deference when conducting a

reasonableness review of decisions that turn heavily on factual findings:

25 The RAD's conclusions on the existence of an IFA are essentially factual: they are based on ample documentary evidence, and they go to the very heart of its expertise in matters of immigration and refugee protection. It is well established that the RAD takes advantage of the specialized knowledge of its members to assess evidence relating to facts that fall within its area of expertise. In such circumstances, the standard of reasonableness requires the Court to show great deference to the RAD's findings. It is not the task of a reviewing court to reweigh the evidence on the record, or to reassess the RAD's findings of fact and substitute its own (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). Rather, it must consider the reasons as a whole, together with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53), and limit itself to determining whether the conclusions are irrational or arbitrary.

[60] Considering the RPD's thorough analysis of the evidence, and the lack of errors or omissions in its reasoning that are critical or that squarely contradict the record, I cannot find that the conclusions in the Decision are "irrational or arbitrary". The Applicants have not demonstrated that there are "shortcomings or flaws" which are "sufficiently central or significant to render the decision unreasonable": *Vavilov* at para 100.

VI. Conclusion

[61] The RPD's Decision concluding that the Applicants have a viable IFA in Tunja is reasonable.

[62] The application for judicial review is therefore dismissed.

[63] There is no question for certification.

JUDGMENT IN IMM-9373-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9373-21

STYLE OF CAUSE: RONALD ENRIQUE MANJARRES CHAVEZ,
YOSWALL ANDRES MANJARRES GUTIERREZ,
VIVIANA CARRILLO ALZATE, CHRISTOPHER
MANJARRES CARILLO, JACOB JOSE MANJARRES
CARRILLO, ROGER JUNIOR CARRILLO ALZATE,
JANES CARRILLO ALZATE, LUISA MARGARITA
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JANYS SOFIA CARRILLO VEGA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 9, 2023

JUDGMENT AND REASONS: ELLIOTT J.

DATED: JULY 21, 2023

APPEARANCES:

Lisa Winter-Card FOR THE APPLICANTS

Rachel Beaupre FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lisa Winter-Card FOR THE APPLICANTS
Barrister and Solicitor
Welland, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario