Federal Court  Cour fédérale

Date: 20240820

Docket: IMM-1931-23

Citation: 2024 FC 1286

Ottawa, Ontario, August 20, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

WILLIAM SOLANO COMETA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Colombia, seeks judicial review of a negative Pre-Removal Risk Assessment [PRRA] decision made by a Senior Immigration Officer [Officer] dated January 16, 2023. In the decision under review, the Officer determined that the Applicant would not be subject to a danger of torture, risk to life or risk of cruel and unusual treatment or punishment if he were to return to Colombia, as per section 97 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 [*IRPA*]. Specifically, the Officer found that the Applicant had provided insufficient evidence and had not rebutted the presumption of state protection.

[2] By way of background, the Applicant entered Canada in September of 2019 and filed a claim for refugee protection. He was subsequently found to be inadmissible to Canada pursuant to paragraph 34(1)(f) of the *IRPA* due to his membership in the Administrative Department of Security of Colombia [DAS], an organization for which "there are reasonable ground [*sic*] to believe engages, has engaged or will engage in terrorism."

[3] In September of 2022, the Applicant filed his PRRA application. In support of his application, the Applicant relied on the following:

A. From 1993 to 2002, the Applicant was a security guard with the DAS.

B. In January of 2014, the Applicant started a small business that involved recycling electronic equipment in Neiva. He would drive to collect waste electronic equipment from different locations in different provinces and then sell the waste in Bogota and Cali. At some point in 2014, the Applicant states he was approached by members of the Revolutionary Armed Forces of Colombia [FARC] in Caquetá, who told him he would need to support them by either giving them money or transporting their goods. He claims they told him that if he paid what they asked, they would not bother him and he could work peacefully in that area. The Applicant also claims the FARC asked him to contact Yamith Yuco Munoz [Yamith], one of the FARC's regional leaders, upon his return to Huila. When the Applicant met Yamith, he states Yamith made the same demand: that the Applicant pay money to

the FARC or transport their goods. However, the Applicant claims he never paid the amount and never returned to the area.

C. In July of 2014, immediately after the birth of the Applicant's son, the Applicant states that men showed up at his partner's residence looking for him and as a result, his partner fled the residence with their son. That same day, the Applicant states he started receiving threatening phone calls from the FARC. The caller threatened to kill him if he did not comply with their demands and said that they knew the Applicant worked with DAS in the past and that he was still working for the government. The caller also accused him of being a government informant.

D. In August of 2014, the Applicant's partner came to live with him and they continued to receive threatening phone calls.

E. In September of 2014, Yamith was arrested by law enforcement. Soon after the arrest, the Applicant states he started receiving calls from the FARC accusing him of working with the security forces, of being a spy and blaming him for Yamith's arrest.

F. In October of 2014, the Applicant's partner filed a report with victims services in Neiva, after which she and the Applicant were declared "victims of forced displacement," also known as internally displaced persons or IDPs.

G. On a day in 2017, his partner told him that two armed men had been standing outside their house for over three hours. The Applicant anonymously informed the police and the police arrested both men.

H. In May of 2018, the Applicant's partner received a call from their son's preschool informing them that two unknown men had come to pick him up after school. After speaking with the Applicant and his partner, the teacher called the police. The two men fled the school.

[4] The parties agree that the determinative issue on this application is whether the Officer's finding that the Applicant had not rebutted the presumption of state protection is reasonable. The applicable standard of review is that of reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8, 59]. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11, citing *Vavilov*, *supra* at para 100].

[5] Absent a situation of complete breakdown of the state apparatus, there is a presumption that a state is able to protect its citizens. A claimant has the burden of rebutting the presumption of adequate state protection with clear and convincing evidence [see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 724]. This imposes both an evidentiary and a legal burden on a

claimant, in that the claimant must adduce evidence to that effect and must convince the decision-maker, on a balance of probabilities, that state protection is inadequate [see *Flores Carrillo v Canada (Minister of Citizenship and Immigration),* 2008 FCA 94 at para 38]. To meet this burden, a claimant will typically have to demonstrate a seeking out, but denial of, state protection. While this is not a legal requirement, it goes to whether the claimant has met their evidentiary burden [see *Orsos v Canada (Citizenship and Immigration),* 2015 FC 248 at para 18; *Lakatos v Canada (Citizenship and Immigration),* 2018 FC 367 at para 20].

[6] In considering whether state protection is adequate, a decision-maker must focus on actual, operational adequacy, rather than a state's efforts to protect its citizens. Efforts must have actually translated into adequate protection at the present time [see *Lakatos, supra* at para 21; *Hercegi v Canada (Citizenship and Immigration),* 2012 FC 250 at para 5]. As noted by Justice Diner in *Lakatos* at paragraph 21, "In other words, lip service does not suffice. The protection must be real, and it must be adequate."

[7] The Officer's determination that the Applicant had not rebutted the presumption that adequate state protection would exist for him in Colombia was based on the following findings:

(i) The Officer found that state officials in Colombia recognized the family as IDPs and, in so doing, acted in a timely manner and showed their willingness to assist the Applicant and his family.

(ii) The Officer found that that the arrest of the two men lurking outside of the Applicant's house was indicative of the police taking action on complaints by citizens.

(iii) The Applicant is required to demonstrate that he has taken all reasonable steps, in the circumstances, to seek protection. However, the Applicant chose not to disclose the threats made by the FARC because he does not trust the Colombian police. The Officer found that doubting the effectiveness of state protection without testing it does not rebut the presumption of state protection.

(iv) The Officer found that the objective evidence regarding current country conditions suggests that, "although far from perfect, there is adequate state protection in Colombia for victims of crime, that Colombia is making serious efforts to address the problem of criminality and that the police are both willing and able to protect victims."

[8] I agree with the Respondent that, notwithstanding the evidentiary and legal burden on the Applicant to rebut the presumption of the adequacy of state protection, the submissions provided by the Applicant in support of his PRRA application did not address the issue of state protection at all. However, the Officer was nonetheless under a positive duty to examine the most recent sources of information in conducting their PRRA analysis, including in relation to the issue of state protection [see *Rizk Hassaballa v Canada (Citizenship and Immigration)*, 2007 FC 489 at para 33]. In accordance with that duty, the Officer considered the 2021 U.S. Department of State Country Report on Human Rights Practices in Colombia [Report].

[9] I find that the Report does not reasonably supports the Officer's finding that "there is adequate state protection in Colombia for victims of crime, that Colombia is making serious efforts

to address the problem of criminality and that the police are both willing and able to protect victims." The Officer cited only a portion of the Executive Summary of the Report, which stated:

> Armed groups, including dissidents of the Revolutionary Armed Forces of Colombia, National Liberation Army, and drug-trafficking gangs, continued to operate. Armed groups, as well as narcotics traffickers, were significant perpetrators of human rights abuses and violent crimes and committed acts of extrajudicial and unlawful killings, extortion, and other abuses, such as kidnapping, torture, human trafficking, bombings, restriction on freedom of movement, sexual violence, recruitment and use of child soldiers, and threats of violence against journalists, women, and human rights defenders. The government investigated these actions and prosecuted those responsible to the extent possible.

[10] I agree with the Applicant that investigating and prosecuting perpetrators "to the extent possible" after significant human rights abuses and violent crimes have been committed is not the equivalent of providing operationally adequate state protection to prevent such abuses in the first place. It is the latter which is the relevant inquiry, which is not supported by the excerpt cited by the Officer [see *Nti v Canada (Citizenship and Immigration)*, 2020 FC 595 at para 37; *Lakatos*, *supra* at paras 21, 26].

[11] Moreover, a review of the body of the Report similarly does not support the Officer's finding. Nowhere in the report is there evidence that could reasonably underpin their conclusion that the country is making serious efforts to address the problem of criminality and that the police are actually able to protect victims from the FARC. To the contrary, the Report contains statements that contradict the finding made by the Officer, which statements the Officer fails to grapple with. Specifically, the Report states that: (i) FARC dissidents numbers were growing in recent years; (ii) FARC dissidents continued to engage in unlawful killings, kidnappings and the laying of land mines; (iii) much of the judicial system was overburdened and inefficient and subordination,

corruption and intimidation of judges, prosecutors and witnesses hindered judicial functioning; (iv) human rights organizations, victims and government investigators accused some members of government security forces of collaborating with and tolerating the activities or organized crime gangs and former paramilitary members; and (v) the Colombian government continued to struggle to provide adequate protection to IDPs. This latter statement is particularly problematic given the Officer's reliance on the Applicant's status as an IDP in support of their finding of adequate state protection.

[12] I note that the Officer did not cite any additional country condition evidence in support of their state protection finding, other than the Report, and the Respondent has not drawn to the Court's attention any other documents that were before the Officer that could have supported such a finding (even though not expressly referenced by the Officer).

[13] I find that the Officer's consideration of the objective country condition evidence is flawed, which renders the Officer's determination that there is adequate state protection unreasonable. Accordingly, the application for judicial review is allowed, the decision is set aside and the matter is remitted to a different officer for redetermination.

[14] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-1931-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The negative PRRA decision of the Officer dated January 16, 2023, is set aside and the matter is remitted back to a different officer for redetermination.

3. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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