

Federal Court



Cour fédérale

**Date: 20240830**

**Docket: IMM-716-22**

**Citation: 2024 FC 1347**

**Toronto, Ontario, August 30, 2024**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**ISAAC RODRIGUEZ GALLEGO  
PATRICIA NATALIA MOJICA CETINA  
PALOMA RODRIGUEZ MOJICA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants are Isaac Rodriguez Gallego [Principal Applicant or PA], his common-law wife, Patricia Natalia Mojica Cetina and their minor daughter, all of whom citizens of Colombia. The Applicants seek leave for judicial review of the decision of the Refugee Appeal

Division [RAD] dismissing their appeal for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [Decision].

[2] The Applicants' refugee claim was based on the PA's alleged activities to pursue restitution of his family's land in Colombia. The PA claims that his family fled their home when he was a child after members of the Revolutionary Armed Forces of Colombia [FARC] took over their family land by force. The PA claims that he started a movement called "Recovering our Homes" in 2019 and met with other victims and interested persons to advance land restitution claims. Due to the PA's involvement in the movement, the Applicants were subject to repeated death threats that they believe came from the FARC.

[3] The Applicants fled to Canada and made a refugee claim in August 2019. The Refugee Protection Division [RPD] refused the Applicants' claim based on credibility. The RPD noted the Applicants indicated in their initial Basis of Claim [BOC] that the PA "joint [*sic*] the movement in January-February 2019" yet stated in their amended BOC that the PA "created" the movement in June-July 2019, and concluded the allegation was a fabrication.

[4] The RAD agreed with the RPD's credibility findings with respect to the PA's involvement in "Recovering our Homes," and whether the movement existed. In the alternative, the RAD found that even if the "Recovering our Homes" movement existed, the PA's activities would not put the Applicants at risk in Colombia and they were unlikely to come to the attention of the FARC.

[5] The hearing of this judicial review application was held on March 4, 2024 before a judge who has since retired from the Court. By Order of the Chief Justice dated June 24, 2024, the application was reassigned to a different judge. The parties agreed that the application would be determined based on the written record and audio recording of the hearing, subject to an opportunity to file further submissions based only on new case law. Both the Applicants and the Respondent filed further submissions.

[6] I grant the application due to the RAD's unreasonable treatment of the corroborating evidence with regard to the PA's involvement in "Recovering our Homes."

## II. Preliminary Issues

[7] The Applicants requested at the hearing that the style of cause be amended to correct the misspelling of the minor applicant's last name. I so order.

## III. Issue and Standard of Review

[8] The Applicants raise the following issues to challenge the reasonableness of the Decision:

- a. Did the RAD improperly discount the Applicants' explanation for their BOC amendment and ignore evidence that contradicted and/or undermined its findings?
- b. Did the RAD unreasonably assess the Applicants' evidence that corroborated their involvement in the "Recovering our Homes" movement?
- c. Did the RAD err in its assessment of the Applicants' risk profile and their likelihood of forward-looking risk in Colombia?

[9] The parties agree that the appropriate standard of review for the RAD's refusal is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at

para 23 [*Vavilov*]. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

#### IV. Analysis

[10] The RAD confirmed the RPD's credibility determination, finding that the misspelled statement "joint the movement" could not have been a communication error with the Applicants' counsel nor a translation error in part because an interpreter was used to help them prepare their narrative. However, as counsel for the Applicants notes, the evidence suggests no interpreter was used in helping the Applicants draft their BOC narrative or amendment. I agree that the RAD erred in this respect. Having said that, I do not find this error was sufficient to set aside the RAD's finding that the Applicants' amendment from their original BOC was significant and rejecting the Applicant's explanation for his amendment.

[11] Similarly, I do not find persuasive the Applicants' argument that there were inadvertent editing and drafting errors by the Applicants' former counsel and that the RAD unreasonably made unsupported generalizations to suggest that counsel, who control the drafting and editing of BOC narratives, are infallible. The Applicants pointed to a page attached to the Applicants' amendment that did not contain the statement "joint [*sic*] the movement" to suggest there were editing and control issues. I note, however, that the Applicants submitted no evidence either to the RAD or to this court from Applicants' counsel regarding how an incorrect version of the facts may have ended up in the version of the BOC that was submitted.

[12] Instead, I find the determinative issue in this case is the RAD's unreasonable assessment of the Applicants' corroborative evidence.

[13] After rejecting the Applicants' explanation for their BOC amendment and finding the PA made a significant change to his narrative, the RAD concluded "the inconsistencies in [the PA's] evidence undermine his credibility regarding his involvement with the 'Recovering our Homes,' and whether this organization exists." The RAD then considered the supporting documents and found that they were insufficient to overcome doubts about the PA's activities in the "Recovering our Homes" movement.

[14] The Applicants provided several documents in support of their claim including supporting letters from family and friends, a pamphlet that the PA created and distributed about a protest he was planning for August 2019, court documents about the proceedings that the PA's father undertook to reclaim the family land, and the court order granting the land restitution.

[15] I find the RAD made reviewable errors in assessing several of these supporting documents.

[16] One of the documents was a letter from a lawyer and long-time neighbour of the Applicants. The PA testified at the hearing that he went to the lawyer to seek advice on how to create a movement from the legal perspective. The lawyer wrote in this letter that he was contacted by the PA for legal advice in July 2019 on the occasion of the threats that he was receiving due to the initiation of the "Recovering our Home" movement. The lawyer's letter also

indicated that he recommended to the PA to gather evidence about the threats to generate a criminal complaint, and as the security conditions worsened for social leaders, he advised the PA to leave the country.

[17] The RAD's comment on the lawyer's letters was brief:

The [PA's] lawyer states that he was contacted by the [PA] for legal advice regarding threats he was receiving due to the initiation of the Recovering our Homes movement.

[18] The Applicants submit that despite containing the exact details that the RAD discounted other supporting letters for not containing, i.e. the name of the organization, the RAD did not ascribe any weight to the letter, did not explain why it did not alleviate its concerns about "Recovering our Homes," and did not impugn its credibility. The Applicants also submit that the content of this letter supported the PA's testimony, yet the RAD did not refer to the PA's testimony and failed to ascribe weight to the evidence.

[19] I agree.

[20] The RAD did not provide any analysis of the lawyer's letter. Presumably, the RAD was relying on the general findings of all support letters as noted in para 27 of the Decision, where the RAD stated generally that the supporting letters failed to provide sufficient information to alleviate the RAD's concerns about the PA's involvement in the movement and the threats he has received. The RAD also found that for the most part, the letters provided information that the Applicants would have provided to the person who signed the letter, and the letters did not provide independent corroboration of their allegations.

[21] However, whether or not the information about the threats came from the PA, the lawyer's letter confirmed the PA's testimony that he went to a lawyer for advice about the initiation of the movement and that at some point he received legal advice to leave the country. The RAD's lack of engagement with this supporting document to consider whether it corroborated, or not, the Applicants' testimony and allegations undermined the reasonableness of the Decision.

[22] The RAD committed a similar error with respect to its analysis of the pamphlet allegedly created by the PA. The RAD noted that the pamphlet "is a handwritten letter inviting people to join their voices with those displaced from their lands by violence and forgotten by the government." The RAD confirmed that the pamphlet "provides a cell phone number for further information." The RAD had "no reason to doubt that the [PA] wrote this" yet found it was not enough to overcome its doubts about the PA's activities in the movement.

[23] I agree with the Applicants that as the RAD did not question the authenticity of the document, the RAD failed to explain why the pamphlet did not alleviate its concern.

[24] I reject the Respondent's arguments that because the pamphlet was written by the PA it is therefore inherently tied to his credibility, and that a handwritten pamphlet is not indicative of a person's involvement in an established movement that would draw attention to itself. These arguments did not appear in the Decision. In any event, I do not find it reasonable for the RAD to disregard a supporting document simply because the claimant has handwritten the document, without further explanation.

[25] I also find the RAD made unreasonable findings with respect to the support letter from the PA's parents. In their letter, the PA's parents provided details about their family's forced displacement by the FARC and the difficulties they experienced in seeking restitution of their family land. The letter further noted that their son, the PA, started a social movement in parallel to the family's land restitution claim to move the latter process along. The letter described the goal and purpose of the movement, and indicated the parents' support of the PA's decision to flee after receiving threats from the FARC.

[26] The RAD decided to assign this letter little weight for two reasons: First, the letter did not specifically state the name of the movement, and second, the authors did not state how they came to know that the FARC and persons inside the Colombian government are responsible for threatening the Applicants.

[27] I find the RAD's reasons for rejecting the parents' letter lack intelligibility. The RAD rejected the veracity of the letter for what it did not say, as opposed to what it did say, contrary to well-established jurisprudence: *Bagri v Canada (Minister of Citizenship and Immigration)*, (1999), 168 F.T.R. 283, at para 11.

[28] Further, as the Applicants point out, while the Applicants believe the FARC was behind the threats, the agent of persecution never revealed their identity. As such, it was unreasonable for the RAD to expect the parents of the PA to explain how they came to know that the FARC was behind the threats, when they were expressing their belief based on their history with the FARC.



[29] Finally, as noted by this Court in *Portillo de Jurado v Canada (Citizenship and Immigration)*, 2024 FC 1108 [*Portillo de Jurado*] at para 10, “likening the situation to puzzle pieces, individual credibility findings represent fragments of evidence. Each piece might be accurate on its own, but without assembling and examining the complete puzzle, the overall picture – the comprehensive credibility assessment – may fail to reflect the true nature of the case.” The Court underscored the necessity of a holistic approach to ensure the integrity and accuracy of the decision-making process, without which, the chain of reasoning is lost and the reasons are no longer intelligible: *Portillo de Jurado* at para 10, citing *Patel v Canada (MCI)*, 2024 FC 28 at para 24.

[30] The RAD committed the same error in this case by failing to take a holistic approach in assessing the Applicants’ credibility by conducting a piecemeal assessment of each document in isolation, without considering the overall context of the Applicants’ claim. This error was further exacerbated by the RAD’s shifting goal post in assessing each of the documents by questioning the credibility of some documents when they did not mention the name of the organization, and insisting on seeing other details when the documents did mention the name of the organization.

[31] For these reasons, I find the Decision fell short of the requisite justification, transparency and intelligibility: *Vavilov* at para 15 and should be set aside. I need not address the remaining submissions the Applicants raise.

## V. Conclusion

[32] The application for judicial review is allowed.

[33] There is no question to certify.

**JUDGMENT in IMM-716-22**

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

1. The application for judicial review is granted.
2. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.
3. The style of cause is amended to correct the last name of the minor applicant from Mojico to Mojica.
4. There is no question to certify.

"Avvy Yao-Yao Go"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-716-22

**STYLE OF CAUSE:** ISAAC RODRIGUEZ GALLEGO, PATRICIA  
NATALIA MOJICA CETINA, PALOMA RODRIGUEZ  
MOJICA v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 4, 2024

**JUDGMENT AND REASONS:** GO J.

**DATED:** AUGUST 30, 2024

**APPEARANCES:**

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