

Federal Court



Cour fédérale

**Date: 20140522**

**Docket: IMM-11574-12**

**Citation: 2014 FC 484**

**Ottawa, Ontario, May 22, 2014**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**MONICA DEL PILAR PLATIN VARGAS,  
LUIS ALEJANDRO PLATIN RIANO, MARIA  
DEL PILAR VARGAS DE PLATIN, JUAN  
CARLOS RODRIGUEZ CUMACO, PAULA  
ANDREA RODRIGUEZ PLATIN (BY HER  
LITIGATION GUARDIAN JUAN CARLOS  
RODRIGUEZ CUMACO), AND MARIA  
ALEJANDRA RODRIGUEZ PLATIN (BY HER  
LITIGATION GUARDIAN JUAN CARLOS  
RODRIGUEZ CUMACO)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Principal Applicant, Monica del Pilar Platin Vargas, her husband Juan Carlos Rodriguez Cuamaco, their twin daughters Paula Andrea Rodriguez Platin and Maria Alejandra

Rodriguez Platin, and the Principal Applicant's parents, Maria del Pilar Vargas de Platin and Luis Alejandra Platin Riano, seek judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD) dated October 17, 2012 which concluded that the Applicants were not Convention refugees or persons in need of protection pursuant to sections 96 and 97, respectively, of the Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA).

## **Background**

[2] The Applicants are from Columbia and claim that they fear persecution by the Fuerzas Armadas Revolucionarias de Colombia (FARC). The Principal Applicant claims that she and her mother were community leaders and activists in Bogota. Her parents later moved to Boyaca but were forced to abandon their farm there because of threats by the FARC. In 2002, she and her mother supported Alvaro Uribe in the presidential elections and, as a result, received threatening phone calls. In 2005, there was an attempted abduction of her mother as she left a political meeting. In August 2005, the twins were born. In 2006, a threat in the form of a condolence note concerning the Principal Applicant's mother was received. In May 2006, the Principal Applicant's father fled to the United States and was joined by her mother in July 2006. There, they made an unsuccessful claim for asylum.

[3] In August 2007, the Principal Applicant again became politically active. She claims that, as a result, she received threatening phone calls from the FARC and that on June 18, 2009 she received a pamphlet at her apartment threatening her and her entire family. In August 2009, she received a call on her cell phone from an individual threatening that she would be the next target.

Shortly after this, while en route to pick up her daughters from school, she was followed by a car that passed her and then blocked her way. She avoided the car but heard shots being fired as she escaped. She and her husband then decided to leave Columbia. She and the children left on August 12, 2009 for the United States. Her husband left in April 2010. They arrived in Canada on April 25, 2010 and made a claim for refugee protection the following day. Her parents arrived in Canada on June 8, 2010 and also made a claim for protection on the following day.

[4] The RPD denied their claims. It found that the Principal Applicant was not credible and that the Applicants had failed to rebut the presumption of state protection.

#### **Decision under review**

[5] With respect to credibility, the RPD noted that the Principal Applicant testified that a bullet fired during the August 2009 encounter caused a hole in her car. However, she did not mention this in her Personal Information Form (PIF), nor did she provide a photograph of the hole or the repair bill. She did not offer any explanation for the omission from the PIF. The Principal Applicant stated that her husband had attended to the repairs and made a police report. However, the report was completed eight months later, on April 9, 2010. The RPD acknowledged the letter of Luz Castellanos, the academic director at the children's school, stating that the Principal Applicant had arrived at school in a distressed state and reported that she had been shot at. However, the RPD found that this was hearsay. The RPD concluded on a balance of probabilities that the incident did not occur. Even if there was an incident, there was no persuasive evidence that the FARC was involved. Further, the Principal Applicant's husband only reported it to the

police the day before he left Columbia. The RPD did not accept his explanation that he made the report at that time so that there would be a record, but rather found that the report was made to support a claim for refugee protection and, for that reason, gave it no weight. The Principal Applicant's PIF narrative was the sole narrative adduced for the family.

[6] As to the attempted abduction, the Principal Applicant's mother testified that they did not immediately report it to the police because of their fears of the FARC and its threats to kill them. She also did not report a further telephone call from the FARC in June 2006. When the RPD pointed out that the Principal Applicant had made no reference to the attempted abduction in her PIF, her mother explained that the Principal Applicant had not been told of the incident because her health at the time was delicate. She was only informed a year and a half later and after she had written her PIF. The RPD noted that the Principal Applicant had not amended her PIF even when she was apprised of the attempted abduction. Further, that she had provided a sworn affidavit in her parents' US claim for asylum referring to continuous threats and kidnapping attempts since December 2005. Despite the inconsistencies and omissions, the RPD found that the applications of the Principal Applicant's parents did mention the attempted abduction and it therefore accepted that there had been an incident in December 2005.

[7] While the Principal Applicant's father testified that they were forced to leave their farm which was taken over by the FARC, the RPD found that the parents' US asylum claim did not mention this. The father testified that he reported the thefts of cattle and the death threats to the police in 1998 or 1999, but he did not have copies of the police reports because they had been left at the farm. In 1998, he was provided with a small piece of paper confirming his attendance at the

police station. The father stated that the police went to his farm to view damage to the fence, but that this was the extent of their investigation.

[8] As to state protection, the RPD found that on a balance of probabilities, the Applicants had not rebutted the presumption of state protection. It noted that the Applicants did not report the alleged incident of December 2005. Further, there was no persuasive evidence that the police did not respond appropriately when they were advised of threats against the Principal Applicant's mother. The RPD found that the police did investigate the problems at the farm. No police report was made on behalf of the Principal Applicant and her family concerning the alleged shooting until after she had left the country. The RPD reviewed the documentary evidence and found that the preponderance of the objective evidence regarding current country conditions suggested that, although not perfect, there was adequate state protection in Columbia for victims of crime.

### **Standard of Review**

[9] The standard of review with respect to credibility findings, which are essentially pure findings of fact, is reasonableness (*Zhou v Canada (Minister of Citizenship and Immigration)*, 2013 FC 619 at para 26; *Rodriguez Ramirez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 261 at para 32; *Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929 at paras 17-18; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (CA) [Aguebor]). That standard also applies to determinations of state protection (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para 38; *Orellana Ortega v Canada (Minister of Citizenship and Immigration)*, 2012 FC 611 at para 7). Reasonableness is

concerned with the justification, transparency and intelligibility of the decision-making process, but also with whether the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[10] When reviewing a credibility finding, it must be kept in mind that an administrative tribunal is in an advantageous position for assessing the credibility of witnesses, accordingly, the Court must show deference when reviewing findings of this kind (*RKL v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No 162 (TD) at paras 7 to 9). The Court will only intervene in a credibility finding if the decision-maker based its decision on “an erroneous finding of fact made in a perverse or capricious manner or if it made its decision without regard to the material before it” (*Aguebor*, above).

### **Analysis**

[11] In my view, the RPD’s adverse credibility finding was reasonable. The RPD clearly stated its reasons for finding that the Applicants lacked credibility and for doubting the veracity of their story. Upon reading the decision as a whole, the RPD’s reasons indicate that it made a general negative credibility finding which was based on its disbelief that the shooting incident occurred and on inconsistencies and omissions in the evidence.

[12] In this regard, the RPD noted that although the Principal Applicant’s mother claimed that her daughter was not made aware of the kidnapping attempt in 2005 until after she had submitted

the PIF, she had in fact, provided a sworn affidavit in her parents' US claim for asylum in which she referred to "continuous threats and kidnapping attempts since December of year 2005". The RPD also noted that the 2005 abduction attempt was not reported to the police until April 2006 and that the threats from the FARC causing the farm to be abandoned, was not mentioned in the Principal Applicant's parents' US asylum claim or in the Applicants' Canadian claims. Rather, it arose for the first time during the hearing. Finally, the RPD noted that although the Principal Applicant's husband stated that he and his wife had received threatening phone calls, he also claimed that he had not been directly targeted.

[13] The Principal Applicant testified that she found a bullet hole in her car after the alleged August 2009 incident, however, she had not included that information in her PIF nor did she amend her PIF before the hearing. The RPD is entitled to compare her PIF to her testimony and to make credibility findings based on inconsistencies and omissions (*Pineda v Canada (Minister of Citizenship and Immigration)*, 2007 FC 889 at paras 14-15; *Shatirishvili v Canada (Citizenship and Immigration)*, 2014 FC 407 at para 29). When asked why she did not include the incident in her PIF, she stated that she did not remember why and offered no explanation for this omission. The RPD also reasonably considered the fact that the incident was only reported to the police eight months after it occurred, and right before the Principal Applicant's husband left Colombia to join his family.

[14] The Applicants also allege that the RPD rejected, without reason, the Principal Applicant's explanation of why the bullet hole was not documented or referred to in the PIF as well as the corroborative evidence comprised of the letter from the academic director of her

daughters' school. When questioned about why she did not take any pictures of the damage, the Principal Applicant claimed that it was due to a fear of the FARC. She also stated that she did not possess a copy of the bill because her husband had received it. The RPD asked why she and her husband did not provide a copy of the bill in the evidence they provided, in response she explained that it was because she departed the country two days after the incident. Given that the Principal Applicant's husband testified that he had made the police report to leave a record that the family was leaving because they were threatened by the FARC, it is reasonable to infer that the husband would also have documented the bullet hole in their vehicle for the same reason and would have retained the repair bill. This is particularly so as he did not leave Columbia until eight months after his wife and children and was aware that they would be seeking refugee protection in Canada.

[15] The RPD did not, and was not obliged to accept the Principal Applicant's explanation (*Houshan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 650 at para 19). In this case it is apparent that the rejection was founded on credibility as the explanation given was not plausible in the circumstances.

[16] The RPD acknowledged the letter from the academic director, considered it in its reasons, but discounted it as being hearsay. Thus, while it was admitted as evidence, it was afforded little weight. It is open for the Board to assign greater or lesser weight to evidence based on its source and any existing corroboration (*Shah v Canada (Minister of Citizenship and Immigration)*, 2013 FC 280 at para 19). While I question the RPD's discounting of this evidence solely on the basis of it being hearsay, upon reading the decision as a whole, it is apparent that the RPD did not



accept that the incident occurred, given the inconsistencies and omissions in the evidence. It was therefore entitled to weigh the letter accordingly. The RPD had also requested corroborative evidence, such as the documenting of the bullet hole and repair to the car, which would have been reasonably available to the Applicants but which was not provided nor was its absence reasonably explained. Given this, in my view, the RPD considered all the submissions, reasonably rejected the explanation as to the lack of often corroborating evidence and weighed the evidence accordingly.

[17] As to the Applicants' contention that the RPD could not reject the claim solely based on a lack of corroborative evidence, this is true if a claimant's credibility is not in question (*Dundar v Canada (Minister of Citizenship & Immigration)*, 2007 FC 1026 at paras 19-22; *Ahortor v Canada (Minister of Employment and Immigration)* (1993), 65 FTR 137 (TD) at para 45). However, here, the Board did not base its credibility finding solely on the basis of a lack of supporting documentation, but also on omissions and inconsistencies in the evidence. When a Board has concerns about credibility, these "[...] impact the assessment of documentary evidence or the absence thereof. The need for corroboration is even more important where credibility is in issue" (*Rosales v Canada (Minister of Citizenship and Immigration)*, 2012 FC 323 at para 19 [Rosales]).

[18] In sum, the Board was best placed to evaluate credibility and its decision fell within the range of possible, acceptable outcomes defensible in respect of the facts and the law (*Rosales*, above, at para 20).

[19] As to state protection, the Applicants submit that the RPD cannot selectively rely on the documentary evidence without making a reasoned analysis for its preference for some of the evidence. Here, the RPD relied on evidence that refers to recent changes to the legislation or to security services in Columbia, but this evidence also clearly demonstrates that the dangers are far from being resolved. The Applicants submit that it does not appear that the RPD was cognizant of the situation in Columbia. Claimants need only seek state protection where it might reasonably be forthcoming and a claim cannot be defeated solely on a failure to approach state authorities in the past. The Applicants further submit that state protection findings cannot be dispositive where there is an error in credibility findings. Moreover, the RPD must properly analyze the evidence and provide reasons for its conclusions which it has not done in this case.

[20] The Respondent submits, in essence, that based on the facts of this case the Applicants did not satisfy their burden of providing clear and convincing evidence that state protection was ineffective and inadequate. It is insufficient to rely solely on documentary evidence indicating flaws in the system if the Applicants have failed to avail themselves of available state protection. Here, the Applicants seek to rely on documentary evidence in the absence of their own failure to seek state protection in a consistent and timely manner.

[21] In order to rebut the presumption of state protection, the claimant “must adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that state protection is inadequate” (Canada (Minister of Citizenship and Immigration) v Flores Carillo, 2008 FCA 94 at para 30). State protection need not be perfect, but it must be adequate, and “only in situations in which state protection ‘might reasonably have been forthcoming’ will

the claimant's failure to approach the state for protection defeat his claim” (Canada (Attorney General) v Ward, [1993] 2 SCR 689 at para 49, 103 DLR (4th) 1; Da Souza v Canada (Minister of Citizenship and Immigration), 2010 FC 1279 at paras 15, 18). Adequate state protection involves more than making “serious efforts” to address problems and protect citizens (Garcia v Canada (Minister of Citizenship & Immigration), 2007 FC 79 at para 16). Instead, the RPD’s focus must be on what is actually happening in a country, that is, evidence of actual or operational level protection, and not on efforts that a state is endeavouring to put in place (Hercegi v Canada (Minister of Citizenship and Immigration), 2012 FC 250 at paras 5-6; Majoros v Canada (Minister of Citizenship and Immigration), 2013 FC 421 at para 12).

[22] While the RPD need not refer to every piece of evidence presented, the more significant a piece of evidence is, the more likely it is that a failure to make reference to it will result in a finding that the Decision was unreasonable, especially when it appears to be a marked contradiction to a finding of the RPD (Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration), [1998] FCJ No 1425 (TD); Vargas v Canada (Minister of Citizenship and Immigration), 2011 FC 543 at para 16).

[23] In my view, based on the record before it, including the Principal Applicant’s PIF and the testimony of the other Applicants, the RPD reasonably found that the Applicants failed to rebut the presumption of state protection. The RPD made a number of findings which are reasonable based on the record including that: the Applicants did not report the alleged incident of December 2005 to the police (until 2006); there was no persuasive evidence that the police did not respond properly when advised of the threats against the Principal Applicant’s mother; the police did

investigate the incidents on the farm; and, that the Applicants did not file a police report until the Principal Applicant fled the country and her husband left the day after making the report.

[24] On the latter point, it was open for the RPD to find that the filing of a denunciation and subsequent departure from Columbia while that process was continuing did not constitute clear and convincing proof of Columbia's inability to protect the Principal Applicant. A similar finding was made in *Montemayor Romero v Canada (Citizenship and Immigration)*, 2008 FC 977 at para 24 and *Romero Davila v Canada (Citizenship and Immigration)*, 2012 FC 1116 at para 39.

[25] The Applicants allege that the RPD ignored country conditions evidence which contradicted its findings. However, the RPD is not required to mention every piece of evidence relied upon in its decision and, more specifically, as the Court stated in *MDGD v Canada (Minister of Citizenship and Immigration)*, 2011 FC 855 at para 17 (*MDGD*) (sub nom *De Lourdes Gonzalez Duran v Canada (Minister of Citizenship and Immigration)*):

[17] [...] the tribunal is not required to mention every piece of evidence relied upon in its decision, particularly when it is clear from the reasons that the tribunal has taken into account all the relevant evidence acknowledging that the Mexican state protection apparatus is imperfect and highlighting the shortcomings and improvements that the government has made.

[26] Here, the RPD recognized human rights abuses, corruption and impunity in Colombia. It also recognized that Colombia is experiencing challenges in addressing corruption and impunity in its security forces. It acknowledged that there are some inconsistencies in the evidence, but found that the preponderance of the objective evidence suggests that, although not perfect, there is adequate state protection in Colombia for victims of crime. The RPD reviewed the measures

being taken by Colombia and its progress to combat the FARC and it did not ignore contradictory evidence.

[27] In any event, the documentary evidence does not assist the Applicants given that the RPD found that they failed to take steps to avail themselves of state protection in Columbia (MDGD, above, at para 16) and because there was a lack of personal evidence to rebut the presumption of state protection. Further, the state protection finding is not determinative given the RPD's credibility finding (*Gonzalez Ventura v Canada (Minister of Citizenship and Immigration)*, 2012 FC 10 at para 62; *Argueta Calderon v Canada (Minister of Citizenship and Immigration)*, 2013 FC 229 at para 5).

[28] For these reasons the application for judicial review must be denied.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is denied;
2. No question of general importance for certification was proposed nor does one arise.

“Cecily Y. Strickland”

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Judge

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

**DOCKET:** IMM-11574-12

**STYLE OF CAUSE:** MONICA DEL PILAR PLATIN VARGAS, LUIS ALEJANDRO PLATIN RIANO, MARIA DEL PILAR VARGAS DE PLATIN, JUAN CARLOS RODRIGUEZ CUMACO, PAULA ANDREA RODRIGUEZ PLATIN (BY HER LITIGATION GUARDIAN JUAN CARLOS RODRIGUEZ CUMACO), AND MARIA ALEJANDRA RODRIGUEZ PLATIN (BY HER LITIGATION GUARDIAN JUAN CARLOS RODRIGUEZ CUMACO)  
v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 19, 2013

**REASONS FOR JUDGMENT AND JUDGMENT:** STRICKLAND J.

**DATED:** MAY 22, 2014

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