

CANADA / JUDGMENT

VC0-00898

COURT

Refugee Appeal Division

DECIDED

3 September 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR : VC0-00898 VC0-00899 / VC0-00900 / VC0-00901 VC0-00902 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, ON Appel instruit / entendu à Date of decision September 3, 2020 Date de la décision Panel Alison Kennedy Tribunal Counsel for the persons who are the subject of the appeal N/A Conseil des personnes en cause Designated representative XXXX XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

[1] I dismiss this appeal. XXXX XXXX XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX (Associate Appellant), and their family members XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXXand XXXX XXXX XXXX, are citizens of Colombia. They are appealing the decision of the Refugee Protection Division (RPD) that they are not Convention refugees or persons in need of protection. They are asking the Refugee Appeal Division (RAD) to substitute the RPD's decision with a positive decision recognizing that they are Convention refugees or persons in need of protection, or to send the matter back to the RPD for redetermination.

DETERMINATION

[2] My role is to look at all the evidence and decide if the RPD made the correct decision.1 I find that the RPD was correct in determining that the Appellants have viable Internal Flight Alternatives (IFAs) in Tunja and Paz de Rio. Therefore, I dismiss the appeal and confirm the decision of the RPD.

BACKGROUND

Appellants' allegations

- [3] The Appellants traveled from Bogota to XXXX XXXX to a farm owned by the Associate Appellant's (AA's) father to find him. However, the people living at the farm did not know of him or where he was. The Appellants then made inquiries with the land registry to see if he had sold the farm. Shortly thereafter, the Appellants received a call from the paramilitary demanding money that was allegedly owed by the AA's father.
- [4] The Appellants then began the land restitution process regarding the AA's father's farm. The Appellants received another threatening call in XXXX 2019 after having taken further steps in the land restitution case. The caller identified himself as a member of the Los Rastrojos, reminded them of the AA's father's debt still owing, and warned them not to continue the land restitution process. The Appellants then went to the police. They also relocated elsewhere in Colombia and changed their phone numbers. Despite changing their numbers, the Appellants were phoned and threatened by the Los Rastrojos again in XXXX and XXXX 2019. The Appellants reported these threats to the police but no assistance was given.
- [5] The Appellants then abandoned the land restitution process and came to Canada to claim refugee protection. Since their arrival in Canada, the Appellants report that the AA's mother and sister in Colombia have been contacted by the Los Rastrojos seeking the money that the AA's father owes them. RPD's findings
- [6] The RPD found that the Appellants were credible about the threats they received from Los Rastrojos, the agent of harm (AOH). However, the RPD found that there was insufficient evidence that the Los Rastrojos would have the means or motivation to find them in Tunja or Paz de Rio. The RPD also determined that the motivation of the AOH would likely be lessened given that the Appellants have now abandoned the land restitution process. The RPD also considered evidence from the National Documentation Package (NDP) indicating that the Los Rastrojos are not present in Tunja or Paz de Rio.
- [7] With regard to the second prong of the IFA test, the RPD noted that the Appellants did not express any reasons why they could not relocate to the IFAs, other than the risk from the AOH. The RPD determined that relocation to the IFAs would be reasonable for the Appellants, and that they have the education, skills, and experience to obtain employment in the IFAs. Appellants' arguments
- [8] The Appellants allege that the RPD failed to properly consider the risk they would face in the IFAs.² They argue that they were located by the AOH when they relocated within Colombia and after changing their phone number, suggesting that they would also be located in the IFAs.³ The Appellants further note that the IFAs are only 2-3 hours from areas of previous persecution, and that it is unreasonable for the RPD to expect them to abandon their fear and move there.⁴ The Appellants also argue that the RPD erred in finding that the Los Rastrojos would not be interested in them due to them abandoning their land claim.⁵ Furthermore, the Appellants note that they did not legally abandon their land claim, but rather that they fled the country while the claim was ongoing.⁶

- [9] The Appellants also argue that the evidence cited by the RPD that 2% of the department of Boyaca (in which Tunja and Paz de Rio are located) is affected by the presence of narco-paramilitary groups contradicts its finding that they would be safe there, and that an IFA only exists if they can successfully live and find no similar or connecting danger.⁷ The Appellants also argue that the AOH can corrupt members of security forces in Colombia, and that the Appellants could be located by the AOH by using their resources and their ties to the authorities.⁸ The Appellants note that they were threatened because they attended the farm and proceeded with their petition for land restitution, and argue that this demonstrates the ties between the authorities and the AOH, as well as the AOH's influence with the authorities.⁹ NEW EVIDENCE The evidence presented by the Appellants is not accepted
- [10] The Appellants submitted five documents on appeal. Each of these documents is a newspaper article, titled as follows:
- a) Land claimants and social leaders: one murder per day (dated January 9, 2019)
 - b) Organized crime and armed saboteurs in times of transition (dated July 15, 2017)
 - c) Indepaz afirma que 338 municipios de Colombia tienen presencia (dated November 9, 2015)
 - d) Security council in Tunja by hired captain of the Inpec (dated June 19, 2019)
 - e) Organized crime groups (undated)
- [11] According to the law,¹⁰ I can only accept evidence that:
- i. arose after the RPD decision; or ii. was not reasonably available at the time of the decision; or iii. that the Appellants could not reasonably have been expected in the circumstances to bring to the RPD before the decision.
- [12] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible, and relevant before I can accept it.¹¹
- [13] The Appellants did not provide any submissions as to why this new evidence should be accepted. Given the lack of any explanation on this point, I do not find that the Appellants have satisfactorily explained why the documents (a) to (d), which pre-date the RPD decision of January 17, 2020, were not reasonably available or could not reasonably have been expected to have been provided to the RPD before its decision was rendered. For this reason, I find that these documents do not meet the threshold for the admission of new evidence set out in subsection 110(4) of IRPA.
- [14] Document (e) is undated. Given that the Appellants have failed to provide any arguments as to why this article meets the threshold for admittance pursuant to subsection 110(4) of the Act, I do not find that they have proven, on a balance of probabilities, that this article arose after the RPD decision, or was not reasonably available at the time of the decision, or that they could not reasonably have been expected to bring to the RPD before its decision was

rendered. Furthermore, after an examination of the article, I do not find that this article contains new information. Consequently, even if the article had been found to have met the threshold of subsection 110(4), I do not find that the Singh/Raza factors have been satisfied in this instance. As such, this document is not admissible on appeal.

ANALYSIS

- [15] I find that the determinative issue in this case is an IFA in Tunja and Paz de Rio. The test to determine whether a viable IFA exists has two prongs:
- (i) there is no serious possibility of the Appellants being persecuted or subjected, on a balance of probabilities, to a danger of torture or to a risk to their lives or of cruel and unusual treatment or punishment in the proposed IFA; and (ii) conditions in the IFA area are such that it would not be unreasonable, in all the circumstances, including those particular to them, for the Appellants to seek refuge there.¹²
- [16] Once the issue of an IFA has been proposed to the Appellants, the burden is on them to demonstrate that the proposed IFA is either unsafe or unreasonable.¹³ No nexus to the Convention
- [17] In this case, the RPD determined that the Appellants failed to demonstrate a nexus to the Convention and considered their claim under section 97 of the Act. Similarly, I find that the Appellants in this instance fear the AOH, the Los Rastrojos, as a result of threats emanating from their land restitution claim and debts allegedly owed by the AA's father. Consequently, I do not find that they have demonstrated a nexus to the Convention, and I will consider the claim under section 97 of the Act. As such, the burden is on the Appellants to prove that they would be, on a balance of probabilities, personally subjected to a risk to life, or a risk of cruel and unusual treatment or punishment, or a danger of torture upon their return to Colombia. Prong 1 - No s. 97 risk proven on a balance of probabilities
- [18] In determining whether the Appellants have proven they would be personally subjected to a s. 97 risk in the potential IFAs, I must consider the evidence before me regarding the means and motivation of the AOH to locate the Appellants in the IFAs. Motivation of the AOH to track the Appellants
- [19] I do not find that the Appellants have provided sufficient evidence to demonstrate, on a balance of probabilities, that the AOH has the motivation to locate them in the IFA locations. The Appellants testified that they had abandoned the land restitution process and they do not have any intention to follow through this process further. I find that this suggests that the motivation of the AOH has likely diminished, given the Appellants' evidence that the contact between the AOH and the Appellants began in 2017 shortly after they inquired about the farm, and they were not contacted again until XXXX 2019 when the land restitution process began progressing further. Given that the Appellants have abandoned this process and do not intend to revisit it, I find that the AOH's personal interest in the Appellants due to the land restitution process is likely diminished such that the AOH would not be motivated

to spend the time, money, and resources necessary to locate and track them to the IFAs on this basis.

- [20] Nevertheless, the Appellants allege that the AOH may want to track them down in the IFA locations because of the money the AA's father owes them. However, I do not find that the Appellants have proven that the AOH would, on a balance of probabilities, be motivated to track them throughout Colombia in order to have them repay this alleged debt. While the AOH is clearly interested in being repaid money they feel is owed, the evidence provided by the Appellants is that the AOH has since contacted other family members about this debt, including the AA's mother and sister. Given that the AOH now has other contacts to approach for repayment of this debt, I do not find that the Appellants have demonstrated, on a balance of probabilities, that the AOH would be willing to use its time, resources, and money to locate and track them to the IFA locations in order to seek repayment of this debt. Furthermore, while the AOH managed to obtain the Appellants' phone number after they relocated within Colombia and changed their number, I note that the Appellants have only been contacted by the Los Rastrojos by phone, and that they had never visited the Appellants in person. This too suggests that the AOH would not be motivated to commit the time, resources, and money required to launch a search for them throughout Colombia and track them to the IFA locations. Rather, I find that the Appellants' allegations that the AOH would be motivated to locate and track them to the IFA locations are speculative in this case and are not grounded in evidence. Means and ability to track the Appellants
- [21] Moreover, I do not find that the Appellants have proven that the AOH has the means and ability to locate them in the IFAs. The documentary evidence suggests that the Los Rastrojos are not present in Tunja or Paz de Rio, and further, that they are declining in power and disappearing.¹⁴ Moreover, as noted by the RPD, only 2% of the department of Boyaca (where Yunja and Paz de Rio are located) is affected by the presence of narco-paramilitary groups.¹⁵ While the Appellants argue that this suggests that the area is not safe for the Appellants, I do not find that this has been demonstrated. The onus is on the Appellants to show that the AOH could locate them in the IFAs, on a balance of probabilities. I do not find that 2% of the Boyaca department being affected by paramilitary activity proves that the Appellants could be located there by the AOH, especially given that the AOH is not known to be active in the department of Boyaca. While the Appellants may still fear other general narco-paramilitary activity upon their return to the IFAs, I find that this concern is a general risk faced by all Colombians and is not specific to the Appellants.
- [22] Furthermore, while the Appellants allege that the AOH are connected with state authorities and that these connections could be used to locate them in the IFAs, I do not find that the Appellants have provided sufficient evidence to prove, on a balance of probabilities, that the AOH has connections that it could use to locate them in the IFAs as alleged. Nor do I find that the Appellants have proven, on a balance of probabilities, that the AOH would be motivated to use any such connections to locate them throughout Colombia. Rather, I find that the Appellants arguments on this point are speculative. Similarly, while the Appellants

argue that the fact that they faced threats after visiting the AA's father's farm and starting their petition for land restitution demonstrates ties between the AOH and the authorities, I do not find this has been demonstrated. Without any corroborating evidence to prove that the AOH became aware of the Appellant's land petition through a to the authorities, I find that this allegation is simply speculative in nature and that the Appellants have failed to demonstrate, on a balance of probabilities, the alleged connections between the AOH and the authorities in this case. Means and motivation of the AOH not proven

- [23] I find that the Appellants have failed to demonstrate, on a balance of probabilities, that the AOH has the means and motivation to track them to the IFA locations. Consequently, I find that the Appellants have failed to prove, on a balance of probabilities, that they face a risk to their lives, or a risk of cruel and unusual treatment or punishment, or a danger of torture if they relocate to Tunja or Paz de Rio. Prong 2 - Reasonableness of the IFA
- [24] The Appellant made no arguments regarding the RPD's findings on the reasonableness of the IFA, those being that the Appellants have the education, skills, and experience to obtain employment in the IFAs. Rather, the Appellants' arguments regarding the reasonableness of the IFA relate to the risk they allege facing in the IFAs which I have considered above. I see no errors in the RPD's analysis requiring me to interfere with its findings on the reasonableness of the IFA, and I find that the Appellants have failed to demonstrate any conditions in the IFA such that it would not be unreasonable, in all the circumstances, including those particular to them, for the Appellants to seek refuge there.
- [25] While the Appellants have also made arguments with regard to state protection, I will not undertake an analysis on this point because I have found that the Appellants have not proven, on a balance of probabilities, that they would be personally subjected to a risk to life, or a risk of cruel and unusual treatment or punishment, or a danger of torture upon their return to Colombia.

CONCLUSION

- [26] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither a Convention refugees nor persons in need of protection. (signed) Alison Kennedy Alison Kennedy September 3, 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 2 Exhibit P-2, Appellant's Record, Memorandum at p.74. 3 Ibid. 4 Ibid. 5 Ibid. 6 Ibid. 7 Ibid. at p. 75. 8 Ibid. 9 Ibid. 10 Subsection 110(4) of the IRPA. 11 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385. 12 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.), at 710. 13 Ibid. 14 National Documentation Package, Colombia, 30 April 2019, tab 7.2: ??Paramilitary successor groups and criminal bands (bandas criminales, BACRIM), areas of operation and criminal activities, including the Clan del Golfo (also known as Urabeños or Autodefensas Gaitanistas de Colombia); state response ... Immigration and Refugee Board of Canada. 24 April 2017. COL105773.E. 15 National Documentation Package, Colombia, 30 April 2019, tab 7.24: ?The

presence and activities of ?Los Rastrojos, including in Buenaventura; information on their relationship with the Gaitanist Self-Defense Forces of Colombia (Autodefensas Gaitanistas de Colombia, AGC) [also known as Gulf Clan (Clan del Golfo)... Immigration and Refugee Board of Canada. 17 April 2018. COL106086.E.

RAD File / Dossier de la SAR : VC0-00898 VC0-00899 / VC0-00900 / VC0-00901 VC0-00902 RAD.25.02 (January, 2020) Disponible en français 2 Immigration and Refugee Board of Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés RAD.25.02 (January, 2020) Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/Internalflightalternative-refugee-appeal-division-2020--6a40c3b44cf2c72690fb28cc>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 25 October 2026 · Esheria