

CANADA / JUDGMENT

TC0-02245

COURT

Refugee Appeal Division

DECIDED

14 September 2020

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RAD File / Dossier de la SAR : TC0-02245

TC0-02246 / TC0-02247 / TC0-02248

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXX XXXXXXXX
XXXX XXXX

Personnes en cause

Appeal considered / heard at

Ottawa, ON

Appel instruit / entendu à

Date of decision

September 14 2020

Date de la décision

Panel

Pamela Arnott

Tribunal

Counsel for the persons who are the subject of the appeal

Michael F Loebach

Conseil des personnes en cause

Designated representative

XXXX XXXX XXXX XXXX

REASONS FOR DECISION

2 / 17

RULE 29

The post-perfection evidence presented by the Appellants is partially accepted.

- [5] In July 2020, the Appellants were asked to provide written submissions about two proposed IFAs: Barranquilla and Cartagena¹. In addition to their memoranda, they provided 8 additional documents. All these submissions are subject to Rule 29 of the RAD Rules, section 110(4) and the Singh/Raza² criteria.
- [6] Rule 29 provides that a document submitted after an appeal is perfected must not be used in the appeal unless it is allowed by the RAD. In deciding whether to allow the use of a document not previously provided, the RAD must consider any relevant factors, including the document's relevance and probative value, any new evidence that the document brings to the appeal and whether the person who is the subject of the appeal, with reasonable effort, could have provided the document when the appeal was perfected. ³ Following this analysis, any new evidence must meet the requirements of section 110(4) as well as the test set out in Singh/Raza of being relevant, credible and new.
- [7] The Appellants have provided an affidavit from Mr. XXXX XXXX, a letter from Major XXXX XXXX XXXX, an excerpt from the Registro Unico Empresarial, a letter from XXXX XXXX and four newspaper articles: two about murders of social leaders, one about the rise of the FARC and one about COVID-19 conditions. I find that the affidavit, the letter and the newspaper articles about social leaders and about COVID are admissible.
- [8] I find that the affidavit of Mr. XXXX XXXX is admissible. Mr. XXXX XXXX has provided his evidence about why the proposed IFAs are unsafe or unreasonable. It could not have been provided at the time of the perfection of the appeal. This evidence is relevant and probative and contains new evidence. I also find that this affidavit meets the requirements of section 110(4) as it could not have been provided at the time of the decision. I also find that this affidavit meets the Singh/Raza requirements as credible, relevant and new for the same reason.
- [9] Turning to email from XXXX XXXX XXXX XXXX, I find that this email is relevant and probative to the question of whether the Appellants have a risk from the FARC. The email indicates that six of the large paramilitary or criminal organizations of Columbia have committed crimes in the Barranquilla and Cartagena areas. This is the same information contained in the Fact-Finding Mission - Conflict Dynamics in the Post-FARC..." cited by the Appellants.⁴ Given that the request to the officer was in regards to the proposed IFAs and the RPD decision did not deal with IFAs, I also find that this evidence could not have been provided at the time of the perfection of the appeal. I find that this email also meets the requirements of section 110(4) as it was provided in response to a request about proposed IFAs, being a request that arose after the determination of the claims. In considering the Singh/Raza factors, I find that the document is new and relevant in determining the future risk to the family. However, I have no information which allows me to substantiate the author or determine the credibility of the information. Having considered all the Singh/Raza

factors, I find that this email is admitted.

- [10] In considering the factors set out in Rule 29, I find that the letter from XXXX XXXX is also not relevant or probative for the determination of the future risk of the Appellants, has no new evidence and could have been provided when the appeal was perfected. I do not allow this document to be used for this appeal.
- [11] I find that the excerpt from the Registro Unico Empresarial could have reasonably been provided during the RPD process or prior to the perfection of the appeal. The document purports to show that the Appellants can be found with ease by their agents of harm which was an issue at the RPD given the events in Bogota in September 2018. This is a topic about which the RPD member asked the Appellants⁵ and is one of the findings which with the Appellants disagree.⁶ I also have concerns about the Appellant's characterization of this evidence: I find that this document is of little probative value as it is a system to find businesses, not individuals. Finally, as a web-based public system, I find that the Appellants could reasonably have been expected to have provided this excerpt at the time of the perfection of the appeal. Having considered all the relevant factors including those identified in Rule 29, I do not allow this document to be used in this appeal.
- [12] The newspaper articles can be considered in three groups: two articles about the murders of social leaders, one article about the rise of the FARC and one article about shopping and COVID-19. I find that these articles met the requirements of Rule 29 as they were all published after the perfection of the appeal. I find that these articles have relevance and probative value and could not have been provided the document when the appeal was perfected. Turning to the requirements of section 110(4) and Singh/Raza, these articles are:
- a. "Between January and March 2020, 47 social leaders..." (3 June 2020) and "Murdered social leader in" (14 May 2020)

These articles arose the RPD decision, were not reasonably available at the time of decision and could not reasonably have been expected to have been produced before the decision. These articles are relevant to the Appellants' argument that their lives are in danger due to Mr. XXXX XXXX work advocating for victims of crime. While these articles repeats much of the information found in the articles provided by the Appellants during their RPD hearing and their appeal memoranda and in the NDP⁷, I find these articles provide an update to those materials. These two articles are admissible.

- b. "FARC dissidents now number" (31 May 2020)

This article arose the RPD decision, was not reasonably available at the time of decision and could not reasonably have been expected to have been produced before the decision. The article is relevant to the Appellants' argument that their lives are in danger due to Mr. XXXX XXXX work advocating for victims of crime. However, the content of the article repeats much of the information found in the articles provided by the Appellants at the RPD and in the NDP,⁸ I find this article is not new and is not admissible.

- c. "As Columbia faces critical weeks with COVID-19...." (19 June 2020)

This article arose the RPD decision, was not reasonably available at the time of decision and could not reasonably have been expected to have been produced before the decision. The article is relevant to the Appellants' argument that they are unable to move to either proposed IFA. It is also new given that it is dealing with the effects of the pandemic. I find this article is admissible.

NEW EVIDENCE

The evidence presented by the Appellants is partially accepted.

[13] According to section 110(4) of the Act⁹, 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 you could not reasonably have been expected in the circumstances to bring to the RPD before the decision.

[14] If the evidence meets one or more of these requirements, I must assess the newness, credibility, and relevance of the evidence in order to determine whether it is admissible. Only when new evidence is admitted do I determine whether to hold a hearing. In order to trigger a hearing, the new evidence needs to raise a serious issue with respect to the credibility of the people who are the subject of the appeal, be central to the decision of the claim, and, if accepted, justify allowing or rejecting the claim.¹⁰ In Singh¹¹ the Federal Court of Appeal dictates a narrow interpretation of section 110(4): the conditions set out in the Act must be met and there is no room for discretion on the part of the RAD. Section 110(4) is not to be used to complete a deficient record submitted before the RPD.¹²

[15] The Appellants have submitted four pieces of new evidence, three of which are newspaper articles relating to country conditions.

[16] Affidavit of the Principal Appellant (19 February 2020) This sworn affidavit is largely a summary of the procedural history of this claim which is not at issue. For the purposes of this application for new evidence, I am considering only paras 19-21 which contain the Appellant's responses to statements made in the RPD decision. I accept that these paragraphs arose the RPD decision and were not reasonably available at the time of decision. However, I find that responses to the issues identified by the RPD could reasonably have been given during the hearing. In my view, the Appellant is using his affidavit to try to correct a deficient record. Following the Federal Court's guidance in Singh, the affidavit is therefore not admissible.

[17] Newspaper article Telesur, "INDEPAZ confirms 27 social leaders...." (January 27, 2020). This article indicates that 27 leaders of various levels of government were killed in the first 27 days of 2020. The article mentions international organizations who are calling for the government to do more to guarantee the safety of leaders. This article arose the RPD

decision, was not reasonably available at the time of decision and could not reasonably have been expected to have been produced before the decision. The article is relevant to the Appellants' argument that their lives are in danger due to Mr. XXXX XXXX work advocating for victims of crime. However, the content of the article is not new given the existing information in the National Documentation Package (NDP)¹³ about the continued armed conflict as well as the articles provided by the Appellants during their RPD hearing.¹⁴ I find this article is not admissible.

- [18] Newspaper article Infobae "Columbia asks the US and" (January 22, 2020): This article indicates that Colombian government is asking that the FARC be considered a terrorist organization as the FARC announced in August 2019 that it is resuming its armed conflict following multiple breaches of the 2016 peace accord. This article arose after the RPD decision, was not reasonably available at the time of decision and could not reasonably have been expected to have been produced before the decision. The article is relevant to the Appellant's argument that they would be targeted in the future by the FARC but is not relevant to their argument that they were targeted in 2018 by the FARC. The content of the article is new in relation to the point that the FARC is resuming armed violence.¹⁵ I find this article is admissible.
- [19] Newspaper article "El Mundo News "Armed Strike in Columbia" (February 13 2020) This article indicates that two guerrilla organizations are threatening violence against the general population in the areas of Cataumbo and Cauca. This article arose the RPD decision, was not reasonably available at the time of decision and could not reasonably have been expected to have been produced before the decision. Turning to the additional criteria of new, credible and relevant, I find that this article is not relevant to the Appellants who came from the area of Huila near Neiva. I also find that much of the information in this article is contained within the record used at the RPD hearing.¹⁶ This article is not admissible.

REQUEST FOR AN ORAL HEARING

- [20] The Appellants have requested an oral hearing under subsection 110(6) of IRPA.¹⁷ I can only hold a hearing if I have accepted documentary evidence as new evidence, and if that evidence raises a serious issue with respect to the credibility of the person who is the subject of the appeal; if the evidence is central to the decision with respect to the refugee protection claim and that, if accepted, would justify allowing or rejecting the claim. I have admitted the newspaper articles about the FARC and the risk to social leaders and the email from XXXX XXXX XXXX XXXX. None of these documents raise a serious issue with respect to the credibility of the Appellants and therefore there is no jurisdiction to hold a hearing. The request is denied.

ANALYSIS

[21] My role is to look at all the evidence and decide if the RPD made the correct decision.¹⁸ The Appellants allege that the RPD erred in

- a. Its assessment of the Appellants' failure to claim in the United States
- b. Its assessment of the Appellants' delay in leaving Columbia;
- c. Its findings of implausibility;
- d. Its assessment of the risk to Mr. XXXX XXXX as a social leader;
- e. Its findings on the future risk to Ms. XXXX XXXX based on her past risk; and
- f. Its findings on state protection.

I have not found it necessary to address all of these issues as I find that a viable IFA is determinative of this claim. In particular, I have only addressed those issues, including credibility, which are inherent in the IFA analysis.

[22] In assessing this claim, I have been mindful of the adult claimants' ages, education and background. In addition, I am cognizant of the many difficulties faced by a claimant in establishing a claim, including cultural factors, the milieu of the hearing room, having the interpreter, and the stress inherent in responding to oral questions.

[23] The Appellants allege that they fear the FARC and FARC dissidents. The term "FARC dissidents" describes those members and units of the FARC who decided not to demobilize following the 2016 peace accord. At the time of the demobilization in 2017, there were approximately 11 000 members or collaborators who handed over weapons¹⁹ but approx. 1100-2500 have now rejected the peace accord or have joined the FARC dissident group.²⁰ The NDP indicates that these dissident groups are most active in the south of Columbia and the border with Venezuela²¹ where their activities focus on illegal mining, drug production and trafficking.²² These groups are currently decentralized and compete amongst each other for territory.²³ It is also reported that former FARC members have joined other criminal groups such as the ELN.

Implausibility and credibility

[24] The Appellants argue that the RPD erred in finding "the incidents as the claimant described never occurred and therefore does not believe what the principal claimant has alleged in this claim".²⁴ The Appellants argue that this finding was coloured by the findings on delay and failure to claim. They also argue that the RPD erred in finding "much of the claimant's testimony to be implausible".²⁵

[25] The Appellants correctly cite the Federal Court that implausibility findings can only be made in the clearest of cases. In this case, the RPD found that "much of the claimant's testimony was implausible"²⁶. I agree with the Appellants that the RPD erred in this finding in two

regards: I find that there is insufficient evidence to describe the entirety of the testimony as implausible, which is normally reserved for incontrovertible findings. I also agree with the Appellants that the RPD erred in not providing clear and transparent reasons for their finding but also find that I can remedy this error by conducting my own analysis of the evidence.

- [26] The Appellants argue that the RPD speculated about the motivation and actions of the agents of harm, without a factual basis for this speculation. They argue that this error taints the RPD's analysis of subjective fear and objective basis for that fear. I agree that the Appellants cannot be expected to know the mind of the agents of harm. On the other hand, the facts described by the Appellants can be interpreted both for and against the Appellants' claim: did they take the kids out of school or did the school year end²⁷; did Mr. XXXX end a six month contract with the intention of emigrating or of hiding from a threat; did the family move to Bogota in hiding or in advance of emigrating to Canada or the US? There are also important gaps in the evidence. The Appellants testified that they were fearful of their lives given the threats to Mr. XXXX XXXX in summer 2018 and Ms. XXXX XXXX experience in 2007. They reported the threat in June 2018 prior to Mr. XXXX XXXX departure from the municipal board. They testified that they changed their residence but stayed in the same municipality.²⁸ Mr. XXXX quit his job but as it was a six-month contract, this job was coming to an end. The Appellants obtained their visas to the US in July 2018 although their narrative does not indicate when they applied. The Appellants also testified that they were able to purchase airline tickets within 2 weeks of the incident in September²⁹. I also find that the events of September 2018 is at odds with the patterns of violence described in the NDP (which is a rapid escalation of violence),³⁰ Notwithstanding these concerns, I find that the RPD's finding of implausibility cannot be upheld as "implausibility can only be made in the clearest of cases".

Mr. XXXX XXXX status

- [27] The Appellants allege that the RPD erred in not assessing Mr. XXXX XXXX status as a social leader. I agree. The RPD discounted his evidence of his work with the two victim associations, the events on the bridge and the event at the cousin's house in September 2018 without engaging with the evidence. There is little in the reasons which would allow me to parse the facts upon which these critical events and actions were weighed. This is an error.
- [28] When a claimant swears that certain facts are true, this creates a presumption that they are true unless there is a valid reason to doubt them³¹. In assessing credibility, several factors may affect a claimant and their ability to establish a claim, including nervousness, cultural factors, and the difficulties inherent in responding to questions through an interpreter. While I agree with the RPD that the Appellants' account of events in June and September has some important gaps, I find that the basic facts of the claim have remained unchanged in all accounts.

[29] There is ample evidence in the NDP about the targeting of political leaders, justice system participants, victim advocates and human rights defenders.³² Mr. XXXX XXXX testified that he was a volunteer in an organization which brought the concerns of rural residents to government between February 2016 and September 2017.³³ He also testified that he was named to the XXXX XXXX for victims in September 2017. The UNHCR indicates that social leaders, particularly human rights advocates, may have a claim based on their imputed political opinion or on their risk to their lives but that each claim needs to be assessed on its own facts.³⁴ The Appellants have also cited many of the references in the NDP that the families of social leaders are also at risk.³⁵ I have also noted in my review of the NDP literature that targeted social leaders usually have a prominence which brings them to the attention of the armed guerrillas³⁶. I am satisfied, on a balance of probabilities that Mr. XXXX XXXX work may have brought him a prominence or a stature of some level which may have brought him to the attention of the armed guerrillas ³⁷. There is also no evidence that he was targeted prior to his volunteer position in the municipal organization for victims. His evidence was that he had volunteered with the victim's organization in 2016-2017, was elected to the XXXX XXXX in 2017 and worked for 6 months in 2018 for a group of 15 municipal counsellors. His evidence was that he was first contacted by criminal groups about his advocacy in June 2018. Having reviewed the totality of the evidence, I find that there is sufficient credible evidence that Mr. XXXX XXXX status as a social leader is a basis for a claim as a person in need of protection.

Ms. XXXX XXXX claim

[30] The Appellants argue that the RPD erred in discounting the problems between Ms. XXXX XXXX and the FARC due to the fact that they occurred in 2008. I disagree. I find, that the length of time that has passed is a relevant factor in the assessment of the likelihood of harm and forward-looking assessment of risk to Ms. XXXX XXXX. The evidence shows that she had had no more recent interactions with the FARC. I find that the RPD did not err.

[31] I have also considered whether section 108(4) of the Act applies to Ms. XXXX XXXX claim. This section provides that a person may be found to have refugee protection, even when it is otherwise safe to go back to their country of citizenship, due to compelling reasons related to their past persecution. I am mindful that the RPD did not make a determination that Ms. XXXX XXXX would have met the definition of a Convention refugee but for a change in circumstances. This is the first reason why section 108(4) does not apply³⁸. Secondly, the Federal Court has indicated that the past persecution must rise to the level of appalling or atrocious to benefit from this exception³⁹. I find that Ms. XXXX XXXX persecution does not meet this level: she was not hurt physically, she was able to work in various locations for 5 years before being forced to leave her position, she was able to live in Colombia for a further 10 years without further involvement with the FARC after quitting her job. I am satisfied that section 108(4) does not apply to Ms. XXXX XXXX.

[32] I have also considered the risk to Ms. XXXX XXXX and the minor children as family members of an alleged social leader. There is ample and uncontested evidence that families of social leaders are targeted by armed groups.⁴⁰ I note that Ms. XXXX and the minor children were not harmed during any of the alleged events although the agents of harm threatened to harm them on two occasions.⁴¹ As I have found that there is sufficient credible evidence of Mr. XXXX XXXX claim, I find that there is a related risk to his wife and children on that basis. Having reviewed the totality of the evidence, I find that there is sufficient credible evidence, viewed on a balance of probabilities, that Ms. XXXX XXXX and the minor children would be personally subjected to a risk to their lives, a risk of cruel and unusual treatment or punishment if they returned to Colombia.

The Appellants do not have a safe IFA.

[33] Refugee claimants are expected to seek protection in another part of their own country, if it is available, before they seek refuge in Canada.⁴² The notion of an IFA is inherent in the definition of a Convention refugee because refugee protection is a form of surrogate protection.⁴³ Once an IFA has been proposed, the Appellants bear the onus to demonstrate that there is a serious possibility of persecution or a risk to their life in the area identified as an IFA.⁴⁴

[34] The analysis for assessing an IFA has two parts according to the Federal Court in *Rasaratnam*.⁴⁵ I must first determine whether there is a serious possibility that the Appellants will be persecuted, or whether they face, on a balance of probabilities, a risk to their lives, torture, cruel and unusual treatment or punishment in the proposed IFA. Secondly, I must also be satisfied, after considering the Appellants' individual circumstances and the conditions in the proposed IFA, that it would not be unreasonable to seek refuge in the IFA. An IFA will only be viable if both criteria are met.⁴⁶ A high threshold of "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area," applies equally to both parts of this test.⁴⁷

There is a risk of harm in Columbia

[35] The Appellants have a viable IFA where they do not face a serious possibility of persecution or, on a balance of probabilities, a risk of harm in the proposed IFAs of Barranquilla or Cartagena. An IFA analysis requires a contextual approach, looking at the profile of the agents of harm, their motivation to search for the Appellants, and their ability to find the Appellants throughout Columbia. There can only be a serious possibility of persecution or a risk of harm if the agents of harm have both the means and the motivation to locate the Appellants.⁴⁸

[36] Given their finding of implausibility, the RPD did not make a finding that the agents of harm in 2018 were the FARC dissidents or another armed group. The Appellants testified that the FARC were the agents of harm in 2007 but speculated on the identity of the agents of harm

for the events of 2017-18. While I agree that the specific identities of the agent of harm need not be established by the Appellants, the onus remains on the Appellants to establish, on a balance of probabilities, that those they fear have the motivation and ability to locate them in Baranquilla or Cartagena.

[37] The objective evidence indicates that the FARC or its dissident elements continue to be responsible for violent crimes in Columbia and are increasing their numbers despite the 2016 peace accord⁴⁹. What is not clear is that the FARC or its dissidents have a presence in Baranquilla or Cartagena. The letter from XXXX XXXX XXXX XXXX indicates that multiple armed groups (including FARC dissidents) have committed crimes in the department of Atlantico. There is no time frame for this statement: they have committed crimes, will commit crimes? As a description of criminal organizations, this is hardly unexpected. The statement further reads

"the presence of members of these groups outside the law in Universities of these departments was determined, with the aim of forming clandestine structures and support networks, to carry out terrorist actions...."⁵⁰

I interpret this statement to mean that these groups are active in universities where they are creating networks for future terrorist attacks. I find that this statement is of limited help in analyzing the future risk to these specific Appellants.

[38] I have also considered the item in the NDP noted by the Appellants that the FARC dissidents "will be able to wield influence across Columbia".⁵¹ The remainder of that text discusses central and southern Columbia and one area in the far east near Venezuela: Barranquilla or Cartagena is not in the areas where the FARC dissidents will have influence. The objective evidence also indicates that the none of the illegal armed groups in Columbia cover all of its territory⁵² and the FARC dissidents are concentrated in areas important for drug production or drug trafficking which do not include Barquinilla nor Cartagena. I also note that the UNHCR Guidelines indicate that the FARC dissidents may have operational ability to target individuals in all parts of Colombia "irrespective of territorial control."⁵³ While this UNHCR document was prepared in 2014-15, I am satisfied, based on the updated information in the NDP and from the Appellant that the operational capacity of FARC dissidents to target social leaders has not significantly changed since 2015. I am satisfied, on a balance of probabilities, that the agents of harm, being FARC dissidents, have the means to target the Appellants in the proposed IFAs.

[39] The Appellants argue that the episode on the bridge and in Bogota in September show that the FARC dissidents have the motivation to find the Appellants. The RPD found that these events did not happen. While I share some of the RPD's concerns about credibility, there is insufficient evidence for me to agree with the RPD's conclusion. I find, based on the Maldonado⁵⁴ principle, that the June and September events occurred. These events, in particular that the gang was willing and able to trace the Appellant to Bogota, show that the agents of harm are motivated to find him.

- [40] The Appellants argue that Mr. XXXX XXXX, as a social leader, will be at risk from armed groups in all locations in Colombia. While I accept that social leaders have been increasingly targetted in Colombia, I am unable to agree that all social leaders are at risk in all areas. I find that the caselaw cited by the Appellants does not indicate that social leaders are at risk in all locations.⁵⁵ I also find that this is a factual question which may change over time in Colombia. I note that Mr. XXXX XXXX did not initially describe himself as a social leader in his testimony and testified at the RPD hearing that he was not longer working as social leader.⁵⁶ He was not engaged as an advocate or social leader after his wife was threatened and lost her job in 2007. On the other hand, he testified in his July 2020 affidavit, perhaps conveniently, that he had every intention of continuing to work as a social leader regardless of the dangers.⁵⁷ The UNCHR indicates that social leaders may be at risk based on their prominence or profile.⁵⁸ Based on two years volunteer work for victims of armed conflict and his membership on the municipal board for victims, I am satisfied, on a balance of probabilities, that MrXXXX XXXX XXXX has this profile.
- [41] The Appellants need not establish that their agent of harm would be able to find them, but merely that, on a balance of probabilities, they would be personally subjected to a risk to their lives, a risk of cruel and unusual treatment or punishment if they returned to Columbia in the proposed IFAs.⁵⁹ This is a relatively low threshold. Based on Mr. XXXX XXXX profile as a social leader and his family's profile as family members of a social leader, I find that the Appellants face a risk of cruel and unusual treatment or punishment if they returned to Columbia and that they do not have a viable IFA.
- [42] Given this finding that the proposed IFAs are not safe for the Appellants, I do not need to consider the second prong of the IFA analysis.
- [43] Accordingly, I find, on a balance of probabilities, the Appellants' claims of facing a future risk or threat of death by the FARC dissidents or another armed group have been established. The Appellants have established that, on a balance of probabilities, they would be personally subjected to a risk to their lives, a risk of cruel and unusual treatment or punishment if they returned to Columbia.

CONCLUSION

- [44] The appeal is allowed. Pursuant to subsection 111(1)(b) of the IRPA, I set aside the determination of the RPD and substitute my own determination that the Appellants are persons in need of protection.

(signed)

Pamela Arnott

Pamela Arnott

September 14 2020

Date

1 The Appellants were advised at the RPD hearing that IFA was an issue and provided oral testimony about Barranquilla, Bogota and Cartagena as proposed IFAs. See RPD-1, Transcript at p 16.

2 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96. Canada (Citizenship and Immigration) v. Raza, 2007 FC 385.

3 RAD Rules, Rule 29.

4 See P-3, Reponse to Member's Direction citing the NDP for Columbia 12 June 2020) item 1.8 "Fact-finding Mission Report: Conflict Dynamics in the Post-FARC-EP Period" December 2018 at p 57. This item was added to the NDP after the rejection of this claim but cited by the Appellants in their submissions.

5 RPD-1, Audio recording at 1:23.

6 RPD-1, Transcript at p 23, 24 and RPD Reasons for Decision at para 16-17.

7 See RPD-1, RPD Decision, Exhibit 8 "Mass killing of Colombia's social leaders 'symstemic attack on peace'", "702 social leaders and 135 ex-combantants would have been killed...", "The paramilitaries control everything", "Kidnappings and death in combat are down but....", "Let Colombia know at once who the killers ...".

8 See P-3, Response to Member's Direction at p 14 citing NDP for Columbia, 12 June 2020, item 4.3 "Chronicle of a Threat Foretold: the ex-FARC Mafia". See also RPD-1, "The first violent threat against the country are the ...".

9 Immigration and Refugee Protection Act (IRPA), SC 2001, c 27, as amended, section 110(4). ("the Act")

10 IRPA, at ss. 110(6).

11 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96.

12 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96.

13 RPD-1, National Documentation Package (Columbia) 31 May 2019 (NDP Columbia) item 1.7 "UNCHR Eligibility Guidelines for Assessing....."; item 2.9 "Colombia: No Peace for Human Rights Defenders"; item 2.11 "Follow-up to Recommendations Made by the IACHR in"; item 7.9 "Recycled Violence: Abuses by FARC Dissident Groups....."

14 See RPD-1, RPD Decision, "Mass killing of Colombia's social leaders 'symstemic attack on peace'", "702 social leaders and 135 ex-combantants would have been killed...", "The paramilitaries control everything", "Kidnappings and death in combat are down but....", "Let Colombia know at once who the killers ...".

15 The NDP for Columbia was updated on 12 June 2020 and includes similar information.

16 RPD-1, RPD Decision, "The first violent threat against the country are the ...". See also P-3, Response to Member's Direction at p 14 citing NDP for Columbia, 12 June 2020, item 4.3 "Chronicle of a Threat Foretold: the ex-FARC Mafia".

17 Appellant's written statement, at para. ii.

18 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145

19 NDP for Columbia (31 May 2019), item 7.22 "The Revolutionary Armed Forces of Columbia" at p 2.

20 The number of dissidents varies considerably in the literature. See NDP for Columbia (31 May 2019), item 7.22 "The Revolutionary Armed Forces of Columbia at p 4-5" and P-1, Appellants' Record "Columbia asks the US and the EU to include FARC dissidents...." at p 1.

21 NDP for Columbia (31 May 2019), item 1.2 "Illegal Armed Groups' Territories" at p 4-5. This item was unchanged in the most recent NDP available at the time of this decision, being 12 June 2020.

22 NDP for Columbia (31 May 2019), item 7.22 "The Revolutionary Armed Forces of Columbia..." at p 5;

23 NDP for Columbia (31 May 2019), item 7.22 "The Revolutionary Armed Forces of Columbia..." at p 6.

24 RPD-1, RPD Decision, Reasons for Decision at para 18.

25 RPD-1, RPD Decision, Reasons for Decision at para 11.

26 RPD-1, RPD Decision, Reasons for Decision at para 11.

27 RPD-1, RPD Decision, Basis of Claim at line 182.

28 RPD-1, RPD Decision, Basis of Claim at line 182-83.

29 The Appellants argue that they were not given the opportunity to explain why they purchased their tickets to the United States in XXXX 2018 when they had valid visas in July 2018. Having reviewed the transcript and the audio recording, I find that the Appellants were not clearly asked this question. I agree that this was an error of the RPD. However, I note that the Appellants, by not taking the opportunity in their affidavit or memoranda in this appeal, have not provided me with any helpful evidence. The Appellants cannot argue that the RPD was unreasonable in its factual conclusion when they fail to take the opportunity to correct any error in their appeal. I am left with the fact that they remained in a situation and a place which they alleged to be dangerous for 2 months without making substantial changes to their living arrangements.

30 RPD-1, RPD Decision, National Documentation Package, Colombia, 31 May 2019, tab 7.16: ? Colombia. 2019 Crime and Safety Report. United States. Overseas Security Advisory Council. 18 March 2019.

31 Maldonado v Canada (Employment and Immigration) 1980 F.C. 302 (CA)

32 RPD-1, National Documentation Package, Colombia, 31 May 2019, tab 1.7: ?UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015. HCR/EG/COL/15/01. This item is unchanged in the most recent NDP at the time of this hearing, being 12 June 2020.

33 RPD-1, Appellant's Basis of Claim at p 4.

34 RPD-1, RPD Decision, National Documentation Package, Colombia, 31 May 2019, tab 1.7: ? UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015. HCR/EG/COL/15/01. This item is unchanged in the most recent NDP at the time of this hearing, being 12 June 2020.

35 P-3, Response to Member's Directions at p 9 and 13.

36 Note also the UNCHR Eligibility Guidelines which note that any assessment must be done on a case-specific basis, including for human rights defenders.

37 See RPD-1, RPD Decision, Narrative of Mr. XXXX XXXX at pg 4 and Exhibit B of Affidavit of XXXX XXXX (26 August 2019) "Association for Victims of", "Letter of Support from XXXX XXXX XXXX XXXX XXXX XXXX XXXX"

38 See Lici v Canada (Citizenship and Immigration) 2011 FC 1451 at para 16.

39 Yamba v. MCI 2000 FCJ 458 (FCA), Velez v. MCI 2018 FC 290

40 P-3, Response to Member's Directions at p 8 and 13 citing NDP for Columbia (12 June 2020), item 2.13 "Visit to Columbia: Report of Special Rapporteur....." and item 1.17 "UNHCR Eligibility Guidelines for Assessing"

41 See RPD-1, Transcript at p 24 and P-1, Appellant's Memoranda at para 34.

42 Canada (Attorney General) v. Ward, [1993] 2 SCR 689 at 752.

43 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 FC 589.

44 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 at 710. See also: Okechukwu v. Canada (Citizenship and Immigration), 2016 FC 1142 at para. 35.

45 Ibid.

46 Ibid. at 711; Calderon v. Canada (Citizenship and Immigration), 2010 FC 263 at para. 10.

47 Adebayo v. Canada (Immigration, Refugees and Citizenship), 2019 FC 330 at para. 53.

48 Nimako v. Canada (Citizenship and Immigration), 2013 FC 540 at para. 7; Mayorga Gonzalez v. Canada (Citizenship and Immigration), 2012 FC 987 at para. 35.

49 RPD-1, RPD Decision, "The first violent threat against the country are the ..."; P-1, Appellants' Record "Columbia asks the US and the EU to include FARC dissidents...." at p 1.

50 P-3 "Response to Member's Direction.

51 P-3 "Response to Member's Direction" citing NDP for Columbia (12 June 2020) item 4.8 "Major Implications of Former FARC Leadership Returning to War",

52 NDP for Colombia, 31 May 2019, item 1.2 "Columbia's Illegal Armed Groups" at p. 3, item 7.22 "The Revolutionary Armed Forces...." at p 18. This item was unchanged in the most recent NDP available at the time of this hearing, being 12 June 2020.

53 NDP for Colombia, 31 May 2019, item 1.7 "UNHCR Eligibility Guidelines for Assessing" (September 2015). This item was unchanged in the most recent NDP available at the time of this hearing, being 12 June 2020.

54 Maldonado v Canada (Employment and Immigration) (1980) 2 F.C. 302 (CA)

55 Henguya v. Canada (Minister of Citizenship and Immigration) 2013 FC 483.

56 RPD-1, Transcript of Hearing at p 29

57 P-2, "Appellant's Affidavit" Reponse to Member's Direction at para 16.

58 NDP for Columbia, 31 May 2019, item 1.7 "UNHCR Eligibility Guidelines for Assessing" (September 2015). This item was unchanged in the most recent NDP available at the time of this hearing, being 12 June 2020.

59 Henguya v. Canada (MCI), 2013 FC 483, at para. 16.

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