

CANADA / JUDGMENT

MB9-02352

COURT

Refugee Appeal Division

DECIDED

24 March 2021

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RAD File No. / No de dossier de la SAR: MB9-02352

MB9-02353 / MB9-02355

Private Proceeding / Huis clos

De Novo

Reasons and decision - Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Montréal, Quebec

Appel instruit / entendu à

Date of decision

March 24, 2021

Date de la décision

Panel

Me Kristine Plouffe-Malette

Tribunal

Counsel for the persons who are the subject of the appeal

Stewart Istvanffy

Conseil des personnes en cause

Designated representative

XXXX XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] XXXX XXXX XXXX (female appellant), XXXX XXXX XXXX XXXX (minor appellant) and XXXX XXXX XXXX (male appellant), citizens of Colombia, allege that they have received death threats from the Revolutionary Armed Forces of Colombia (FARC) since 2002.
- [2] The Refugee Protection Division (RPD) found the appellants' testimony to be credible, but concluded that they had an internal flight alternative (IFA) in Cartagena, because since the adoption of peace agreements in 2016, the FARC would no longer have the ability, means or interest to find them. At the first appeal, the Refugee Appeal Division (RAD) adopted the RPD's conclusions and confirmed the rejection of their refugee protection claim.
- [3] The Federal Court found this decision to be unreasonable because it was based on a cursory review of the documentary evidence regarding the FARC's ability to act, a misunderstanding of the burden of proof on the refugee protection claimants, in this case the appellants, and, lastly, because, in the Court's view, the RAD did not properly apply the test in subsection 108(4) of the Immigration and Refugee Protection Act (IRPA), which allows for an exception for "compelling reasons."
- [4] The Federal Court, however, rejected the application for judicial review filed by XXXX XXXX XXXX, the appellants' son with United States citizenship, of majority age in this case, because, in the Court's opinion, the conclusion that he had no fear of persecution in the United States was reasonable, a conclusion that was not challenged.
- [5] Since the RAD considers that the appellants have established, on a balance of probabilities, that there is no safe location for them should they return to Colombia, the RPD's determination is set aside, the appeals are allowed and the appellants are granted refugee status within the meaning of section 96 of the IRPA.

BACKGROUND

- [6] Both the female appellant and the male appellant were victims of the FARC between 2002 and 2016.

- [7] Originally from Valle del Cauca, a Colombian region long dominated by the FARC's presence, eight members of the female appellant's family, basically XXXX, were abducted, tortured and murdered between 2002 and 2016 on suspicion of collaborating with opposing paramilitary militias. Thus, political opinions antagonistic to those defended by the FARC were imputed to them.
- [8] Of these eight individuals, the father, a brother and a cousin of the female appellant were murdered in 2002, her first husband was murdered in 2003, and she was personally threatened. She then sought to protect herself by going into hiding, while moving constantly within the country. She also attempted to find safe haven in Ecuador in 2010-2011, without success due to the economic situation in that country.
- [9] In 2012, another of the female appellant's brothers was murdered. Then, the male appellant, newly married to the female appellant, was personally subjected to death threats, because the FARC demanded that he pay them money from the company where he worked.
- [10] The male appellant fled Colombia to the United States in XXXX 2013, and the female appellant joined him in XXXX 2014, followed by her son, the minor appellant, in XXXX 2015.
- [11] In November 2016, when the appellants were out of the country, another of the female appellant's brothers, having returned to his home region after an absence of 15 years, was abducted by the FARC and has not been found since.
- [12] Fearing U.S. Immigration policies, all the appellants crossed the Canadian border in 2017 to claim refugee protection.

Refugee Protection Division decision

- [13] On January 7, 2019, the RPD rejected the appellants' refugee protection claims because, although it found their account and allegations credible, it also concluded that they had an IFA in Cartagena. After noting that this city is located more than 1,000 km from the city of Palmira, the appellants' primary home, it considered that the FARC had neither the motivation nor the means to find them in Cartagena.
- [14] It relied on the ability of the appellant's brother to live for 15 years outside their home region without being detected by the FARC, as well as their departure from the country for more than five years, to conclude that the FARC would not be motivated to look for them.
- [15] Relying on the documentary evidence available at the time it rendered its decision, the RPD concluded that the FARC did not have the capacity it once had, that no armed group was active throughout the entire territory, that the FARC's territory of operation was concentrated in the south of the country and that it was absent from the northeast, where Cartagena is located.

- [16] The RPD asked the appellants to explain why they could not relocate to Cartagena. The female appellant asserted that the FARC was everywhere in the country, while the male appellant specified that they could find them no matter where they lived.¹ This testimony did not convince the RPD, and, after reviewing the appellant's profile, it concluded [translation] "that it is not unreasonable for the claimants to move to Cartagena [...] [nor] objectively unreasonable for them to relocate [there]."²
- [17] Finally, the RDP concluded that the FARC had always been active in Colombian territory, and, therefore, was of the opinion that there was no change in circumstances that would allow it to consider the "compelling reasons" exception.

SCOPE OF THE APPEAL

- [18] In accordance with Huruglica,³ the RAD must carry out an independent review of the evidence submitted in support of an appeal, and, except where the RPD enjoys a real advantage as to the issue of credibility, it must apply the correctness standard. In this case, the RAD conducted such an independent review of all of the evidence, including listening to the two hearings before the RPD. It does not consider that the RPD enjoyed a particular advantage in assessing the appellant's credibility, and, as a result, applied the correctness standard.

ANALYSIS

Issue in this appeal

- [19] On November 27, 2020, the Federal Court ruled that the RAD's decision was unreasonable in terms of its conclusion regarding the IFA and also in the "compelling reasons" exception. It found three errors in the RAD's decision: two errors in the evaluation of the first IFA criterion and one error in the "compelling reasons" analysis.
- [20] In this second appeal, since the RAD believes that the appellants provided credible testimony, that they established a serious possibility of persecution and that they do not have state protection, the evaluation of the first IFA criterion is the main issue raised on appeal.

Credibility and well-founded fear of persecution

- [21] According to Maldonado, sworn testimony given by refugee protection claimants-in this case, the appellants-is presumed to be true unless there are valid reasons to doubt its truthfulness.⁴ This presumption is not absolute and will be displaced if there are reasons to doubt the testimony. After reviewing all the appellants' testimony, the RAD is of the opinion that they provided credible testimony, free from contradictions, omissions and inconsistencies. Several of the female appellant's family members were murdered and victimized by the FARC between 2002 and 2016. They also were personally threatened by the FARC. The female appellant also was forced to relocate regularly, accompanied by her son,

to avoid detection. Upon his return to Palmira, the male appellant was subjected to an extortion attempt by the FARC, which prompted him to flee the country. Ultimately, the RAD concludes that the appellants established, on a balance of probabilities, the allegations in support of their refugee protection claim.

- [22] Moreover, the RAD concludes from its own analysis that they established a well-founded fear of prosecution for reasons of political opinion imputed by the FARC to the female appellant's family members, as well as to the appellants, in Palmira, and, more broadly, in Valle del Cauca.
- [23] It was because of their lack of collaboration with the FARC that various members of the female appellant's family were murdered and abducted. The FARC is a revolutionary and political movement that uses violence to impose its ideology. In the female appellant's opinion, they used the murders of her family members as examples to other farmers, to demonstrate how those who do not cooperate with them are treated. The RAD concludes that they established that they were targeted by the FARC for reasons of imputed political opinion. Furthermore, they established a serious possibility of persecution by reason of their presumed opposition to the FARC.

Internal flight alternative

Applicable legal principles

- [24] As the Federal Court has noted, because the protection accorded to refugees is subsidiary, it is important, before reaching a conclusion and according this status to a refugee protection claimant, to consider the possibility of a flight alternative even within the claimant's country of origin. It is settled law that this IFA is assessed based on a two-pronged test,⁵ which seeks to determine whether there is a location elsewhere in the country where the refugee protection claimant would not have a well-founded fear of persecution nor be exposed to risk,⁶ and, in the circumstances, whether it would be objectively reasonable for the claimant to settle there.⁷
- [25] The Federal Court notes that the nature of the burden of proof on the claimant seeking refugee protection in Canada under section 96 of the IRPA is the same when the time comes to assess the IFA.⁸ Therefore, in accordance with the Supreme Court's decision in *Chan v. Canada*, the Court notes that a refugee protection claimant must establish a serious possibility of persecution, and not that there exists, on a balance of probabilities, a possibility of persecution.⁹ These conclusions are reminiscent of the Federal Court of Appeal's finding in *Thirunavukkarasu*, which holds that the IFA analysis is inherent in the granting of status following the filing of a refugee protection claim, meaning that an IFA is analyzed differently based on the legal arguments in section 96 and subsection 97(1) of the IRPA. Furthermore, this same Court clearly established the burden of proof to be applied under section 96 of the IRPA in *Adjei*:

- [18] What is evidently indicated by phrases such as "good grounds" or "reasonable chance" is, on the one hand, that there need not be more than a 50% chance (i.e., a probability), and on the other hand that there must be more than a minimal possibility. We believe this can also be expressed as a "reasonable" or even a "serious possibility", as opposed to a mere possibility.¹⁰
- [26] Not only has this conclusion been repeatedly reiterated by the higher courts,¹¹ but the distinction is relevant to assessing the serious possibility of future persecution to be analyzed in the first part of an IFA review. In this sense, Justice Grammond notes, in *Gomez Dominguez v. Canada*, the words of Justice de Montigny in *Pacificador v. Canada*:

It is well established that the standard of proof a refugee claimant must satisfy to show an objective basis for a fear of persecution is a serious possibility or reasonable chance of persecution in the future. The facts grounding the claim, however, must be established on a balance of probabilities. In other words, one must distinguish between what happened in the past, to be established on the civil standard of the balance of probabilities, and what will happen in the future, to be determined on the basis of the reasonable chance yardstick.¹²

- [27] It is therefore established that the evaluation of past and present events supporting the refugee protection claim must be based on the balance of probabilities standard, while the prospective assessment of fear allegations, including those related to the IFA, must be based on the serious possibility of persecution standard.¹³ Ultimately, this is consistent with the very idea that underpins any review of a refugee protection claim when it comes to establishing the basis of a fear of persecution, i.e., that it be assessed prospectively and not retroactively.¹⁴
- [28] Recently, Justice McHaffie described the framework of analysis and the burden of proof with respect to an IFA in the following terms:
- [8] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu*, at pp. 595-597; *Hamdan v. Canada* (Immigration, Refugees and Citizenship), 2017 FC 643 at paras. 10-12.¹⁵
- [29] In summary, the RAD takes from the holdings of the higher courts that the IFA determination is assessed on the basis of the so-called balance of probabilities burden. However, the first prong of the IFA is assessed on the basis of the same burden of proof as in section 96 and subsection 97(1) of the IRPA, that is, respectively, the serious possibility of persecution or a balance of probabilities that a claimant would be personally at risk should they return to the country. In addition, with respect to the first prong of the IFA assessment based on the legal argument in section 96 of the IRPA, it is important for a panel to analyze the factors that are the ability of the agent of persecution as well as the motivation of the

latter to locate the claimant. Justice McHaffie of the Federal Court distinguished these concepts as follows:

"It is important to note that there is a difference between a persecutor's ability to pursue an individual throughout a country and his desire to do so or interest in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution.¹⁶

[30] A combined reading of the Federal Court teachings allows the RAD to assert that while the agent of persecution's ability to act-an important factor, although not decisive in itself-rests essentially on evidence of past action, thus requiring the application of the burden of proof on a balance of probabilities; rather, the determination of the agent of persecution's motivation requires a burden of proof of serious possibility, because here this is an assessment of future risk that a claimant would face should they return to the country. Finally, once this analysis is complete, the decision-maker must conclude its assessment of the IFA's first prong by responding to the initial question of whether or not the claimant would face a serious possibility of persecution, considering its analysis of the agent of persecution's ability and motivation.

[31] In this case, it is not clear from the RAD's decision that a distinction was made between the two standards of proof applicable to the first prong of the IFA test mentioned above. Therefore, with due respect to the RPD, in the absence of a statement to that effect, it is not possible to know whether it applied the serious possibility or balance of probabilities standard in analyzing the FARC's ability and motivation-two components in assessing the serious possibility of future persecution-to seek out the appellants, including in Cartagena, which is the IFA identified at the hearing. Consequently, the RAD's intervention is justified.

There is a serious possibility of persecution should the appellants return to Cartagena

[32] In its analysis of the appellants' testimony and the documentary evidence, the RPD concluded that the FARC had neither the motivation nor the ability to locate the appellants should they return to Cartagena. It believed that the FARC had no motivation to search for them, because, first, the appellant's brother was able to live in the country for 15 years and was abducted only after he returned to live in his home region. Second, the passage of time would, according to the RPD, have eroded the FARC's interest in the appellants, who had been out of the country for approximately five years by the time of the hearing. Relying on the documentary evidence in the National Documentation package (NDP) available at the time of the hearing, the RPD concluded that the FARC did not occupy the territory of Cartagena, that it no longer had the means to act throughout the territory and that the city of Cartagena, being more than 1,000 km from the appellant's city of residence, therefore offered a safe IFA.

- [33] On appeal, the appellants argued in their memorandum that the RPD erred in its analysis of the IFA's first prong, because it failed to consider all the evidence submitted regarding the FARC's ability to find them, as well as the FARC's motivation. In the opinion of the RAD, the appellants are correct.
- [34] At their RPD hearing, the appellants asserted that they feared they would meet the same fate as the other members of the female appellant's family: they feared being murdered by the FARC. This is the alleged serious possibility of persecution that must be analyzed under the first prong of the IFA.
- [35] As Justice Grammond has noted, the ability to act and the motivations of the agents of persecution are central to the assessment of the IFA's first prong. There is also a consistent line of case law to this effect and the RAD believes that both factors must be analyzed here.¹⁷ The RAD is of the opinion that the appellant established that the FARC has the motivation to harm them should they return to Colombia, including in the city of Cartagena. They established, on a balance of probabilities, that eight members of the female appellant's family were held captive, tortured and murdered by the FARC between 2002 and 2016.¹⁸ Furthermore, the FARC abducted the female appellant's brother in 2016, a few months after he returned to his home region following a 15-year absence. However, the female appellant's brother did not settle elsewhere in the country in peace and safety; she asserted at the hearing that, like her, her brother moved around the country this entire time, relocating frequently to avoid detection.¹⁹ Therefore, when the RPD concluded that the female appellant's brother was able to live for 15 years without being disturbed, not only is this inconsistent with the female appellant's testimony, but the RPD omits the fact that he was eventually abducted by the FARC, despite the passage of time. Thus, it cannot be asserted that the FARC no longer has the motivation to find the appellants because they have been absent for almost seven years now, if it was motivated to abduct the female appellant's brother 15 years after the cabal against members of this family began.
- [36] It is true that this abduction, the latest incident involving a member of the female appellant's family and the FARC on the record, occurred in their home region, where the initial problems arose in 2002. However, according to the female appellant's account, while the FARC was motivated to locate most of her family members in Palmira, they nevertheless pursued and displaced some of them to Cali, but also to Tenerife, thereby acting outside their main area of activity in Valle del Cauca. In the opinion of the RAD, it is possible to conclude that the FARC's motivation to pursue the appellants extends throughout the entire country.
- [37] The RAD is also of the opinion that the FARC has the ability, on a balance of probabilities, to attack them, should they return to Colombia. It is important to note that, in making this conclusion, the RAD relies on the updated documentary evidence, namely, the NDP on Colombia dated June 12, 2020, as well as on recent case law—two elements that post-date the RPD's decision, and, in some instances, post-date the RAD's first decision.

- [38] Based on the documentary evidence, important members of the FARC have taken up arms and have gained some power and control over the territory, undermining the supposed success of the peace agreements.
- [39] In March 2020 the Research Directorate of the Immigration and Refugee Board of Canada (IRB) published the report of a mission carried out in partnership with a similar body in Costa Rica in March 2019, entitled Colombia: Fact-Finding Mission Report. Conflict Dynamics in the Post-FARC-EP Period and State Protection?.
- [40] This report states that the implementation of the peace agreements is difficult, complex and polarized because of the Colombian political context. Despite the signing of these agreements, it is emphasized that the acts of violence and forced displacements have persisted, because while certain individuals have been demobilized, several actors and members of criminal organizations are still active.²⁰ According to this report, in 2016, at the time that the peace agreements were signed, the FARC had between 13,000 and 15,000 members. FARC dissidents, that is, FARC members opposed to the peace process, began their activities as these agreements were being negotiated. These dissidents are now reported to be members of 22 armed groups, including approximately 1,280 former FARC members,²¹ spread over 58 of Colombia's 1,122 municipalities, with representation in 13 of the country's 32 departments, covering all regions but not the entire territory.²² Therefore, control of the territories formerly occupied by the FARC has reportedly more or less been taken over by the country's second largest armed group, Ejército Popular de Liberación (EPL) [Popular Liberation Army], FARC dissidents, paramilitary groups and drug trafficking organizations. Nor should one ignore the fact that the exact location of certain FARC members has never been officially known, and has not been known even since the signing of the peace agreements. Consequently, it is not possible to know with precision the FARC's territory of action.²³
- [41] The organization InSight Crime published a report in November 2019, entitled Chronicle of a Threat Foretold: The ex-FARC Mafia. The authors of the latter estimated that FARC dissidents number around 3,000 members, a figure that has allegedly shown signs of growth in recent years. In addition, it is noted that as of October 2019, the phenomenon of FARC dissidents-or ex-FARC mafia-continues to expand and increase its abilities. In this sense, FARC dissidents are reportedly present in 18 departments and active in 117 municipalities.²⁴ In comparing the figures in the IRB report, it can only be concluded that the FARC is gaining ground, while at the same time intensifying its ability to act. This conclusion is also supported by a joint reading of the various maps of Colombian territory presented in this report, which confirm that FARC members are present, or that they carry out violent actions or maintain illicit economic activities, mainly linked to drug trafficking, in almost all Colombian regions.²⁵ Furthermore, the official statement by one of the FARC leaders in August 2019, that they intended to take up arms again, means that they are no longer positioned as a local or regional threat, but rather as a national threat.²⁶

- [42] In the RAD's opinion, the evidence shows that the FARC is not what it once was, if one looks back over the fifty years of the Colombian armed conflict. However, while their ability to act has been reduced, it is not possible to assert that they no longer have the ability to act throughout the entire Colombian territory. On the contrary, the documentary evidence suggests that they still have significant means to act.
- [43] Ultimately, given the previously demonstrated incidents, coupled with the review of the documentary evidence, the RAD concludes that the FARC would still have the motivation and sufficient means to find the appellants should the latter return to Colombia. While each case is unique, to be decided based on the evidence on record, this analysis is reinforced by recent Federal Court case law that emphasizes the importance of analyzing the documentary evidence in assessing the IFA when a person claims to be pursued by the FARC in Colombia. As Justice Grammond notes in Gomez Dominguez, these decisions have generally found it unreasonable to recognize the existence of a safe IFA in an area based on the absence or withdrawal of the FARC when a person has established that they are threatened by them.²⁷ Relying on the signing of the 2016 peace agreements to consolidate the diminished capacity of the FARC would, moreover, constitute a piecemeal reading of the evidence.²⁸ It is now clear that these agreements have not been successful and may even lapse.²⁹
- [44] In conclusion, the RAD is satisfied, on a balance of probabilities, that there is no safe IFA for the appellants in Colombia. Given that they have rebutted the first prong of the IFA test, it is not necessary to proceed with an analysis of the second prong.
- [45] Furthermore, the RAD is also of the opinion that the documentary evidence analyzed above, particularly the IRB report underlining the major security issues faced by FARC victims despite the adoption of laws and aid programs for victims of armed conflict, shows that Colombian national authorities are not in a position to protect the appellants.³⁰ The evidence for the lack of state protection, should the appellants return to the country, is clear and convincing. This presumption is rebutted.

CONCLUSION

- [46] In accordance with paragraph 111(1)(b) of the IRPA, the appeal is allowed, and the RPD's determination that the appellant is neither a Convention refugee nor a person in need of protection within the meaning of subsection 97(1) of the IRPA is set aside and substituted by the present decision.
- [47] The appellants are refugees within the meaning of section 96 of the IRPA.

(signed)

Kristine Plouffe-Malette

Me Kristine Plouffe-Malette

March 24, 2021

Date

IRB translation

Original language: French

1 Recording of the Refugee Protection Division (RPD) hearing on November 15, 2018, from 34:30 to 37:00; from 39:00 to 48:00.

2 SPR-1, Refugee Protection Division (RPD) record, RPD determination, at paras. 27, 31.

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

4 Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 FC 302 (FCA).

5 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 (CA); Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 FC 589 (CA); Ranganathan v. Canada (Minister of Citizenship and Immigration), [2001] 2 FC 164 (CA).

6 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 (C.A.), at p. 710.

7 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 (CA), at p. 709.

8 Gomez Dominguez v. Canada (Citizenship and Immigration), 2020 FC 1098, at para. 17.

9 Gomez Dominguez v. Canada (Citizenship and Immigration), 2020 FC 1098 at para. 18; Chan v. Canada (Minister of Employment and Immigration), [1995] 3 S.C.R. 593.

10 Adjei v. Canada (Minister of Employment and Immigration), 1989 CanLII 5184 (FCA), at para. 8.

11 See, for example, Li v. Canada (Minister of Citizenship and Immigration), 2005 FCA 1; Merja v. Canada (Minister of Citizenship and Immigration), 2005 FC 73; Hedayati v. Canada (Minister of Citizenship and Immigration), 2006 FC 577; Paz Ospina v. Canada (Citizenship and Immigration), 2011 FC 681; Roy v. Canada (Citizenship and Immigration), 2012 FC 434; El Achkar v. Canada (Citizenship and Immigration), 2013 FC 472; Gao v. Canada (Citizenship and Immigration), 2014 FC 59; Zhou v. Canada (Citizenship and Immigration), 2015 FC 821; Potes Mina v. Canada (Citizenship and Immigration), 2016 FC 834; Elisme v. Canada (Citizenship and Immigration), 2019 FC 1306; Tapambwa v. Canada (Citizenship and Immigration), 2019 FCA 34; Fodor v. Canada (Citizenship and Immigration), 2020 FC 218; Zidan v. Canada (Citizenship and Immigration), 2021 FC 170.

12 Pacificador v. Canada (Citizenship and Immigration), 2007 FC 1050, at para. 74.

13 Gomez Dominguez v. Canada (Citizenship and Immigration), 2020 FC 1098, para. 27-29.

14 Pour-Shariati v. Canada (Minister of Employment and Immigration), 1994 CanLII 3542 (FC), [1995] 1 FC 767, confirmed by (1997) 39 Imm. L.R. (2d) 103 (F.C.A.) ; Natynczyk v. Canada (MCI), 2004 FC 914, at para. 71; Emezieke v. Canada (Citizenship and Immigration), 2014 FC 922 at para. 30; Chen v. Canada (Citizenship and Immigration), 2020 FC 907, at para. 7.

15 Olusola v. Canada (Citizenship and Immigration), 2020 FC 799; reaffirmed in Ambroise v. Canada (Citizenship and Immigration), 2021 FC 62, at para. 13.

16 Leon v. Canada (Citizenship and Immigration), 2020 FC 428, at para. 13.

17 See, for example, Perez Mendoza v. Canada (Minister of Citizenship and Immigration), 2010 FC 119, at para. 33; Lara Deheza v. Canada (Citizenship and Immigration), 2010 FC 521; Singh Gill v. Canada (Citizenship and Immigration), 2011 FC 447; Kebche v. Canada (Citizenship and Immigration), 2012 FC 1341; Rodriguez Llanes v. Canada (Citizenship and Immigration), 2013 FC 492; Nimako v. Canada (Citizenship and Immigration), 2013 FC 540, at para. 7; Gutierrez v. Canada (Citizenship and Immigration), 2015 FC 266, at paras. 23-24, 43; Balogh v. Canada (Citizenship and Immigration), 2016 FC 426; Potes Mina v. Canada (Citizenship and Immigration), 2016 FC 834; Feboke v. Canada (Citizenship and Immigration), 2020 FC 155, at para. 43; Leon v. Canada (Citizenship and Immigration), 2020 FC 428, at para. 13; A.B. v. Canada (Citizenship and Immigration), 2020 FC 915, at para. 23; Hernandez v. Canada (Citizenship and Immigration), 2021 FC 8; Saliu v. Canada (Citizenship and Immigration), 2021 FC 167, at para. 46.

18 See in particular the exhibits filed in support of the refugee protection claims P-1 to P-7 (P-1: Death certificate of Jorge Zambrano Arias, December 29, 2003; P-2: Death certificate of Ferdinando Gomez Gonzalez, September 23, 2002; P-3: Death certificate of Mauricio Andrés Dominguez Rosero, September 15, 2002; P-4: Death certificate of German Gomez Dominguez, September 15, 2002; P-5: Finding and declaration of death of German Gomez Dominguez issued by the general prosecutor, March 26, 2014; P-6: Death certificate of José Luis Sanchez Meneses, June 2, 2003; P-7: Information regarding the homicide of Milton Fernando Gomez Dominguez issued by the general prosecutor, September 20, 2012).

19 Recording of the hearing held before the RPD on November 15, 2018, from 1:10 to 1:18; from 2:14 to 2:16.

20 SAR-1, National Documentation package (NDP) on Colombia (June 12, 2020), Tab 1.8: Colombia: Fact-Finding Mission Report: Conflict Dynamics in the Post-FARC-EP Period and State Protection. Immigration and Refugee Board of Canada. March 2020, at p. 11; see also SAR-1, National Documentation package (NDP) on Colombia (June 12, 2020), Tab 1.5: Colombia. The World Factbook. United States. Central Intelligence Agency. June 2, 2020; Tab 1.6: 2019 Humanitarian Needs Overview: Colombia. United Nations. Office for the Coordination of Humanitarian Affairs. November 2018; Tab 1.9: Political and Economic Situation. Colombia: Background and U.S. Relations. United States. Congressional Research Service. November 29, 2019. R43813; Tab 2.1: Colombia. Country Reports on Human Rights Practices for 2019. United States. Department of State, March 13, 2019; Tab 2.7: Colombia. World Report 2020: Events of 2019. Human Rights Watch. January 2020; Tab 2.5: Report of the United Nations High

Commissioner for Human Rights on the Situation of human rights in Colombia. United Nations. Human Rights Council, May 8, 2020. A/HRC/43/3/Add.3; Tab 7.8: République de Colombie : Situation sécuritaire. COI Focus. Belgium. Commissioner general for Refugees and Stateless Persons. June 7, 2018.

21 Another source estimated the number of Revolutionary Armed Forces of Colombia (FARC) members who were not participants in the peace process to be between 800 and 1,500 persons (SAR-1, National Documentation Package on Colombia (June 12, 2020), Tab 2.1: Colombia. Country Reports on Human Rights Practices for 2019. United States. Department of State, March 11, 2020. Agence France-Presse published the figure of 1,100 FARC members who rejected the peace agreements in February 2018 (SAR-1, National Documentation Package (NDP) on Colombia (June 12, 2020), Tab 7.22: Colombia: the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia - FARC), including demobilization of former combatants; information on dissident groups, including number of combatants, areas of operation, activities and state response (2016-April 2018), Immigration and Refugee Board of Canada, April 18, 2018. COL106084.E, at p. 5.

22 SAR-1, National Documentation package (NDP) on Colombia (June 12, 2020), Tab 1.8: Colombia: Fact-Finding Mission Report: Conflict Dynamics in the Post-FARC-EP Period and State Protection. Immigration and Refugee Board of Canada. March 2020, at p. 23-24; Tab 2.16: Summary of Stakeholders' submissions on Colombia. Office of the United Nations High Commissioner for Human Rights. March 12, 2018. A/HRC/WG.6/30/COL/3; Tab 4.5: Revolutionary Armed Forces of Colombia. Stanford University. Mapping Militant Organizations. July 2019.

23 SAR-1, National Documentation package (NDP) on Colombia (June 12, 2020), Tab 1.8: Colombia: Fact-Finding Mission Report: Conflict Dynamics in the Post-FARC-EP Period and State Protection. Immigration and Refugee Board of Canada. March 2020; Tab 1.6: 2019 Humanitarian Needs Overview: Colombia. United Nations. Office for the Coordination of Humanitarian Affairs. November 2018; Tab 2.2: Colombia. World Report 2020: Events of 2019. Human Rights Watch. January 2020; Tab 4.5: Revolutionary Armed Forces of Colombia. Stanford University. Mapping Militant Organizations. July 2019.

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Board of Canada

Refugee Appeal Division

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