

CANADA / JUDGMENT

MC2-10686

COURT

Refugee Appeal Division

DECIDED

2 December 2022

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RAD File No. / No de dossier de la SAR : MC2-10686

MC2-10687 / MC2-10688 / MC2-10689

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

[Translation of the original version]

Persons who are the subject of the appeal

XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX
XXXXXXXXXX XXXX XXXX XXXX

Personnes en cause

Date of decision

December 2, 2022

Date de la décision

Panel

Me Anne-Thierrie Tétreault

Tribunal

Counsel for the persons who are the subject of the appeal

Me Alfredo Garcia

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] XXXX XXXX XXXX XXXX (the male appellant), his wife, XXXX XXXX XXXX XXXX (the female appellant) and their children, XXXX XXXX XXXX XXXX (the associate appellant) and XXXX XXXX XXXX XXXX (the minor appellant), are citizens of Colombia. This refugee protection claim is based on the facts alleged by the male appellant. He has feared a group called XXXX XXXX since he found himself in front of them during a protest at the XXXX XXXX XXXX XXXX (XXXX) on XXXX XXXX, 2018. In the months that followed, he received several threats targeting him and his family. After they left Colombia, the agents of harm targeted his parents.
- [2] The RPD concluded that the appellants had failed to establish that there was a serious possibility of persecution on a Convention ground or that, on a balance of probabilities, they would be subjected to a risk to their lives, to a risk of cruel and unusual treatment or punishment, or to a danger of torture should they return to Colombia, where it found they had an internal flight alternative (IFA) in Medellín.
- [3] The appellants are challenging that decision and asking the Refugee Appeal Division (RAD) to allow the appeal and grant them refugee status or to refer the matter to the RPD for re-determination of the refugee protection claim by a different member. They submit that the RPD conducted a limited and erroneous analysis of the ability and motivation of the agents of harm to locate them in Medellín and of the reasonableness of moving to that city.
- [4] The determinative issue in this appeal is the IFA in Mexico.

DETERMINATION

- [5] I dismiss the appeal. The RPD's decision is correct. The appellants are neither Convention refugees nor persons in need of protection.

BACKGROUND

Refugee Protection Division decision

- [6] The RPD found that XXXX XXXX had neither the motivation nor the ability to locate the male appellant and his family. It considered that the text messages received by the male appellant were the result of an information leak from the XXXX XXXX, who, according to the male appellant, was a member of XXXX XXXX. It considered that the threats received by the male appellant in Bogotá did not establish that XXXX XXXX had the ability to locate him and his family elsewhere in Colombia if he no longer worked for XXXX. It considered that

the fact that the threats to the male appellant's parents had completely stopped after XXXX 2019 showed that XXXX XXXX had little interest in the appellants and that, on a balance of probabilities, the members of the group would therefore not be motivated to locate them in Medellín.

- [7] The RPD also found that the incident involving the male appellant's son, who was accosted on XXXX XXXX, 2021, by drug dealers to search his cellphone, was not, on a balance of probabilities, related to the problems involving XXXX XXXX. It found that the male appellant no longer posed a significant threat to XXXX XXXX as his problems had begun because he had recognized people from XXXX XXXX among XXXX staff and he had not worked there for several years. It also found that the articles submitted in evidence did not establish that XXXX XXXX was affiliated with the FARC or that the latter had participated in the XXXX 2018 protests.
- [8] The RAD found that it would not be objectively unreasonable for the appellants to seek refuge in Medellín.

Appellants' arguments

- [9] In their memorandum, the appellants argue that it is speculative and erroneous to conclude that the only way for XXXX XXXX to locate the male appellant would be through his work at XXXX. They point out, in this regard, that XXXX XXXX were able to locate the male appellant's parents, whose telephone number is certainly not in the XXXX's records, and also informed the male appellant by text that he had been located while he was outside Bogotá. They point out that XXXX has a branch in Medellín and that this is the extent of XXXX XXXX' resources and contacts throughout the country to find them.
- [10] They argue that it was wrong to conclude that XXXX XXXX was not motivated merely because the male appellant's parents stopped receiving text messages and the male appellant no longer worked at XXXX. In so concluding, they claim that the RPD minimized the impact of the report filed by the male appellant on XXXX XXXX, 2019, and, according to them, it is more likely than not that the persons identified in the complaint were notified, which contributes to the motivation to pursue the male appellant.
- [11] They also challenge the RPD's assessment of the evidence and argue that it establishes that the men who took control of XXXX do belong to the FARC and wish to make themselves known under the name XXXX XXXX, an affiliation through which they have the means and the ability to locate the appellants throughout the country.
- [12] Regarding the reasonableness of the IFA, they refer to the objective evidence¹ and point out that the RPD should have considered the risks related to the safety and economy of the proposed location and not just their professional profile. They allege that a move to Medellín represents an undue hardship and subjects them to physical danger.

ANALYSIS

[13] My role is to review all the evidence and determine whether the RPD's decision is correct.² To that end, I conducted my own independent analysis of the record to determine whether the RPD erred, based on the arguments made by the appellants in their appeal memorandum, while also considering the evidence on the record and the recording of the hearing held virtually by the RPD on February 15, 2022.

Internal flight alternative

- [14] The test to be applied in determining whether there is an IFA is two-pronged.³ Under the first prong, the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted or subjected to a danger of torture, to a risk to their life or to a risk of cruel and unusual treatment or punishment in the part of the country in which it finds an IFA exists.
- [15] The second prong involves determining whether the conditions in the part of the country considered to be an IFA are such that it would not be unreasonable, in light of all the circumstances, including those particular to the claimant, for them to seek refuge there.
- [16] Both prongs must be satisfied to conclude that an IFA exists.
- [17] The risk of harm at the hands of XXXX XXXX does not have a nexus to any of the Convention grounds. The male appellant received threats because on XXXX XXXX, 2018, he saw members of that organization, faces uncovered, and recognized one of them among the XXXX staff. Thus, this claim is being considered under subsection 97(1) of the Immigration and Refugee Protection Act and the appellants must establish, on a balance of probabilities, that they will be personally subjected to a risk to their lives, to a risk of cruel and unusual treatment or punishment, or to a danger, the existence of which is substantiated by serious reasons for considering, of torture in the proposed IFA.⁴

First prong

- [18] In considering the first prong of the IFA, the RPD addressed the ability and motivation of the agents of harm to locate the appellants elsewhere in Colombia, particularly in Medellín.

Ability to locate the appellants in Medellín

- [19] I agree with the RPD's position on XXXX XXXX' ability to locate the appellants elsewhere in Colombia, which has not been established on a balance of probabilities.
- [20] To begin, the newspaper articles⁵ filed in evidence by the appellants do not establish that on XXXX XXXX, 2018, the protesters seen by the male appellant had ties to the FARC and that they would thus have the ability to trace him and his family to Medellín, where the criminal group is present.

- [21] Some articles recount how hooded students stormed the XXXX premises on XXXX XXXX, 2018, which corroborates the protest described by the male appellant in his allegations. However, regarding the protests involving FARC members, the article is dated XXXX XXXX, 2018, and has no connection with the facts alleged by the male appellant.
- [22] Contrary to what the appellants state in their memorandum, it is not clear that these two protests are related. The contexts of the two protests appear to be completely separate. During the XXXX protest, the article describes 14 hooded men starting to launch projectiles to get the attention of students, and their claims related to the peace process between the FARC and the government. However, the XXXX protest was reportedly set up by students for the right to education and its financing.
- [23] I acknowledge that one of the XXXX 2018 protesters describes himself and his companions as radicals; however, this is not enough to link the appellant's allegations to the FARC. Moreover, the article⁶ indicates that the FARC dissociated itself from this protest by claiming [translation] "to reject both the declarations and riots" condemning the use of their initials and image for militant purposes.
- [24] The male appellant stated that it was on XXXX XXXX, 2018, that he startled protesters when they were not hooded and not in XXXX 2018. Under no circumstances does he state in his account,⁷ in the Basis of Claim Form or the amendment to this form,⁸ that XXXX XXXX are affiliated with the FARC and that the threats received came from this group.
- [25] For these reasons, I am of the opinion that the RPD did not err in finding that the appellants had not established, on a balance of probabilities, that their agents of harm were associated with the FARC.
- [26] As for the fact that XXXX XXXX were able to locate the male appellant's parents in XXXX 2019 to leave a threatening letter at their apartment and that they received calls on their landline, it does not establish that they have the ability to find the appellants as far as Medellín. The male appellant's parents live in Bogotá, as did the appellants at the time.
- [27] With regard to the XXXX branch in Medellín, it seems speculative to claim that XXXX XXXX also operates there. The appellants did not submit any evidence to that effect.
- [28] Notwithstanding the above, I am of the view that, although XXXX XXXX had the ability to locate the appellants elsewhere in Colombia, they still need to be motivated to locate them today. In this respect, the case law⁹ states that the fact that a persecutor is able to pursue an individual is not decisive evidence that they are motivated to do so. Moreover, the appellants have not established that XXXX XXXX still have an interest in the male appellant.

Motivation to locate the appellants in Medellín

- [29] The male appellant claims to have recognized the XXXX XXXX among the protesters. He testified that he did not know the individual's name.¹⁰ Even if he filed a complaint with the authorities for the threats received, this complaint, the precise content of which was not disclosed in evidence, cannot therefore identify any specific person. We do not know who exactly makes up XXXX XXXX. I am of the opinion that the XXXX XXXX, 2019, complaint is not sufficient to motivate XXXX XXXX' to locate the appellant and his family still today.
- [30] As for the fact that, since XXXX 2021, the male appellant's parents stopped receiving telephone calls after cancelling their telephone number, I find that the RPD did not err. This element is certainly a significant indication that the agents of harm do not still have the motivation regarding the appellants or that they would have an interest in pursuing them throughout Colombia.
- [31] It is important to note that receiving calls and feeling followed near their home did not cause the male appellant's parents to change their lifestyle. They did not move, they waited several months before deciding to disconnect the telephone line on which they were receiving the anonymous calls and they did not consider it necessary, despite having a visa for Canada, to leave their country after the XXXX 2019 threats.
- [32] In addition, once the telephone line was disconnected, there was no retaliation or new incident involving XXXX XXXX. Considering that they knew the parents' address, as they left a letter there in XXXX 2019, they had the opportunity to contact the parents other than by telephone but did not do so.
- [33] In addition, I must take into account that the male appellant's problems began when he recognized a XXXX employee among the protesters. Fearing being found out, the individual ordered the appellant to disappear and not return to the XXXX. The appellant has not been employed at that XXXX since XXXX 2019. I find that the RPD correctly found that, on a balance of probabilities, he no longer poses a threat to this employee or to XXXX XXXX.
- [34] Therefore, I conclude that, on a balance of probabilities, there is no serious possibility of the appellants being persecuted or subjected to a danger of torture, to a risk to their lives, or to a risk of cruel and unusual treatment or punishment in Medellín, where an IFA exists.

Second prong

- [35] At the hearing, the appellant acknowledged that, apart from the problems encountered with XXXX XXXX, there was no other reason preventing him from moving to the proposed IFA with his family.¹¹
- [36] In this context, it is difficult to give weight to the arguments presented in the memorandum of appeal, namely that Medellín is an unreasonable IFA because of the safety risks of the location.

- [37] The standard to conclude that an IFA is unreasonable is rigorous.¹² It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling and temporarily relocating to a safe area and actual and concrete evidence of such conditions.¹³
- [38] In this case, the appellants have not presented any evidence to support a conclusion that such conditions would jeopardize their lives and safety in the proposed IFA.
- [39] The risks associated with crime in Medellín are similar to those in Bogotá, the city where the appellants once resided.¹⁴ Medellín has experienced the largest drop in violence and the homicide rate for the city remains below the national average.¹⁵
- [40] Therefore, I am of the view that the RPD did not err in considering the particular circumstances of the appellants, who will, in all probabilities, be able to find employment and continue their studies, if applicable, in the proposed IFA.
- [41] In short, it is not objectively unreasonable for the appellants to seek refuge in Medellín. The appellants did not establish that there is a serious possibility of persecution or that, on a balance of probabilities, they would be personally subjected to a danger of torture, to a risk to their lives, or to a risk of cruel and unusual treatment or punishment if they were to return to Colombia.

CONCLUSION

- [42] I dismiss the appeal and confirm the determination that XXXX XXXX XXXX XXXX, XXXX XXXX XXXX XXXX, XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX are neither Convention refugees nor persons in need of protection.

(signed)

Anne-Thierrie Tétreault

Me Anne-Thierrie Tétreault

December 2, 2022

Date

IRB translation

Original language: French

IRB translation

Original language: French

1 National Documentation Package (NDP) on Colombia, April 29, 2022, Tab 15.3: The socio-economic situation, including demographics, employment rates, and economic sectors, particularly in Barranquilla, Bucaramanga and Ibagué (2017-May 2020). Immigration and Refugee

Board of Canada (IRB). May 13, 2020. COL200220.E, Tab 4.3: Chronicle of a Threat Foretold: the ex-FARC Mafia. InSight Crime. Juan Diego Cárdenas et al. November 11, 2019; NDP on Colombia, April 29, 2022, Tab 1.5: Colombia. The World Factbook. United States. Central Intelligence Agency. August 23, 2021.

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

3 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 (CA), at 710 and Thirunavukkarasu v. Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA).

4 Sadiq v. Canada (Citizenship and Immigration), 2021 FCA 430, para. 43.

5 Refugee Protection Division (RPD) record, Exhibit D-17, p. 349.

6 RPD record, Exhibit D-17, p. 357.

7 RPD record, Basis of Claim Form, p. 28.

8 RPD record, Exhibit D-1, p. 220.

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

10 Second recording of the RPD hearing held on March 16, 2022, at approximately 0:33:30.

11 Third recording of the RPD hearing held on March 16, 2022, at approximately 0:28:37.

12 Perez v. Canada (Citizenship and Immigration), 2011 FC 8; Montalvo v. Canada (Citizenship and Immigration), 2008 FC 716; Jean Baptiste v. Canada (Citizenship and Immigration), 2019 FC 1106.

13 M.C.I. v. Ranganathan, Rohini (FCA, A-348-99), Létourneau, Sexton, Malone, December 21, 2000, 2000 CanLII 16789 (FCA), [2001] 2 FC 164.

14 NDP on Colombia, August 31, 2022, 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.... IRB. April 24, 2017. COL105773.E, p. 31 and 34. Tab also available in the NDP dated August 31, 2021.

15 NDP on Colombia, August 31, 2022, Tab 7.8: Republique de Colombie : Situation sécuritaire [Republic of Colombia: security situation]. COI Focus. Belgium. Office of the Commissioner General for Refugees and Stateless Persons. June 7, 2018. Tab also available in the NDP dated August 31, 2021.

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RAD.25.02 (August 20, 2021)

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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 (August 20, 2021)

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