

CANADA / JUDGMENT

MB9-10642

COURT

Refugee Appeal Division

DECIDED

8 January 2020

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RAD File / Dossier de la SAR : MB9-10642 MB9-10643 / MB9-10644 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX Personnes en cause
Appeal considered / heard at Montreal, QC Appel instruit / entendu à Date of decision January 8,
2020 Date de la décision Panel Michel Colin Tribunal Counsel for the persons who are the subject
of the appeal Jack C Martin Conseil des personnes en cause Designated representative N/A
Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR
DECISION OVERVIEW

- [1] The Appellants, XXXX XXXX XXXX XXXX (Principal Appellant), her spouse XXXX XXXX
XXXX XXXX (hereinafter referred to as "XXXX"), and their adult daughter, XXXX XXXX XXXX
XXXX (hereinafter referred to as "XXXX"), citizens of Colombia, appealed a decision of the
Refugee Protection Division (RPD), dated April 23, 2019, rejecting their claims for refugee
protection.
- [2] The Appellants fear Los Enchapuchados (LE) whom they submit is a cell of the National
Liberation Army (ELN). The LE attempted to forcibly recruit Laura and to extort her father
XXXX. They beat XXXX and threatened to kill the whole family if they did not comply.
- [3] The RPD rejected their asylum claims as it found them not to be credible and because they
failed to provide clear and convincing evidence that state protection would not be available
to them.
- [4] The Appellants submit that the RPD made significant errors in assessing their credibility,
that it ignored evidence before it, and that it erred in law.
- [5] Based on my independent review of the record and applying for the correctness standard, I
find that the RPD's decision is correct as state protection is available and the appeal is
therefore dismissed. The reasons are as follows.

ANALYSIS

- [6] The determinative issues are state protection and the sufficiency of credible evidence
pertaining to it. Absence of sufficient evidence to establish that the LE is a "primary cell" of
the ELN Importance of determining if LE is a cell of the ELN

- [7] In their submissions at the hearing, counsel then representing the Appellants insisted upon the importance taking into consideration the link between the LE and the ELN. He stated that the claim should be analyzed with regard to section 96 of the Immigration and Refugee Protection Act (IRPA), because opposition to the ELN constitutes imputed political opinions. He preceded each of his submissions regarding state protection and internal flight alternative with the statement, "If this group is believed to be associated with the ELN, then..." before saying that each of these is not viable. In his hearing submissions he explained that it was very difficult to find an article establishing the link between the two groups (LE and ELN), as an online search of the words "Los Enchapuchados" produces a multitude of (irrelevant) results in which any person who was ever attacked by a "hooded" person for any reason gets mixed into the results.
- [8] The Appellants still maintain in their memorandum that they were persecuted by a cell of the ELN. No evidence pertaining to the LE in the document relied upon by the Appellants to establish the link between the two groups.
- [9] At the hearing, XXXX repeatedly testified that the LE is a "primary cell" of the ELN. She based this finding on the document submitted at the hearing as Document 121-Article "Story of a hood...", El Tiempo, Aug. 1, 2015. I have closely examined this document.
- [10] I would first mention that the name LE does not appear as a proper name in the article. As mentioned by their counsel before the RPD, the word "enchapuchados" refers to people who protest or attack their victims while wearing hoods. The article is largely an account of the way a source, who decided to speak out, was recruited on campus in 2015 by the Bolivarian Student Movement, a part of the Revolutionary Armed Forces of Colombia (FARC). The "hooded" men or "enchapuchados", that it refers to, are thus associated with these latter two groups.
- [11] Therefore, I do not find that this article establishes the existence of a group named LE, or that a group named LE is a "primary" cell of the ELN, as suggested by the Appellants.
- [12] The method of recruitment described in the article is mainly that of the Bolivarian Student Movement associated with the FARC. However, in the last few lines of the article, the methods of recruitment of the ELN are briefly described and compared to that of the FARC. If the method of recruitment used by the ELN is similar to that of the LE, one might argue that the likeliness that LE is associated with the ELN is increased. It is thus necessary to examine the whole document, including the information pertaining to the recruitment by the FARC, as the methods of recruitment of the ELN are described in comparison to these.
- [13] The methods of recruitment described in the article are markedly different than those which were used by the LE with XXXX. People with specific skills such as the knowledge of chemistry or environmental activism are targeted for recruitment which is not consistent with XXXX profile of studying English in evening courses. This was correctly considered by the RPD.

- [14] Then a long process of establishing friendship and links with the individual they wish to recruit starts. Only after then, the recruiters identify themselves as the Bolivarian Student Movement, associated with the FARC and start persuading their target to support them and gradually demand increasingly violent contributions, failing which, the recruit's life is threatened. The ELN recruitment methods described appear to be even more gradual than that of the FARC. The article states, "The ELN has a more disciplined structure than that of the FARC, and its political work is stronger... The work ... begins in the schools, where bonds of interest are created and then strengthened in the university... (The ELN) do not look for quantity but quality."
- [15] As correctly indicate by the RPD, I find that this is not similar to the recruitment method used by the LE on XXXX. Indeed, according to her testimony, she encountered members of the LE on three occasions within less than one month. The first time, a woman asked her for her address and XXXX refused to reply. In the second encounter, a man immediately displayed a knife, had her walk towards the aforementioned woman, and within minutes, identified himself as a member of the LE and threatened to kill her and her family if she did not join the LE. Merely days after that, XXXX was beaten in the street. There is no evidence of any attempt to befriend her, indoctrinate her and persuade her to join a political cause.
- [16] In summary, the article:
- Fails to mention the LE by name;
 - Specifically mentions that it refers to the Bolivarian Student Movement;
 - Specifically mentions that the "hooded" protesters of the Bolivarian Student Movement have ties to the FARC rather than the ELN;
 - Describes the targeted recruitment of individuals who have a very different profile than that of Laura;
 - Describes a totally different method of recruitment than that used by the LE on XXXX;
 - In no way indicates that the LE is a "primary cell" of the ELN as alleged by the Appellants.
- [17] I do not mean to imply that all of the recruiters of the FARC or the ELN act in a uniform manner every time they recruit people. I simply conclude, as the RPD correctly did, that contrary to the allegations of the Appellants, this article does not corroborate the existence of a group named LE or establish a link between this group and the ELN. Additional considerations when reviewing the record
- [18] During the hearing, the Appellants were unable to point out the specific paragraph on which they rely to assert that this article refers to links between the LE and the ELN, as both the Spanish and English versions of the document were missing the passages they wanted to point out. A few of the questions were formulated, based on the premise that the "enchapuchados" mentioned in the article were indeed the LE and that the confirmation that the LE is a cell of the ELN, would be evident once the complete copy of the article sent after

the hearing could be examined. While this way of formulating questions did not have any negative impact on the hearing process or the RPD decision, I find it would be useful for anyone who means to review the recording to know this.

- [19] Also, the RPD refers to XXXX as the "Principal Claimant" in its decision, whereas her mother is the person identified as the "Principal Claimant" at the beginning of the decision. This is an error likely resulting from the fact that the narrative was that attached to XXXX BOC form. I find that there were no consequences resulting from this error, but once again, it is useful information to know in advance when reviewing the record. Submissions of the Appellants as to the errors made by the RPD decision which may have an incidence on the analysis of state protection
- [20] I will now examine the submissions of the Appellants as to the errors made by the RPD decision which may have an incidence on the analysis of state protection.
- [21] Some of the Appellants' submissions are based on the premise that the article mentioned above refers to the LE and its alleged links to the ELN, which I found not to be the case, for reasons already explained. For purposes of clarity and concision, I will not repeat these findings at length in each case. However, other submissions are based on information that appears both in this article and other documentary or testimonial evidence, and require more detail to be addressed fully.
- [22] The Appellants submit that the RPD:
1. required corroboration of testimonial evidence and did so without adequate reason; They refer to paragraphs 17 and 18 of the decision in which the RPD stated that the Appellants did not demonstrate that XXXX has the profile of a person sought by the LE. The RPD does mention that it found no documents in the National Documentation Package (NDP) pertaining to the LE, recruitment by this group on campus, or links between it and the ELN, before examining the article provided. I find that this does not imply that corroboration of testimonial evidence was required and that its absence undermined the credibility. The RPD also mentions that the article does not corroborate recruitment profiling and methods such as those presented by the Appellants. This does not imply that corroboration of testimonial evidence was required and that, in its absence, a negative inference was made regarding credibility. Essentially, the RPD did not imply that the facts described by XXXX require corroboration. It found that the recruitment method described by XXXX is not that described in the article and hence it not has been established that she was recruited by the groups described in it and that it found no other documents which support that the recruitment method described by XXXX is used by those same groups. I find this to be correct. I will further address other submissions pertaining to the targeted profile of the LE hereunder.
 2. a) erred in creating a profile of targets of ELN from the examples of recruitment in this article and that this amounts to sheer speculation; and

- b) speculated as to the modus operandi of recruitment by terrorist groups and its affiliates; I find that the RPD did not create a profile of targets of ELN, nor did it speculate as to the modus operandi of recruitment by terrorist groups. It simply noted that XXXX does not have the profile, qualities or knowledge sought by the recruiters of the groups, nor was she recruited in a manner similar to that of those groups mentioned in the documentary evidence. This undermines the credibility of their allegation that the documents, particularly this article, constitutes proof that they were targeted by an ELN affiliated cell. The RPD decision is correct in this regard.
3. erred when concluding that XXXX does not have the profile of a person sought by the LE; I do find that the RPD erred when concluding that XXXX does not have the profile of a person sought by the LE. Since I find that the article does not pertain to the LE, and that there are no documents or contradictory evidence as to who the LE profiles, for what purposes it does, and the way they go about it, I find it speculative to assume that XXXX does not have the profile that the LE seeks. Nevertheless, this question pertains to the credibility of evidence that the Appellants are targeted by the LE and not the credibility of evidence pertaining to state protection, given the determinative issues I have identified.
4. a) failed to consider the documentary evidence of the ELN and other militant bodies using forced recruitment in other parts of Colombia; and
- b) did not have regard to all of the article which showed the depletion of the ranks through desertion and the fears of those who deserted; I find no error in the failure of the RPD to consider this evidence, as the RPD correctly found that the Appellants have not established that the LE is affiliated with the ELN or any other militant bodies mentioned in the documentary evidence. There is nothing in the testimonial evidence that suggests that the LE is a "militant body". According to the evidence, the people who threatened the Appellants, wanted their address, wanted XXXX to join them, wanted extortion money and nothing more. The individuals never mentioned that XXXX should join them in any political or "militant" action. The assailants never mentioned that they are affiliated with the ELN or any other group. The evidence is not sufficient to qualify the LE as one of the "militant bodies" described in the evidence. By way of example, the LE could just as well have been looking for a new person not known to police to help them commit a crime. The fact that they recruited her on campus is insufficient to conclude that the LE is a "militant body" associated with ELN, FARC, a BACRIM or any other similar group, particularly when one considers that the Appellants had never heard of this group, be it on campus, in their community, on the news programs that they watched on television, and newspapers that they read, where student recruitment and violence were reported, according to their testimony. Other issues raised by the Appellants are not determinative
- [23] I find it unnecessary to examine submissions made by the Appellants that the RPD erred in the assessment of their credibility with issues that do not pertain to state protection. Consideration of mental health issues of Laura

- [24] I have considered the medical evidence on record regarding XXXX. These documents indicate that XXXX reports symptoms associated with PTSD as well as clinical impressions that a PTSD treatment plan should be implemented. Other than these impressions, it remains unclear whether XXXX has been tested and diagnosed with PTSD. The credentials of the signatories are not detailed either. More importantly, XXXX ability to testify is not evaluated.
- [25] Upon examination of the recording of her testimony, I found no evidence that she was unable to fully articulate what happened, be it because of PTSD or any other reason. Insufficiency of clear and convincing evidence regarding the absence of state protection Submissions that the RPD erred in its analysis of state protection
- [26] The appellants also submit in their memorandum that the RPD failed to consider evidence that the: "family feared reprisals if they went to the authorities.... The article about Los Encapuchados related the disappearance of someone involve with the group who was accused of speaking with the authorities...illegal armed groups in Colombia are constantly changing alliances.... The ELN has formed allegiances with other armed groups...armed groups have infiltrated state institutions including police and the attorney-general's office.... The ELN maintains a network of collaborators in cities.... The ELN has been involved in recruiting children, and the UNHCR states that children who oppose forced recruitment have faced human rights abuses. Parents generally don't report it.... under this expanding structure that has now increased their presence in several parts of the country, the groups [the ELN] can monitor a target across Colombia."
- [27] As I have found, as the RPD correctly did, that the Appellants have failed to establish that the LE is associated with the ELN or any other militant group, I find no error in the failure of the RPD to address this evidence.
- [28] Finally, they submit that, "The RPD based its finding that there was state protection on objective documentary evidence describing the government's on then off negotiations with the ELN, stating that 'the government is making concrete efforts to combat violence'.... The Refugee Protection Division did not provide any analysis of the operation adequacy of the efforts being undertaken."
- [29] I agree with the Appellants in this regard. To note that the efforts made by the state are part of its considerations without considering their adequacy constitutes an error. However, this error is not fatal as I will consider the adequacy of state protection hereunder. Independent analysis of state protection
- [30] The Appellants have the burden of proving with "clear and convincing evidence" that the state would be unable to protect them.
- [31] The Appellants did not file a complaint with the authorities. Hector testified that he wanted to file a complaint but that his daughter insisted that he should not, despite the fact that that time, they did not yet believe that the people that they fear have any links to the ELN.

- [32] I have already explained why I do not find that the Appellants established any link between the LE and the ELN or other militant group. Very little is known about this group since their purpose and affiliations were not declared by the assailants, the Appellants had never heard of this group, be it on campus, in their community, or in the news.
- [33] The documentary evidence pertaining to state protection found in the NDP deals primarily with protection from armed conflict, the FARC, other militant groups, drug dealers, and domestic violence. As the Appellants have not established any reason why state protection should be examined within any one of these particular contexts, I have relied on documentary evidence pertaining to state protection in general terms.
- [34] In the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia² one finds that the armed conflict, demobilization of the FARC and fight against drug cartels, have monopolized many public resources and left certain areas, especially remote rural ones, with little state protection:
83. OHCHR has observed that, despite its efforts, the State has not been able to provide public services to the various territories of the country in a coordinated manner, especially to the remote rural areas most affected by the conflict.
84. According to national police statistics, in 2018, 49.5 percent of municipalities reported an increase in homicide rates with respect to 2017.
- [35] With regard to the situation in Bogota where the Appellants lived, the Documentation and Research Department of the Belgian asylum determination system indicates in paragraph 6 and the following of their publication³, that the murder rate has fallen by 82 % in the past ten years. At the time of publication of its source in May 2018 (the source cited is a document titled "Apolitical, Treating violence like a disease helped cut Colombia's murder rate by 82 %", 15/05/2018) the murder rate in Bogota was the lowest it had ever been in 32 years. I find this to be quite indicative of the adequacy of state protection in the case of these Appellants, particularly since I consider that they have not established that the people they fear are related to the ELN.
- [36] In such circumstances, I find that the Appellants have failed to provide clear and convincing evidence that the state is unable to protect them.

CONCLUSION

- [37] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA). (signed) Michel Colin Michel Colin January 8, 2020 Date MC/lp 1 RPD Record: Document 12-Article "Story of a hood...", El Tiempo, Aug. 1, 2015. 2 RPD Record: National Documentation Package (NDP) (30 April 2018) Tab 2.5 also at the same Tab in the most recent NDP. 3 RPD Record: NDP (30 April 2019) Tab 7.8 also at the same Tab in the most recent NDP.

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