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[1] XXXX XXXX XXXX XXXX (principal appellant), her sister XXXX XXXX XXXX XXXX, and her children XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX (associate appellants) are Colombian citizens.

- a. The principal appellant alleges that she was persecuted by extreme right supporters because of her political involvement in support of a left-wing candidate during Colombia's presidential elections in 2018.
- b. The appellants are appealing against the November 22, 2019, decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection based on credibility. They allege that the RPD based its determination on erroneous findings that it made in a perverse or capricious manner or without regard for the evidence before it and request that the RPD's determination be set aside and that they be granted a de novo hearing before a differently constituted panel.¹
- c. The issue in this case is whether the RPD erred.
- d. As was the case for the RPD, the determinative issue for the Refugee Appeal Division (RAD) is the appellants' credibility.

[2] I dismiss the appeal. The RPD correctly determined that the appellants are neither Convention refugees nor persons in need of protection.

BACKGROUND

- [3] According to the Basis of Claim Form (BOC Form) of the principal appellant, XXXX XXXX XXXX, she allegedly received threats beginning in mid-2017 through social media, emails and telephone calls.
- [4] She filed a complaint with the police in XXXX 2018, but since she was unable to identify the agent of persecution, the police officers could not produce a police report.
- [5] The threats continued after the presidential elections ended on June 17, 2018.
- [6] On XXXX XXXX XXXX 2018, she left Colombia with her sister XXXX and her minor daughter XXXX XXXX; her son XXXX XXXX had already been in Canada for a few months.
- [7] On November 5, 2019, the day before the RPD hearing, the appellants' counsel made a written request² to introduce evidence and to extend the time limit to present it.
- [8] The evidence includes various attestations and requests; a medical document; a prosecutor's report; and threatening letters and texts, including a threatening letter from the XXXX XXXX [XXXX XXXX] criminal group dated XXXX XXXX XXXX 2018, namely XXXX days prior to leaving Colombia. NEW EVIDENCE The evidence presented by the appellants is rejected
- [9] Under the Immigration and Refugee Protection Act³ (IRPA), I can only allow evidence:
- i. that arose after the RPD rendered its decision; ii. that was not reasonably available at the time of the decision; or iii. that the person could not reasonably have been expected in the circumstances to have presented to the RPD before the decision was rendered.
- [10] If the evidence meets one or more of these requirements, I must decide whether the evidence is new, credible and relevant before accepting it.⁴
- [11] The appellants are submitting two new pieces of evidence in support of their appeal, but are not requesting an oral hearing before the RAD: A) The original BOC Form of the principal appellant, XXXX XXXX XXXX XXXX, written by hand in Spanish (D1).⁵ B) Corrected letter from the XXXX XXXX XXXX XXXX XXXX and the author's identity documents (D2).⁶
- [12] For the original BOC Form completed in Spanish (D1), the appellants submit that [translation] "[a]s corroboration, and because the principal claimant could not have known prior to the hearing that she would be questioned about the lack of space in her BOC Form, a copy of the original Spanish version of the BOC Form is filed with this appeal record as Exhibit D-1."⁷
- [13] The appellants submit that upon their arrival in Canada, they did not speak French or English when they completed their BOC Form and that, consequently, it was reasonable for the principal claimant not to have properly understood the BOC Form's instructions indicating that it was necessary to "[g]ive details in all of your answers" and that "[i]f you need more space, use additional sheets of paper."⁸

- [14] This document does not meet the requirements of subsection 110(4) of the IRPA as it did not arise after the rejection of the refugee protection claim and it was reasonably available. Furthermore, as indicated in the questions of the BOC Form, the appellants are asked to answer in detail and to use additional sheets of paper as needed. Consequently, this document is rejected.
- [15] Document (D2) is a second letter from the XXXX XXXX dated XXXX XXXX XXXX 2020, to correct the first version, dated XXXX XXXX, 2019, and introduced before the RPD. It did not give weight to the letter because of major inconsistencies in the principal appellant's testimony at the hearing about her alleged moves and changes in work locations cited in the letter, given that she had confirmed the opposite.
- [16] The appellants submit the following: [translation] It is true that the syntax of the letter suggests that reference is being made specifically to the principal claimant. However, a recently obtained explanatory letter, by the same author as the original letter, regarding these inconsistencies and which corroborates the explanation the appellant provided at the hearing, is attached to the appeal record as Exhibit D-2.9
- [17] They submit that the principal appellant [translation] "seemed surprised by the RPD's questioning since she reiterates that she had never moved and explains that the letter on this matter surely refers to members of the XXXX in general."¹⁰
- [18] I note that this is a brief, personalized statement consisting of three paragraphs that all refer to XXXX XXXX. The first identifies Ms. XXXX, the second lists her activities within the foundation, and the last states that [translation] "like other members of our foundation, he [sic] was harassed and threatened for carrying out humanitarian tasks, and forced on several occasions to change places of residence and work locations."
- [19] I disagree with the appellants' submission that [translation] "the syntax of the letter suggests that it is specifically the principal appellant"¹¹ and that the new letter (D2) corrects this inaccuracy.
- [20] The original letter was indeed written in Spanish, which is the mother tongue of the person concerned. She signed her BOC Form on June 29, 2018, she instructed counsel on July 11, 2018, and the RPD hearing was not held until November 6, 2019, which gave her more than a year to make amendments, provide evidence corroborating her allegations and make any corrections deemed necessary.
- [21] Furthermore, subsection 110(4) of the IRPA does not provide the opportunity to complete a deficient record submitted before the RPD, but to allow for errors of fact, errors in law or mixed errors of fact and law to be corrected.¹²
- [22] The RAD has no discretion to admit the new evidence,¹³ as the correction made in this document were reasonably and readily available and should have therefore been presented to the RPD.

[23] Document D2 will also not be accepted as evidence.

ANALYSIS

[24] My role is to consider all the evidence and determine whether the RPD made the correct decision.¹⁴

[25] The RPD found that the appellants were not credible because of omissions of important facts between the allegations in their BOC Forms and during their testimony at the hearing and also due to significant inconsistencies during the testimony of XXXX, the principal appellant, and in the evidence provided.¹⁵

[26] The appellants submit that: [translation] Not believing the claimants' allegations about the danger of returning to Colombia is an unreasonable conclusion by the RPD, given the documentary evidence on the record, the testimony and the reasonable explanations given by the principal claimant in response to the Court's questioning.¹⁶ The principal claimant

[27] In its reasons, the RPD considered the younger sister, XXXX XXXX XXXX XXXX, to be the principal claimant, and XXXX XXXX XXXX XXXX and her children to be the associate claimants.

[28] In their memorandum, the appellants mention that XXXX is the principal claimant and that XXXX was [translation] "erroneously called the principal claimant."¹⁷

[29] I agree with the appellants' remarks that the RPD erred in these designations, despite the fact that the alleged persecution mostly concerns XXXX, and has only a very secondary impact on the other appellants. Yet this error is not fatal since it seems from the questioning at the hearing, and the RPD's reasons, that the key individual in the refugee protection claims is indeed XXXX. Letter from the "XXXX XXXX"

[30] The RPD found that failing to mention in her BOC Form that she received a death threat in a letter that the principal allegedly received from the XXXX XXXX criminal group seriously undermines her credibility.

[31] The RPD questioned the appellants about this omission and was not satisfied with the answers they provided regarding oversight or lack of space in the BOC Form.¹⁸

[32] The appellants submit that [translation] "although it is an omission, the explanations provided by the principal claimant are, in our opinion, reasonable."¹⁹ They consider that it is reasonably conceivable that the principal claimant did not understand the instructions in the BOC Form because she did not speak English or French.

[33] I disagree with the appellants for the following reasons: * As indicated at paragraph 20 above, the appellants signed their BOC Form on June 29, 2018, have had legal assistance since July 11, 2018, and their hearing before the RPD was not held until November 6, 2019, giving them over 15 months to amend, complete and finalize their record and add other sheets of paper, as suggested in the questions of the BOC Form. * The alleged letter from the

XXXX XXXX is a nominal threat from a group that the appellants themselves described at the hearing as an extremely violent paramilitary group, especially since that was the first time they had received a threat signed on behalf of the group, which makes it different from the other anonymous threats by email or by telephone.

- [34] I consider this to be a major omission, especially since it seems to be the factor that triggered the appellants' decision to leave Colombia three weeks later.
- [35] The RPD did not err on this point. Prosecutor's report
- [36] The RPD did not give any credibility to the statements of the principal appellant, XXXX, and of her sister XXXX regarding the threats received since XXXX 2017, or any probative value to the complaint filed as evidence.²⁰ The complaint, dated XXXX XXXX, 2018 (XXXX days before they left Colombia), does not mention the letter from the XXXX XXXX and includes XXXX statements fixing XXXX XXXX, 2018, as the date when the threats began, not nearly one year earlier, as confirmed at the hearing.
- [37] The appellants submit that the principal appellant [translation] "explained that at that time, she was not convinced that she was actually being threatened by the 'XXXX XXXX' and wanted 'to file her report quickly because she was very afraid to be seen in the police station,'"²¹ and that she testified that she did not especially want to file a complaint specifically against the XXXX XXXX.²²
- [38] They submit [translation] "that it is unreasonable for the RPD not to have given 'any credibility to XXXX and XXXX claims about the threats received since XXXX 2017' and 'no probative value to the complaint filed as evidence'"²³ and that it was a breach of procedural fairness.²⁴
- [39] I disagree. I examined the entire record and listened to the recording of the hearing. The member was courteous and professional, she made sure that the appellants understood the questions, and she kept repeating them when the appellants' statements seemed inconsistent.
- [40] When it comes to procedural fairness, the issue is whether the principles of natural justice were respected taking into account the specific circumstances of the case.²⁵
- [41] The purpose of procedural fairness is to ensure that refugee protection claimants understand the proceedings, have a reasonable opportunity to tender any evidence that supports their claim, and are given a chance to persuade the RPD that their claim is well-founded.²⁶
- [42] The truthfulness of allegations is rebuttable where the evidence is inconsistent with the testimony or where the RPD is unsatisfied with the explanations for those contradictions, inconsistencies and omissions.²⁷

- [43] In this case, the RPD considered all of the evidence, and the appellant understood the proceedings, submitted evidence in support of her claim and had the chance to persuade the panel that her claim was well-founded. The RPD therefore respected the principle of procedural fairness. Letter from Dr. XXXX
- [44] The RPD did not give any weight to the letter from Dr. XXXX to corroborate XXXX fear of threats in Colombia. The RPD did not believe that XXXX had truly been threatened because she did not take any measures to protect herself and her family, she remained at the same address the whole time, and she did not change the cellphone on which she received the threats. The RPD concluded that this behaviour was not consistent with her allegations of fearing threats in her country.²⁸
- [45] The appellants submit that the RPD's conclusion is [translation] "unreasonable given the abundant and varied corroborating evidence and explanations provided by the claimant, showing the faulty logic in the analysis leading to this conclusion."²⁹
- [46] I am of the opinion that, in their memorandum, the appellants simply repeat the same explanations that had already been provided at the hearing before the RPD (which it rejected), without explaining what the faulty logic was in the RPD's analysis that led to this conclusion.
- [47] During the hearing, the principal appellant did not have satisfactory answers for several of the RPD's concerns regarding the failure to include major incidents of persecution in her BOC Form or in her complaint to the authorities, the inconsistencies between the account in her BOC Form and her statements before the RPD, or the omissions in the evidence submitted in support of her allegations. Her answers were evasive and inconsistent and her explanations were unreasonable and unsatisfactory.
- [48] I am of the opinion that the appellants' criticisms are unfounded and I conclude that the principal appellant failed to demonstrate, on a balance of probabilities, that she would be subjected to a risk to her life or to a risk of cruel and unusual treatment or punishment if she returned to Colombia. The RPD's conclusion in this respect is correct. Colombian Human Movement party (Colombia Humana)
- [49] The RPD found that the principal appellant's credibility was also undermined by the contradictions and inconsistencies regarding her alleged affiliation with the Colombia Humana party.³⁰
- [50] The appellants submit that [translation] "in our opinion, the claimant's explanation that she did not receive sound advice for completing her form [BOC Form], coupled with the fact that she did not speak either English or French, reasonably explains this minor inconsistency."³¹
- [51] Once again, I cannot agree with this argument since it is not a minor inconsistency and the RPD clearly explained in its reasons the context of the question and the contradictions in the principal appellant's testimony.

- [52] In response to the RPD's question about why she was receiving threats, XXXX responded that she had taken part in the election campaign of the left-wing candidate, Gustavo Petro, and she stated that she was a member of the Colombia Humana party.
- [53] When asked why she had indicated in her Schedule A form that she did not belong to a party, she responded that she had been wrongly advised when she completed the form, to later retract and state that she had perhaps misread the question, to then launch into an evasive speech mixing volunteer work and membership, without being able to indicate the dates of her alleged membership in this party.
- [54] The RPD also explained that, given these credibility issues and the fact that the letter from the Colombia Humana party does not mention that XXXX was a party member, it did not give any weight to this letter intended to corroborate XXXX affiliation with the party.
- [55] I am of the opinion that the RPD rightfully concluded that this document is inconsistent with the principal appellant's testimony and that the explanations given at the hearing were not satisfactory. XXXX XXXX XXXX XXXX XXXX (the XXXX)
- [56] The RPD did not give any weight to the letter from the XXXX because this letter mentions that XXXX had to change her place of residence and her work location on several occasions, while at the hearing, XXXX stated that she had never moved.³²
- [57] The appellants produced a new letter from the XXXX, which I found to be inadmissible as new evidence at paragraphs 12 to 23 above.
- [58] Lastly, I see no reasons to set aside the RPD's conclusions. Together, these contradictions and omissions seriously undermine the credibility of the appellants, who failed to demonstrate that they would face a serious possibility of persecution if they returned to Colombia. In addition, they did not prove on a balance of probabilities that they would be subjected to a risk to their lives or to a risk of cruel and unusual treatment or punishment. The RPD's decision is correct.

CONCLUSION

- [59] I dismiss the appeal and confirm the RPD's determination, according to which the appellants are neither Convention refugees nor persons in need of protection. Mokhtar Lamani Mokhtar Lamani February 12, 2020 Date IRB translation Original language: French 1 Appellants' memorandum, conclusions and decision sought, p. 57 of the appellants' record. 2 Refugee Protection Division (RPD) record, pp. 318 and 319. 3 Subsection 110(4) of the Immigration and Refugee Protection Act. 4 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96; Raza v. Canada (Citizenship and Immigration), 2007 FCA 385. 5 Appellants' record, pp. 21 to 33. 6 Ibid. pp. 34 to 41. 7 Appellants' memorandum, para. 24. 8 Ibid. paras. 25 to 27. Appellants' sworn statement, pp. 42 to 44, appellants' records. 9 Ibid. para. 57. 10 Ibid. para. 56. 11 Ibid. para. 57. 12 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96, para. 54. 13 Deri v. Canada (Citizenship and Immigration), 2015 FC 1042, para. 55. 14

Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 15 RPD reasons, para. 14. 16 Appellants' memorandum, para. 17. 17 Ibid. para. 1. 18 RPD reasons, paras. 15 to 18. 19 Appellants' memorandum, para. 22. 20 RPD reasons, para. 22. 21 Appellants' memorandum, para. 29. 22 Ibid. para. 33. 23 Ibid. para. 38. 24 Ibid. para. 39. 25 Ching v. Canada (Citizenship and Immigration), 2015 FC 725, para. 75. 26 Nemeth v. Canada (Minister of Citizenship and Immigration), 2003 FCT 590, para. 10. 27 Lawani v. Canada (Citizenship and Immigration), 2018 FC 924, para. 21. 28 RPD reasons, paras. 23 and 24. 29 Appellants' memorandum, para. 49. 30 RPD reasons, paras. 25 to 26. 31 Appellants' memorandum, para. 51. 32 RPD reasons, paras. 27 and 28.

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