

CANADA / JUDGMENT

MB9-11230

COURT

Refugee Appeal Division

DECIDED

4 March 2020

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RAD File / Dossier de la SAR : MB9-11230 MB9-11231 / MB9-11232 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX XXXX XXXX Personnes en
cause Appeal considered / heard at Montreal, QC Appel instruit / entendu à Date of decision
March 4, 2020 Date de la décision Panel Me Jo-Anne Pickel Tribunal Counsel for the persons who
are the subject of the appeal Me Luis Alberto Vasquez Martinez 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] The appeal is dismissed for the reasons that follow.
- [2] XXXX XXXX XXXX XXXX, her daughter, XXXX XXXX XXXX XXXX, and her mother, XXXX
XXXX XXXX XXXX XXXX (Appellants) are citizens of Colombia. XXXX XXXX XXXX XXXX
was a XXXX who XXXX XXXX companies as part of the XXXX XXXX XXXX and XXXX office.
The Appellants fear that, if they return to Colombia, they will be killed or seriously harmed
by an individual using the name XXXX XXXX and his associates who XXXX XXXX XXXX
XXXX believes are associated with XXXX, a large oil and gas company operating in
Colombia. An individual going by the name of XXXX XXXX stalked, sexually harassed and
eventually began threatening XXXX XXXX XXXX XXXX and her daughter from XXXX 2016
until they left Colombia in XXXX 2017. XXXX XXXX XXXX XXXX and her daughter lived in
Bogotá until they went to stay with her father in Cali in XXXX 2017. XXXX XXXX XXXX XXXX
believes that the persons harassing and eventually threatening her were linked to XXXX
since she had been responsible for the company having to XXXX a large XXXX for XXXX
XXXX. In XXXX 2017, XXXX XXXX XXXX XXXX left Colombia with her daughter for her
sister's place in Canada where they joined her mother who had been visiting her daughter
and son-in-law since XXXX 2016.
- [3] The RPD found that the Appellants fear being victims of crime and therefore there was no
nexus between their claims and the refugee Convention. The RPD did not find any
contradictions, inconsistencies or omissions in the Appellants' evidence. Instead, the RPD
found that XXXX XXXX XXXX XXXX failed to establish a profile as someone of interest to
XXXX. It also found that XXXX XXXX XXXX XXXX credibility was undermined by her return
to Colombia in 2017 after a visit to Canada. In addition, it found that several aspects of XXXX

XXXX XXXX XXXX behaviour over the course of the year during which she received sexually obscene messages and threats were not consistent with those of a person who feared for her life and that of her daughter in her home country. For example, XXXX XXXX XXXX XXXX did not change her phone number. She also remained in Bogotá and kept her daughter in the same school for almost a year before moving to Cali to live with her father. Overall, the RPD did not believe XXXX XXXX XXXX XXXX account of the harassment and threats she received before she left Colombia. The Appellants challenge these findings. DECISION

- [4] My role is to look at all the evidence and decide if the RPD made the correct decision.¹ The RPD was correct in finding that the Appellants are neither Convention refugees nor persons in need of protection. However, I make this finding for different reasons than the RPD. In my view, the determinative issues in this case are: (1) the identity of the agents of harm and (2) whether the Appellants have an internal flight alternative in Barranquilla. I agree with the RPD that the evidence is insufficient to establish, on a balance of probabilities, that the agent of harm is linked to XXXX. I also find that the Appellants would have a viable internal flight alternative in Barranquilla.

ANALYSIS

- [5] At the outset, I note that I agree with the RPD's finding that the Appellants' allegations about the threats against XXXX XXXX XXXX XXXX do not have a nexus to any of the grounds contained in the refugee Convention.² Therefore, their claim is one that engages s. 97 of the Immigration and Refugee Protection Act which addresses persons in need of protection. The Appellants do not contest the RPD's finding that their allegations relate to a fear of being victims of crime and have no nexus to any of the grounds contained in the refugee Convention. I agree with this finding by the RPD. While the comments and threats made to XXXX XXXX XXXX XXXX were sexual in nature, her allegation was that she was being threatened due to actions she carried out as part of her employment as a XXXX for the XXXX XXXX who XXXX XXXX enterprises. She provided some evidence to suggest that this might be the case. Agents of Harm
- [6] The RPD was correct to find that the Appellants failed to establish that the agents of harm in this case were connected to XXXX. However, I make this finding for reasons that differ from those given by the RPD. The RPD found that XXXX XXXX XXXX XXXX claim that the agent of harm was linked to XXXX was not credible. Instead, in my view, the problem is one of credibility mixed with an insufficiency of evidence to establish on a balance of probabilities that the agents of harm in this case are linked to XXXX.
- [7] The individuals who threatened XXXX XXXX XXXX XXXX never stated that they were associated with, or acting on behalf of XXXX XXXX. XXXX XXXX XXXX XXXX believes that the individuals who harassed and threatened her were linked to XXXX and they were retaliating against her because her XXXX of the company resulted in the XXXX of a significant XXXX. However, XXXX XXXX XXXX XXXX belief, even if honestly held, that XXXX was responsible for the threats against her is not sufficient to establish that this is the case

on a balance of probabilities. In addition to her belief, XXXX XXXX XXXX XXXX relied on two other pieces of evidence. The first is the timing of the harassment and threats. XXXX XXXX XXXX testified that the harassment against her began soon after the reporting in the media of a XXXX she had XXXX against XXXX. The second piece of evidence was XXXX XXXX XXXX XXXX testimony that, during one of the calls in XXXX 2017, the caller said, "we are going to screw you the way you screwed us". I address both of these pieces of evidence below. Timing of threats

- [8] With respect to the timing issue, XXXX XXXX XXXX XXXX submitted to the RPD a disciplinary report dated XXXX XXXX XXXX 2015, which cleared her of any wrongdoing with respect to the late delivery of the XXXX for XXXX XXXX that she issued to XXXX in 2013. I agree with the Appellants that the RPD erred in finding that the report was fabricated due to the Appellants' failure to submit the original of the report and due to a typo in the listing on the first page of the XXXX XXXX as a result of XXXX XXXX XXXX XXXX XXXX. I do not find that these factors were sufficient for the RPD to find that XXXX XXXX XXXX XXXX had fabricated the report. However, in my view, neither the report nor the timing of the events surrounding it are sufficient to establish, on a balance of probabilities, that XXXX was responsible for the threats being made to XXXX XXXX XXXX XXXX.
- [9] As noted above, at the hearing, XXXX XXXX XXXX XXXX testified that she believed that XXXX was behind the threats she was receiving because the company had received bad press coverage after she XXXX a XXXX on them for XXXX XXXX.³ In a notice dated February 6, 2020,⁴ I asked XXXX XXXX XXXX XXXX to explain why she believed that XXXX was responsible for the threats against her if the only media coverage of the XXXX she XXXX on the company that was in evidence was from 2013, which was three years before she began to receive sexually inappropriate messages in 2016. The Appellants replied by filing an affidavit from XXXX XXXX XXXX XXXX in which she sets out the chronology of her involvement with XXXX.⁵ According to this chronology, she first XXXX the XXXX on XXXX in XXXX 2013. The company appealed this XXXX arguing that it was imposed outside the legal deadlines. XXXX XXXX XXXX XXXX department began to investigate the matter in XXXX 2013 and cleared her of any wrong doing. XXXX then appealed to a higher tribunal in XXXX 2014. In addition, her department conducted an internal investigation and issued a report in XXXX 2015 in which XXXX XXXX XXXX XXXX was once again cleared of any wrongdoing. XXXX XXXX XXXX XXXX did not start receiving sexually inappropriate messages until ten months later, in XXXX 2016. According to XXXX XXXX XXXX XXXX, the company is continuing to appeal the matter beyond the appeal tribunal.
- [10] I do not agree with XXXX XXXX XXXX XXXX that this sequence of events establishes, on a balance of probabilities, that the persons who began to send her sexually inappropriate messages in XXXX were linked to XXXX. In her affidavit, XXXX XXXX XXXX XXXX repeats what she stated in her testimony-that she believes that the harassing and threatening calls she received were related to the fact that XXXX' reputation suffered from coverage of the XXXX in the media especially because the company was in XXXX XXXX with XXXX XXXX, a

large multinational Canadian company.⁶

- [11] I do not agree with this assessment. The only media coverage in evidence is an article dated XXXX XXXX XXXX 2013.⁷ The article states that XXXX had, at that time, recently been acquired by XXXX XXXX. The XXXX XXXX on XXXX, the media coverage, and the XXXX of the company to XXXX XXXX all occurred in 2013 whereas the first messages received by XXXX XXXX XXXX XXXX were sent a full three years later. Even if one were to consider the date on which XXXX XXXX XXXX XXXX was cleared of wrong doing by her department, which occurred in XXXX 2015, this was a full 10 months before the first messages received by XXXX XXXX XXXX XXXX in XXXX 2016. Given this delay, I cannot agree that the timing of the first sexually inappropriate messages received by XXXX XXXX XXXX XXXX gives rise to an inference that these messages were related to the ongoing legal dispute with XXXX over the XXXX she XXXX on them three years earlier. XXXX XXXX XXXX 2017, threat
- [12] As noted above, the second factor that the Appellants rely upon to establish that the agent of harm is associated with XXXX is the fact that during one of the calls in XXXX 2017, the caller said, "we are going to screw you the way you screwed us". At most, this establishes that the threat may have been connected to XXXX XXXX XXXX XXXX work. However, it does not establish that the caller was acting on behalf of XXXX.
- [13] In fact, the contemporaneous evidence submitted by the Appellants indicates that this was precisely XXXX XXXX XXXX XXXX belief around the time of the events in question. The Appellants filed a copy of a Criminal Report that XXXX XXXX XXXX XXXX filed with the Attorney General's Office in Cali on XXXX XXXX XXXX 2017, after she received a threatening call a couple of days before.⁸ The report indicates that, when the investigators asked XXXX XXXX XXXX XXXX whether she suspected anyone in particular, she replied "I don't suspect anyone in particular but because of my work, there are businessmen who get upset about the (XXXX XXXX XXXX) decisions that are made, but I don't suspect anyone in particular." XXXX XXXX XXXX XXXX did not indicate a belief that XXXX was responsible for the threats against her in that report and there is no evidence that she ever informed the authorities that she suspected that XXXX was responsible for the threats against her.
- [14] When the RPD asked XXXX XXXX XXXX XXXX why she did not mention XXXX to the authorities if she believed that they were responsible for the threats against her, XXXX XXXX XXXX XXXX said that she did not name XXXX because she did not have evidence to prove that the people who were harassing and threatening her were linked to XXXX. I disagree with the Appellants that the RPD disregarded this explanation. Instead, the RPD correctly found that the explanation was not satisfactory since one does not need to prove their case when they approach the authorities. XXXX XXXX XXXX XXXX was making a complaint in order to seek assistance from the police. If XXXX XXXX XXXX XXXX truly believed that the persons threatening her were linked to XXXX, it is more likely than not that she would have said so to the authorities. XXXX XXXX XXXX XXXX is a XXXX. As such, she would be aware of the importance of identifying potential suspects in order to increase the likelihood that the authorities can conduct a proper investigation and bring to justice those responsible for

harassing and threatening her.

- [15] Based on all of the above, the evidence establishes that XXXX XXXX XXXX XXXX did not suspect that XXXX was responsible for the threats against her at the time of the events in question. Taken at its very highest, based on XXXX XXXX XXXX XXXX testimony that the callers referred to being screwed by her in one of the calls, the evidence suggests that the threats may have been linked to XXXX XXXX XXXX XXXX work as a XXXX XXXX. However, the evidence is insufficient to establish that the persons threatening XXXX XXXX XXXX XXXX were associated with XXXX. The evidence establishes only that the persons threatening XXXX XXXX XXXX XXXX were unknown individuals who may have been harassing and threatening her due to her work as a XXXX XXXX. Internal Flight Alternative
- [16] I find that the Appellants have failed to establish that they do not have a viable internal flight alternative in Barranquilla.
- [17] The onus is on the Appellants to demonstrate that they do not have a viable internal flight alternative in Colombia. The two-pronged test to establish an internal flight alternative is the following.⁹
- (1) the decision-maker must be satisfied on the balance of probabilities that the Appellants would not face a serious possibility of persecution in the internal flight alternative location or a likelihood that they would be subjected personally to one of the types of harm that would make them persons in need of protection there.
 - (2) the conditions in the part of the country under consideration must be such that it would not be unreasonable, in all the circumstances, for the Appellants to seek refuge there. The threshold for unreasonableness is a very high one and requires nothing less than the existence of conditions that would jeopardize the life and safety of a claimant.¹⁰
- [18] By notice dated February 6, 2020, I asked the Appellants to explain why they would not have a viable internal flight alternative in Barranquilla.¹¹ In their response,¹² the Appellants submitted an affidavit sworn by XXXX XXXX XXXX XXXX in which she reiterated much of the testimony she provided at the hearing on the issue of internal flight alternative. In the affidavit, XXXX XXXX XXXX XXXX stated her belief that her life would be at risk anywhere in Colombia. She noted that she was found within two weeks when she moved to her father's place in Cali in XXXX 2017 and that Cali has about twice the population of Cali. XXXX XXXX XXXX XXXX also stated that she had no family or friends in Barranquilla and therefore she would have no support. She said that she and her daughter would be at risk due to the high rate of violence against women in Barranquilla. XXXX XXXX XXXX XXXX stated that it would be difficult for her to work as a XXXX in Barranquilla and that any advertising she did would permit her agents of harm to find her. Finally, she stated that her personal information would be activated in police databases if she returned to Colombia and that her agents of harm would be notified that she had returned. First prong of internal flight alternative test

- [19] I find that the evidence does not establish that, if the Appellants relocated to Barranquilla, they would face a serious possibility of persecution or the likelihood of any of the kinds of serious harm that would make them persons in need of protection within the meaning of s. 97 of the Immigration and Refugee Protection Act.
- [20] I do not agree with XXXX XXXX XXXX XXXX that the fact that the unknown persons threatening her tracked her down shortly after she moved to her father's place in Cali in XXXX 2017 necessarily means that they would likely be able to track her down in Barranquilla if she relocated there. I agree with the Appellants that the fact that the unknown agents of harm tracked XXXX XXXX XXXX XXXX down at her father's place in Cali must be taken into consideration as a factor demonstrating a certain capacity of these agents of harm to track XXXX XXXX XXXX XXXX down outside Bogotá. However, it does not necessarily establish, on a balance of probabilities, that these individuals would have any way of knowing that the Appellants were living in Barranquilla more than three years later.
- [21] To begin with, it would have been much easier for these unknown individuals to find XXXX XXXX XXXX XXXX at a family member's place shortly after they had been threatening her in Bogotá. By contrast, these individuals would likely have no way of knowing that the Appellants had relocated to Barranquilla over three years later, especially given the lack of a family connection there.
- [22] In addition, I find that there is insufficient evidence of a continuing interest and motivation by these unknown individuals to track down the Appellants in Barranquilla today. To begin, there was no evidence that the unknown individuals who had tracked XXXX XXXX XXXX XXXX down at her father's place in Cali had ever returned there to ask about her after she left in XXXX 2017. This is despite the fact that, as of the time of the RPD proceeding, XXXX XXXX XXXX XXXX father continued to live in Cali. There was also no evidence that the unknown individuals who had harassed and threatened XXXX XXXX XXXX XXXX over social media had sent her any messages after she left Colombia. In my view, this lack of any continued communication or contact gives rise to an inference that the unknown individuals who threatened XXXX XXXX XXXX XXXX do not have a continuing interest and motivation to track her down in a different city three years after the events that form the basis of her claim.
- [23] I also do not agree with XXXX XXXX XXXX XXXX assertion that her agents of persecution likely would find her because, as a XXXX, she would need to advertise if she went into XXXX XXXX in Barranquilla. It is not unreasonable to expect that XXXX XXXX XXXX XXXX, who was a XXXX XXXX, would seek employment in another sector of employment if that would permit her and her family to live safely in Barranquilla.
- [24] I also do not agree with XXXX XXXX XXXX XXXX claim that there is any evidence that her personal information would be activated in police databases if she returned to Colombia and that her agents of harm therefore would be notified that she had returned. XXXX XXXX XXXX XXXX made no allegations of any police collusion in relation to the threats she had

received. The evidence establishes that the persons threatening XXXX XXXX XXXX XXXX were unknown individuals who perhaps were threatening her due to her work for the XXXX XXXX. There was absolutely no evidence that these unknown individuals had any connection to the police or other state authorities, or the ability to obtain information from these entities.

- [25] Finally, I do not agree that the evidence establishes that the Appellants would face the likelihood, or even a serious possibility, of violence against them as women in Barranquilla. As noted above, although the messages initially receive by XXXX XXXX XXXX XXXX included comments of a sexual nature, her allegation at all times in this case has been that they arose due to her work as a XXXX XXXX. It is true that, if XXXX XXXX XXXX XXXX, her daughter and her mother relocate to Barranquilla, they would be living there as three women alone. However, all three lived together in Bogotá without experiencing any violence against them as women. While there exists violence against women in Colombia, I find that the evidence in this case is insufficient to establish that the Appellants would face a serious possibility of violence against them as women in Barranquilla, as alleged.
- [26] For all these reasons, I do not agree with any of the arguments that the Appellants have provided for why they would face a serious possibility of persecution or the likelihood of any of the kinds of serious harm that would make them persons in need of protection in Barranquilla. Second prong of internal flight alternative test
- [27] I do not agree with any of the reasons that XXXX XXXX XXXX XXXX gave for why it would be unreasonable for the Appellants to relocate to Barranquilla.
- [28] I do not agree with XXXX XXXX XXXX XXXX that the simple fact that she does not have family in Barranquilla is sufficient to make that city unreasonable as an internal flight alternative. While XXXX XXXX XXXX XXXX states that it would be difficult for her to find work as a XXXX in Barranquilla, the evidence does not establish that it is likely that she would be unable to find adequate employment in Barranquilla. XXXX XXXX XXXX XXXX is university-educated; she has a XXXX in XXXX XXXX; and she worked for the XXXX XXXX for twelve years. I do not find that any difficulty she may face in finding work would be of such a degree as to jeopardize her life and safety or that of her family.
- [29] For all these reasons, I do not agree with the reasons that the Appellants gave for why it would be unreasonable to expect them to relocate to Barranquilla. XXXX XXXX XXXX XXXX claim
- [30] In addition to denying the claim filed by XXXX XXXX XXXX XXXX mother, XXXX, because she has a viable internal flight alternative in Barranquilla, I would also deny it on the basis that she failed to establish a serious possibility of persecution or the likelihood of serious harm anywhere in Colombia. The only threats alleged in this case were threats against XXXX XXXX XXXX XXXX. Although XXXX XXXX XXXX XXXX had been living with her mother in Bogotá, in the midst of the harassing messages allegedly being received by XXXX XXXX XXXX XXXX, her mother left Colombia to come to Canada to take care of her other

daughter's children in XXXX 2016. Despite knowing where XXXX XXXX XXXX XXXX father lives, the unknown persons threatening XXXX XXXX XXXX XXXX did not go after her father to get to her. Therefore, I do not agree with the claim made by XXXX XXXX XXXX XXXX mother that the evidence establishes on a balance of probabilities that the unknown persons threatening her daughter would likely go after her to get to her daughter is she returned to Colombia.

[31] Because of all of the above findings above, I do not have to address the Appellants' arguments about the RPD's credibility findings in this case.

CONCLUSION

[32] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection. (signed) Jo-Anne Pickel Me Jo-Anne Pickel March 4, 2020 Date JP/tm

1. Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 2 Section 96 of the Immigration and Refugee Protection Act. 3 Audio-recording of hearing 38:00 and 1:58:00. 4 Letter from RAD to Appellants, February 6, 2020 (Exhibit RAD-1). 5 Letter from Appellants to the RAD, February 18, 2020 (Exhibit P-3). 6 Audio-recording of hearing 38:00 and 1:58:00. 7 Claimants documents C-27 in RPD Record, p. 127. 8 Claimants documents C-24 in RPD Record, p. 111. 9 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). 10 Ranganathan v. Canada (Minister of Citizenship and Immigration), [2001] 2 FC 164 (CA). 11 Letter from RAD to Appellants, February 6, 2020 (Exhibit RAD-1). 12 Letter from Appellants to the RAD, February 18, 2020 (Exhibit P-3).

RAD File / Dossier de la SAR : MB9-11230 MB9-11231 / MB9-11232 RAD.25.02 (January, 2020)
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Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
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