

CANADA / JUDGMENT

TB7-25077

COURT

Refugee Protection Division

DECIDED

30 July 2020

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RPD File / Dossier de la SPR : TB7-25077 TB7-23078 / TB7-23084 UCI / IUC: XXXX XXXXXXXX
XXXX XXXX Huis clos / Private Proceeding Reasons and Decision ? Motifs et décision Claimant(s)
XXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXXXXXX XXXX XXXX Demandeur(e)(s) d'asile
Date(s) of hearing February 25, 2020 Date(s) de l'audience Place of hearing Toronto, Ontario Lieu
de l'audience Date of decision and reasons July 30, 2020 Date de la décision et des motifs Panel H.
Ross Tribunal Counsel for the claimant(s) James Stephen Schmidt Barrister and Solicitor
Conseil(s) du (de la/des) demandeur(s) d'asile Designated representative N/A
Représentant themselves désigné themselves Counsel for the Minister N/A Conseil du (de la)
ministre REASONS FOR DECISION

- [1] The claimants, XXXX XXXX XXXX, XXXX XXXX XXXX (XXXX or principal claimant), and XXXX XXXX XXXX (XXXX), claim protection in Canada pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA),¹ at the hands of an XXXX XXXX XXXX (XXXX), a member of the Fuerzas Armadas Revolucionarias de Colombia (FARC).
- [2] Pursuant to Rule 55(1) of the Refugee Protection Division Rules, the claims were heard jointly.² ALLEGATIONS
- [3] The claimants have set out their allegations in detail in the narrative portions of their Basis of Claim (BOC).³ In short, they allege that: * The late XXXX XXXX XXXX had been a XXXX XXXX XXXX XXXX XXXX in their home town of Cali, Colombia. In 2001, XXXX XXXX XXXX agreed to XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. In fact, XXXX was involved in many more than the one XXXX case for XXXX XXXX XXXX XXXX XXXX XXXX. XXXX insisted that XXXX XXXX XXXX should XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. When XXXX XXXX XXXX refused to do so, XXXX threatened to harm XXXX XXXX XXXX. XXXX instructed him to talk to people in his FARC group and to provide them with reports. XXXX would call XXXX XXXX XXXX from the Venezuelan border. * XXXX XXXX XXXX XXXX from XXXX XXXX. He reported the harassment to the authorities at XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX in Bogota. * There was a period of calm between XXXX 2007 and late 2015. The claimants attribute this to the fact that XXXX had fled to Venezuela. However, in late 2015, XXXX resumed threatening XXXX XXXX XXXX. XXXX contacted him using surrogates, demanding that he be paid some XXXX XXXX pesos as compensation. In lieu of payment of this sum,

XXXX XXXX XXXX was to go to prisons and convince prisoners to join a new guerrilla group. He refused. * After FARC reached a peace agreement with the Colombian government, XXXX returned to Colombia at the beginning of 2016. He escalated his threats to include the other claimants and XXXX XXXX, who is XXXX's brother. XXXX XXXX worked for XXXX XXXX XXXX. * Strange men watched the family home and questioned the neighbours about XXXX XXXX XXXX. They also watched his office. They even went to XXXX's classes, where they sat close to her and asked her where the XXXX (her father) was. * On XXXX XXXX, 2017, two men abducted XXXX XXXX XXXX. The men drove him towards a sugar cane plantation and he feared he would be killed. He was saved by some labourers returning home. Three weeks later on XXXX XXXX, 2017, the claimants left Colombia. They went to the United States (US). However, XXXX XXXX XXXX was forced to return on XXXX XXXX, 2017 because his sister XXXX XXXX had died. He arrived in Colombia on XXXX XXXX, 2017. Meanwhile XXXX and XXXX travelled to Buffalo and then on to Canada. * The claimants state that while XXXX XXXX XXXX was in Colombia, a former member of the FARC, XXXX (aka "XXXX"), demanded that he pay the money owed to them. XXXX gave him two days to pay it. He went into hiding and left Colombia on XXXX XXXX, 2017. PRELIMINARY MATTERS

- [4] The original principal claimant, XXXX XXXX XXXX, died in XXXX, Ontario on XXXX XXXX, 2019. A copy of the certificate of death issued by the funeral home,⁴ as well as a copy of the application for an official death certificate⁵ were placed before the panel. At the hearing, the panel indicated that it would continue the hearing with XXXX XXXX XXXX being substituted as that new principal claimant. The claims of the associate claimants were continued.

ANALYSIS

Identity

- [5] The panel had numerous civil documents before it, which included birth certificates for each claimant, and the marriage certificate of XXXX and XXXX XXXX XXXX.⁶ Exhibit 1 contained copies of the claimants' passports.⁷ Based on these documents and on their oral testimony, the panel finds that the personal identities and citizenship of the claimants has been satisfactorily established.

Issues

- [6] Nexus to the Convention definition is a determinative factor, as is credibility. The agent of persecution - XXXX
- [7] The claimants identify XXXX as the main agent of persecution. On the basis of the documentation that was filed, the panel finds, on a balance of probabilities, that XXXX XXXX XXXX did have a XXXX XXXX XXXX relationship with XXXX.⁸ Also, on the basis of documents that were before it, the panel is satisfied that XXXX XXXX XXXX did XXXX XXXX and that he XXXX XXXX XXXX on XXXX XXXX, 2007.⁹

- [8] The claimants allege that XXXX is or was a member of the FARC; however, outside of the claimants' assertions, there was no reliable evidence linking him to the FARC. Counsel for the claimant submitted that XXXX XXXX XXXX's denunciation on pages 33-36 of Exhibit 6 is a complaint about former FARC members.¹⁰ This complaint is in relation to XXXX XXXX and XXXX (aka "XXXX"). They may well be former members of the FARC, as it states in the complaint. However, XXXX XXXX XXXX was not available to tell the panel how he came by this knowledge, and the claimants are also not in a position to do so. They both testified that XXXX XXXX XXXX told them that XXXX is connected to the FARC. However, XXXX also testified that her father did not discuss XXXX XXXX with the family. She amplified that, as their husband and father, he did not offer explanations, but would only try to calm them down.
- [9] Without the ability to question XXXX XXXX XXXX on how he came to know that XXXX was connected to the FARC, the panel is unable to test the credibility of his assertion or to make such a finding. In coming to this conclusion, the panel notes that when XXXX XXXX XXXX XXXX XXXX XXXX, he stated that he was doing so because XXXX had threatened him. He did not state that XXXX was a member of the FARC. Accordingly, the panel finds that while there is sufficient evidence establishing a XXXX XXXX XXXX relationship between XXXX XXXX XXXX and XXXX, there is not sufficient evidence before it to allow it to conclude that XXXX was a member of the FARC. XXXX and XXXX XXXXo
- [10] XXXX and XXXX XXXX allegedly asked XXXX XXXX XXXX to recruit inmates of the XXXX XXXX XXXX prison to the FARC cause, and allegedly instigated a campaign of terror against him, XXXX and XXXX when he refused. XXXX XXXX XXXX described them as associates of XXXX,¹¹ and former members of the FARC.¹² Again, in the absence of XXXX XXXX XXXX, it is not possible for the panel to make any cogent conclusion about their connection to the FARC.
- [11] Counsel for the claimants has submitted that the allegations, as related by XXXX XXXX XXXX, have been set out consistently. He submitted that XXXX XXXX XXXX related the same story at the Port of Entry (POE), as he did in the BOC. The panel finds that this is not entirely correct.
- [12] During his interview at the POE, XXXX XXXX XXXX told the CBSA officer that he was afraid to return to Colombia because he and his family were being threatened.¹³ He stated that he had been XXXX XXXX XXXX members of the FARC. They wanted him to do illegal things, and when they wanted him to recruit people who were in jail, he told them he would stop. XXXX XXXX XXXX told the officer: I am going to tell you what happened: CAUCA had two members that I were XXXX them as XXXX XXXX XXXX XXXX XXXX and that was XXXX XXXX, XXXX XXXX. I was XXXX [a] truck drive, while he was driving someone XXXX XXXX in this truck and he did not know that. And a couple of guys, that way that works is I could go in and out of jail. They were waiting for me to come out: They are the FARC people. When I came out one of them approached me and told me that in that cell there is this guy and that guy and we want you to recruit for us and I told them I am sorry that is illegal.¹⁴

- [13] When the officer asked him whether he knew who the two men were, XXXX XXXX XXXX replied, "they told me that they belong to Mr. XXXX XXXX, that is where the problem was."¹⁵
- [14] In his narrative, XXXX XXXX XXXX, describes being approached by XXXX and XXXX XXXX for payment of the money that XXXX demanded. He also states that they asked him to recruit dissidents to a new guerrilla group. However, he states that at that point (when he was asked to recruit) he "did not do that either, and at that point [he] did not know that these two men were working on behalf of XXXX XXXX..."¹⁶ Clearly, XXXX XXXX XXXX's statements at the POE with respect to when he knew that XXXX and XXXX XXXX were connected to XXXX is different from what he states in his BOC. This is an unresolved credibility issue because, as previously stated, he is no longer alive and the claimants repeatedly testified that they had little knowledge about his professional dealings or about the nature of his interactions with XXXX and XXXX XXXX.
- [15] On considering the totality of the evidence and testimony respecting the agents of persecution, the panel found that there is insufficient credible evidence to allow it conclude that these men had a link to the FARC. The panel also found that there was insufficient evidence before it to allow it to conclude, as counsel submitted, that a political opinion could be imputed to the claimants due to XXXX XXXX XXXX's refusal to recruit for the former FARC members. The panel finds, on a balance of probabilities, that XXXX did demand a large sum of money from XXXX XXXX XXXX, and this was a criminal act. Further, given the unresolved credibility issue of when XXXX XXXX XXXX knew that XXXX XXXX and XXXX were members of the FARC, the panel is not prepared to find that there was a political aspect to this claim.
- [16] The panel finds that what the claimants fear is criminality, namely, extortion, which the panel finds does not establish a link to the Convention refugee protection. The panel finds that the claimants are not Convention refugees. Are the claimants persons in need of protection?
- [17] The panel assessed the claims under section 97 of the IRPA in order to determine whether the claimants were persons in need of protection as defined by that section.
- [18] Section 97 of the IRPA establishes that protection could be extended to foreign nationals who are not Convention refugees in certain circumstances. Section 97(1)(b) of the IRPA requires that there be a risk to life, or of cruel and unusual treatment, or punishment if the person is unable, or because of that risk unwilling to avail himself of the protection of that country and that risk would be faced by the person in every part of the country.¹⁷ The definition also requires that the risk not be a generalised risk or be inherent to lawful sanction or due to lack of medical services in the country: 97(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

- (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
- (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
- (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.¹⁸

[19] The claimants allege that they have been subjected personally to a risk to life by XXXX XXXX and his henchmen. The claimants allege that at XXXX's instigation, people have watched the family home. These same people have invaded XXXX's classes, frightening her. On one occasion, a man on a motor bicycle pointed a gun directly at XXXX while the claimants were walking on the street.

[20] In response to the panel, they testified that the risk remains even though XXXX XXXX XXXX has died because the family was always targeted. They claimed they would face the same risk throughout Colombia. For the following reasons, the panel is not persuaded that the claimants would be subjected personally to a risk to life, or to cruel and unusual treatment or punishment.

[21] First, while the claimants allege that they were targeted as family members of XXXX XXXX XXXX, given the unresolved credibility concerns regarding who was allegedly targeting him and why, the panel is unable to assess the credibility of their assertions, particularly as there was no objective evidence of the alleged harassment before the panel.

[22] Furthermore, the evidence that was before the panel shows that XXXX XXXX XXXX entered into a XXXX XXXX XXXX relationship with XXXX in 2001, which relationship ended in 2007.¹⁹ The claimants testified that the harassment began some eight years later in 2015. XXXX testified that this was because XXXX felt safe to return to Colombia after the peace agreement. The documentary evidence states, in part, that "[a]fter four years of formal peace negotiations, the Colombian Government signed a final peace accord with the FARC in November 2016, which was subsequently ratified by the Colombian Congress."²⁰

[23] An Insight Crime article of 3 March 2017²¹ describing the process states, In 2012, the group[FARC] entered peace talks with the government of Juan Manuel Santos, and the negotiators announced a bilateral ceasefire deal in June 2016. A final agreement was reached between the two parties in August 2016. The FARC are currently [March 2017] demobilizing in select "concentration zones" across Colombia, after which many will be reintegrated into society while those responsible for grave crimes will serve reduced sentences outside of prisons. The points of the accord include tackling drug trafficking and criminal groups, the participation of the FARC in national politics, land reform and victims' rights.

- [24] The panel is aware that parts of the agreement had been negotiated prior to August 2016, but in the context of XXXX having been charged with serious crimes, the panel is not persuaded that he would have felt safe to return to Colombia prior to the signing of the final agreement.
- [25] The panel finds that the absence of police reports or other objective evidence taken together with the unresolved credibility concerns negates against a finding that the claimants were, or will be, subjected personally to a risk to their lives, or of cruel and unusual treatment or punishment in Colombia.

CONCLUSION

- [26] In light of the foregoing analysis, the panel finds that XXXX XXXX XXXX and XXXX XXXX XXXX are not Convention refugees as defined in section 96 of the IRPA, and are not persons in need of protection as defined in section 97(1) of the IRPA.
- [27] The claims are rejected. (signed) H. Ross H. Ross July 30, 2020 date 1 The Immigration and Refugee Protection Act, S.C. 2001, c.27, as amended [IRPA], sections 96 and 97(1). 2 Refugee Protection Division (RPD) Rules SOR/2012-256, Rule 55. 3 Exhibit 2-4, Basis of Claim Forms (BOCs). 4 Exhibit 9, Death Certificate. 5 Exhibit 12, Proof of Request of Original Death Certificate. 6 Exhibit 6, Personal Disclosure received September 17, 2019, at pp. 1-9 and 19-23. 7 Exhibit 1, Package of Information from the Referring CBSA/CIC, Certified True Copy of Passport. 8 Exhibit 6, Personal Disclosure received September 17, 2019, at p. 52. 9 Ibid., at pp. 46-47. 10 Ibid., at pp. 33-36. 11 Exhibit 2, BOC - TB7-25077. 12 Exhibit 6, Personal Disclosure received September 17, 2019, at pp. 33-36. 13 Exhibit 1, Package of Information from the Referring CBSA/CIC, Interview Notes for XXXX XXXX XXXX, at p. 6. 14 Ibid. 15 Ibid., at p. 7. 16 Exhibit 2, BOC - TB7-25077. 17 IRPA, supra, footnote 1, section 97. 18 Ibid. 19 Exhibit 6, Personal Disclosure received September 17, 2019, at pp. 44- 6-47 and 52. 20 Exhibit 5, National Documentation Package (NDP) for Colombia (May 31, 2019), item 1.5. 21 Ibid, Exhibit 5, Item 4.5, Insight Crime 3 March 2017, FARC

1 Immigration and Refugee Board of Canada Refugee Protection Division Commission de l'immigration et du statut de réfugié du Canada Section de la protection des réfugiés RPD.29.01 (October 4, 2019) Disponible en français RPD File / Dossier de la SPR : TB7-25077 TB7-23078 / TB7-23084

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