

CANADA / JUDGMENT

TB6-17398

COURT

Refugee Protection Division

DECIDED

6 November 2017

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RPD File No. / N° de dossier de la SPR : TB6-17398 TB6-11912 TB6-11920 TB6-11921 Private Proceeding / Huis clos DE NOVO REASONS FOR TB6-11912, TB6-11920, TB6-11921 Reasons and Decision ? Motifs et Décision Claimant(s) XXXX XXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXX Demandeur(e)(s) d'asile Date(s) of Hearing August 31, 2017 September 26, 2017 Date(s) de l'audience Place of Hearing Toronto, Ontario Lieu de l'audience Date of Decision November 6, 2017 Date de la décision and reasons et des motifs Panel S. Charow Tribunal Counsel for the Claimant(s) Michael Brodzky Barrister and Solicitor Conseil(s) du (de la/des) demandeur(e)(s) d'asile Designated Representative(s) XXXX XXXX XXXX XXXX Représentant(e)(s) désigné(e)(s) Counsel for the Minister N/A Conseil du (de la) ministre REASONS FOR DECISION

- [1] The claimants, XXXX XXXX XXXX ("the mother"), XXXX XXXX XXXX ("the daughter"), XXXX XXXX XXXX, and XXXX XXXX XXXX XXXX ("the sons"), citizens of Colombia, claim refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act ("the IRPA")¹.
- [2] These claims were heard jointly pursuant to Rule 55 of the Refugee Protection Division Rules.² The mother was appointed as a designated representative for her children, as all three are minors. ALLEGATIONS
- [3] The claimants' allegations are set out in their Basis of Claim ("BOC") forms.³ In short, the daughter was approached by members of Los Urabeños, a new armed group with extensive power in Colombia, and was told she had to sell illegal narcotics on their behalf. After the mother reported this to the Fiscalía (the prosecutor's office), she was assaulted in their home. Los Urabeños threatened each claimant with violence and death.

DETERMINATION

- [4] The panel finds that the claimants have not established that they are Convention refugees pursuant to section 96 nor that they are persons in need of protection under subsection 97(1). The claimants have not established that they would face a serious possibility of persecution in Colombia, nor, on a balance of probabilities, that their removal to Colombia would subject them personally to a risk to life or to a risk of cruel and unusual treatment or punishment or to a danger of torture.

ANALYSIS

- [5] The determinative issue in these claims is an internal flight alternative ("IFA") to Cali. In making this assessment, the panel has considered all the evidence, including the oral testimony, documentary evidence entered as exhibits, and counsel's submissions. Identity is Established
- [6] The claimants' personal identities as nationals of Colombia are established, on a balance of probabilities, by their testimony and their Colombian passports.⁴ The Claimants Were Credible
- [7] When a claimant swears that certain facts are true, this creates a presumption that they are true unless there is valid reason to doubt their veracity.⁵ The panel finds, on a balance of probabilities, that the claimants have established that they were targeted by members of Los Urabeños and that they may be targeted in the future, should they return to their home in Bogota.
- [8] Both the daughter and the mother testified in a straightforward manner, without embellishment, and there were no inconsistencies that went to the core of their claims that were not explained. Both gave testimony that was clear, cogent, and consistent with the evidence before this panel. The panel finds that all of the testimony given at this hearing was credible as to what the claimants experienced and believed. There is a Viable Internal Flight Alternative in Cali
- [9] The panel has considered the availability of an IFA and whether, on a balance of probabilities, the claimants could relocate to a different part of their home country, and live without a serious possibility of persecution or risk to their lives, or of cruel and unusual treatment or punishment, or danger of torture.
- [10] In order to determine whether a viable IFA exists, the panel must consider a two-prong test.⁶ The panel must be satisfied that there is no serious possibility of the claimants being persecuted in the part of the country in which the panel finds an IFA exists. Furthermore, conditions in that proposed part of the country must be such that it would not be unreasonable, in all circumstances, including those particular to the claimants, for them to seek refuge there.

- [11] The panel proposed IFA locations of Cali and Barranquilla to the claimants. The panel finds that both prongs of the IFA test are met in the proposed IFA of Cali. The Claimants' Allegations
- [12] The claimants alleged that the daughter was befriended by two men who wore the uniforms of police officers. After some time, these men told the daughter that she needed to sell narcotics for them at her school, or else they would tell people she did drugs and harm her physically. After this demand, the daughter began to see these two men outside the home she shared with her family.
- [13] The daughter told the mother what was happening and the mother sent the daughter to the home of relatives. The mother immediately went to the Fiscalía, who took the report and issued a protection order for the daughter.⁷ That night, the mother began to see men outside their home similar to the ones her daughter had described to her.
- [14] The next day, the mother went to the neighbourhood's police station, who told her that they had not received the protection order from the Fiscalía, but that even if they had, it would be up to her to protect the daughter because of their limited resources.
- [15] As soon as the mother returned home from the police station, the men she saw the night before approached her and forced her into her apartment. They assaulted the mother and searched the apartment for the daughter. They told the mother that she had "made [herself] into an informant" and that they knew she had spoken to the police. It was then that they told her that they were members of Los Urabeños. They claimed that they had been responsible for a recent nearby murder. The men had weapons.
- [16] At that point, the men looked around the apartment and said it was "pretty." They told the mother that she had to leave. They told her that she had four hours to leave or else they would kill her. They said that they knew she had two more children and that if she did not want anything to happen to her sons or her daughter, she would have to leave.
- [17] The mother gathered up some documents and her handbag and left her home. She picked up the sons from school and went to her relatives' home, where her daughter was staying.⁸ They did not return home at any point after that, but rather began to make the arrangements to leave the country. While staying with their relatives, they tried to stay in the home as much as possible. They did not tell their relatives why they were staying with them.
- [18] Since leaving Colombia, they have not received any new threats from anyone. No one in their family has been threatened by these men since the claimants left the country. The Claimants Would Not Face a Risk in the Proposed IFA
- [19] The claimants testified about their fear of Los Urabeños, and there is indeed extensive documentary evidence about the challenges Colombia faces from armed non-state actors. It is noted that paramilitary successor groups known as bandas criminales [criminal gangs] - BACRIM, grupos emergentes [emerging groups], or combos pursue functions of territorial, social, and economic control exerted by violent means.⁹ They carry out a wide variety of

illegal activities, which indeed includes extortion, threats, murders, and the trafficking of narcotics¹⁰ as per the claimants' allegations. It is specifically noted that these groups recruit and involve minors.¹¹ The national reach of Los Urabeños is also clear, as it is noted that it had a presence in 279 municipalities in 27 departments, including both departments in which the proposed IFAs are located.¹²

- [20] It is very clear to the panel that the agent of persecution would have the means to trace or target these specific claimants in the proposed IFAs. However, the panel must also examine whether the agent of persecution would have the motivation to do so.
- [21] The panel turns back to the credible testimony given by the claimants. The mother gave detailed oral testimony about the attack that she experience in her home, which was consistent with a narrative provided ahead of the hearing.¹³ In this narrative, the mother wrote: ...then the man said to me: I know you have two other brats and you don't want us to give them "chumbimba" right? He told me that the apartment could be a very good site for headquarters, he said they wanted us "gone" from there and never go back, that I should get lost with my brats because if they were to catch [the daughter] they were going to give her "chumbimba" or that maybe she could be put to work the streets so that they could get a little money out of her, he said I'd know what to do, that nothing was going to happen if I kept my mouth shut. He said: you have four hours to evacuate, old one or you all die.¹⁴
- [22] To the panel, it seemed clear that should the claimants fulfil the men's demands of leaving them the apartment, and not telling anyone about what had happened, then there would be less than a mere possibility of risk to them in the future. Essentially, the men told the claimants to leave and that they would only be at risk should they stay. There is no indication that these men would pursue the claimants once they had left Bogota, and there is no indication that they have attempted to do so once the claimants had left their apartment.
- [23] While discussing Cali, the proposed IFA, the panel asked the mother why she thought someone would be able to find her. She answered that Los Urabeños are all over the country, that they have photographs of her daughter, and that she would not be able to put her children at risk for them to find them and kill them.
- [24] The panel then specifically asked her why these men would still be looking for her and her family. She repeated that they have photographs of her daughter, that they are everywhere, and that the children could be found easily if registered in school. The mother said that she had to make a decision and she could "not even contemplate minimizing the risk of them killing [her] children. [She] needed to eliminate completely that risk."
- [25] The panel then asked why these men would still be looking for her if they had told her to leave her home or else they would kill her and she did indeed leave. The mother answered that the risk still exists, as the men had met the daughter and they wanted her to sell drugs.

- [26] The panel is very sympathetic to the mother's desire to "eliminate completely" any risk to her children. However, that is not the legal test for the first prong of the IFA assessment. The panel finds that as the claimants have already complied with the demands of their agent of persecution, there would be no motivation for the agent of persecution to pursue them to the proposed IFA.
- [27] In his submissions, counsel for the claimants provided a thorough argument that should the claimants be required to return to Colombia, they would essentially be internally displaced persons ("IDPs"). Referring to the provided country condition documents,¹⁵ counsel submitted that there is somewhere between four to six million people who have been internally displaced by Colombia's conflicts. Counsel submitted that as IDPs, the claimants would be at risk of persecution or harm, with the minor claimants at risk of being recruited by armed groups, and the daughter especially at risk because of her gender and age. It was submitted that there is not adequate state protection from these groups in the proposed IFA.
- [28] To assess what the actual risk the claimants would face should they relocate to the proposed IFA, the panel turns to the submitted objective documentation regarding IDPs in Colombia. It is noted that IDPs go from one city to another, and settle in the poorest areas.¹⁶ However, the risk most prominently identified in the submitted evidence is that IDPs can be easily tracked by their agents of persecution, a risk already discussed above.¹⁷ Although sexual violence is noted to be a "habitual and frequent practice," it is also noted that this is a "premeditated, systematic, and generalized practice."¹⁸ It is also noted that women and children are particularly vulnerable segments of the IDP population who endure sexual exploitation, violence, and malnutrition.¹⁹
- [29] However, the panel cannot find that the dangers faced in general by people in the proposed IFA, even those faced by women and children who are internally displaced persons, rise to the level required by the legal tests. The documentary evidence submitted by the claimants establishes that there is a higher risk of persecution or harm for IDPs, whether violence based or via recruitment, but does not establish that there is a serious possibility of persecution or a probable risk to life, or risk of cruel and unusual treatment or punishment, or danger of torture in the proposed IFA. To find otherwise, based on the evidence before this panel, would be speculative.
- [30] Therefore, the panel finds that on a balance of probabilities, there is no serious possibility of persecution nor a risk to life or risk of cruel and unusual treatment or punishment or danger of torture in the proposed IFA of Cali. The Proposed IFA is Reasonable
- [31] The panel has considered both the personal circumstances of the claimants and the objective evidence with respect to the claimants' ability to relocate to Cali. As per her testimony, the mother worked extensively in positions such as XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX for a large company. Her work history extends back for over ten years. She is well-educated, and holds a university degree in XXXX XXXX. When the mother was asked by the panel if she could find a job in Cali, the only answer given by the mother

was that they would have to live in hiding. She testified that if they returned to Colombia, "be it Cali or any other city," they would have to live in hiding. She could not work, nor would the children be able to go to school. If one of the minor claimants became sick, the mother would not be able to get them medical care, and the children would not be able to go to a park. Again, as per the above analysis, it is more likely than not that the claimants would not have to live in hiding.

- [32] The claimants have submitted evidence that indicate levels of poverty and extreme poverty for IDPs.²⁰ Counsel also argued many IDPs live in poverty, and have limited access to health care and education.²¹ However, considering the mother's high level of education and extensive work experience, the panel finds that it is more likely than not that the mother would be able to find employment in the proposed IFA, a city of more than 2.646 million people.²² Likewise, the evidence before the panel indicates that the limited access to healthcare and education is more prevalent in more rural settlements for IDPs, as opposed a city as big as Cali.
- [33] The panel has also specifically considered that the mother is, essentially, a single parent to three minor children. She testified that she only receives "a minimal fee" from their father, who lives in Bogota. However, the panel also notes that the mother was able to support her family on her own for the time they had spent previously in Colombia. The claimants have offered no corroborated evidence that she will not be able to continue to do so should they relocate to Cali. Similarly, the mother testified that she still has family in Colombia with whom she communicates regularly. There was no indication that they could not offer them any support, whether financially or emotionally, should the claimants return to Colombia. As they would not be required to go into hiding, as discussed above, the claimants have not established that they would be prevented from accessing social services such as education or health care. Furthermore, the claimants have already shown great adaptability, taking themselves out of danger and traveling to Canada. ²³
- [34] The Federal Court has held that the threshold for the 'objectively unreasonable' standard is very high and requires, at a minimum, the proof of adverse conditions which would jeopardize the life and safety of the claimants in relocating to a safe area, and that the claimant is required to produce actual and concrete evidence of such conditions.²⁴ The panel finds that the claimants have not provided such evidence to meet this high threshold. Accordingly, the panel finds that it would not be unreasonable for the claimants to relocate to Cali.

CONCLUSION

- [35] Since the panel has found that the claimants have an IFA in Cali that is safe and reasonable in their particular circumstances, the panel finds they do not face a serious possibility of persecution in Colombia. The finding of an IFA also applies to IRPA section 97(1), as on a balance of probabilities, the claimants do not face a danger of torture or risk to life or risk of cruel and unusual treatment or punishment. Consequently, the claimants are neither Convention refugees nor persons in need of protection.
- [36] The panel accordingly must reject each claim for refugee protection. (signed) "S. Charow" S. Charow November 6, 2017 Date 1 Immigration and Refugee Protection Act (IRPA), SC 2001, c 27, as amended. 2 Refugee Protection Division Rules, SOR/2012-256. 3 Exhibits 2 - 5. 4 Exhibit 1, Package of information from the referring CIC/CBSA. 5 *Maldonado v. Canada* (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.). 6 *Thirunavukkarasu v. M.E.I.*, [1994] 1 F.C. 589 (C.A.); *Rasaratnam v. M.E.I.*, [1992] 1 F.C. 706 (C.A.), at p. 710. 7 Exhibit 9, Claimants' Documentary Evidence (personal documents), received October 21, 2016, p. 10-11. 8 Exhibit 9, Claimants' Documentary Evidence (personal documents), received October 21, 2016, p. 12-13. 9 Exhibit 6, National Documentation Package (NDP) for Colombia (31 May, 2017), Item 7.2. 10 Exhibit 6, NDP for Colombia (31 May, 2017), Item 7.2. 11 Exhibit 6, NDP for Colombia (31 May, 2017), Item 7.2. 12 Exhibit 6, NDP for Colombia (31 May, 2017), Item 7.2. 13 Exhibit 9, Claimants' Documentary Evidence (personal documents), received October 21, 2016, p. 1-9. 14 Exhibit 9, Claimants' Documentary Evidence (personal documents), received October 21, 2016, p. 3. 15 Exhibit 8, Claimants' Documentary Evidence (received October 26, 2016); and, Exhibit 12, Claimants' Documentary Evidence (received January 16, 2017). 16 Exhibit 8, Claimants' Documentary Evidence (received October 26, 2016), p. 18. 17 Exhibit 8, Claimants' Documentary Evidence (received October 26, 2016), p. 18-21. 18 Exhibit 8, Claimants' Documentary Evidence (received October 26, 2016), p. 21. 19 Exhibit 8, Claimants' Documentary Evidence (received October 26, 2016), p. 44. 20 Exhibit 8, Claimants' Documentary Evidence (received October 26, 2016), p. 43. 21 Exhibit 6, NDP for Colombia (31 May, 2017), Item 2.1; Exhibit 8, Claimants' Documentary Evidence (received October 26, 2016); and, Exhibit 12, Claimants' Documentary Evidence (received January 16, 2017). 22 Exhibit 6, NDP for Colombia (31 May, 2017), Item 1.5. 23 *Momodu v. Canada* (Citizenship and Immigration), 2015 FC 1365. 24 *Singh v. Canada* (Minister of Citizenship and Immigration), 2013 FC 988.

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