

CANADA / JUDGMENT

Morales Morales v. Canada (Citizenship and Immigration)

2026 FC 196

COURT

Federal Court

DECIDED

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Docket: IMM-3637-24

Citation: 2026 FC 196

Ottawa, Ontario, February 10, 2026

PRESENT: Madam Justice Conroy

BETWEEN:

EDWIN ALBERTO MORALES MORALES

ROSA MILENA ALBARRACIN NUNEZ

SEBASTIAN DANIEL MORALES ALBARRACIN

DAVID SANTIAGO MORALES ALBARRACIN

Applicants

and

MINISTER OF CITIZENSHIP AND

IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW [1] This is a judicial review of a decision by the Refugee Appeal Division [RAD] to affirm the decision of the Refugee Protection Division [RPD] that the Applicants are not convention refugees or persons in need of protection under the Immigration and Refugee Protection Act [IRPA] sections 96 and 97.

[2] For the reasons set out below, I find that the RAD's assessment of the adequacy of state protection for the co-Applicants is unreasonable, but that its reasons on forward-looking risk reveal no reviewable error. The flaws identified have caused me to lose confidence in the RAD's overall conclusion. In the circumstances of this case, I am not convinced that upon redetermination the RAD would inevitably reach the same conclusion on forward-looking risk. Therefore, I order the matter be sent back to the RAD for redetermination.

II. BACKGROUND A. Material Facts and Events Leading to this Application [3] Mr. Morales [Principal Applicant] is a 45-year-old citizen of Colombia and an architect. His wife (Rosa Milena Albarracin Nunez) and sons are co-Applicants in these proceedings.

(1) Extortion by the ELN [4] In 2010, Mr. Morales started a consulting business in Saravena, Colombia, the community where he lived with the co-Applicants. His business was involved in several public infrastructure projects.

[5] In 2015, Mr. Morales started receiving pamphlets and extortion demands related to his business from two paramilitary groups: the Black Eagles and the National Liberation Army, or ELN.

[6] Mr. Morales was initially able to ignore these demands. However, in early 2017, the ELN began escalating their threats and demanding an in-person meeting with him. In response to this escalation, Mr. Morales reported the ELN's threats through a formal "denunciation" (criminal complaint) to the Attorney General of Colombia.

[7] Then, in August 2017, while Mr. Morales was working in Bogota, armed ELN members came looking for him at his family home in Saravena and threatened his wife, Ms. Nunez.

- (2) Flight to Bogota [8] Mr. Morales decided that the family had to leave Saravena. They travelled separately to avoid detection. Ms. Nunez joined him in Bogota in or around late September or October, and the children waited with their grandmother until November. When the children travelled to Bogota, they changed vehicles multiple times for security.
- [9] In October 2017, Mr. Morales' father was abducted in Saravena by armed ELN members who questioned him about Mr. Morales and his family. Before bringing him home, the men informed Mr. Morales' father that they would continue to pursue Mr. Morales and his family.
- [10] In January 2018, Mr. Morales was granted protection by the National Protection Unit [UNP], a branch of Colombia's Ministry of the Interior that provides protection to citizens who are threatened by paramilitaries. The UNP granted Mr. Morales two bodyguards to accompany him when he left his home, a bulletproof vest, a car that he (but not his family) could be driven in, and a cellphone. Mr. Morales repeatedly requested protection from the UNP for his wife and sons, but it was only ever issued to him.
- [11] The Applicants were very cautious while living in Bogota. Although Mr. Morales and Ms. Nunez were able to work and their sons were able to attend school, the parents were careful to keep a close eye on their sons, and no one in the family left their home unnecessarily. The family also moved several times during this period as a precaution – both within Bogota and to Metagene and Santuario.
- [12] According to documentation from the UNP, the Applicants did not have any confirmed encounters with the ELN after leaving Saravena. However, Mr. Morales noticed and reported people loitering suspiciously outside their home, Mr. Morales had an encounter with a police officer in 2019 during which a stranger was filming him, and Mr. Morales and Ms. Nunez each reported incidents of being followed by strange men in 2019 and 2020, respectively. Mr. Morales also reported in his RPD testimony that he continued to receive threatening text messages from the ELN during this period. He testified that he forwarded these messages to the UNP.
- [13] In March 2021, the UNP conducted an updated risk assessment and reduced Mr. Morales' security to one bodyguard, a car, and a cellphone. Mr. Morales testified that this change was, at least in part, due to budget cuts at the Ministry of the Interior.
- [14] On June 23, 2022, the Applicants travelled to Canada for a vacation. At some point in June, Mr. Morales received a threatening text message from the ELN and, just before the family's planned return to Colombia, Mr. Morales learned that he would be losing his UNP protection altogether. Mr. Morales and his family decided to stay in Canada and seek refugee protection.

B. Decision Under Review [15] In October 2023, following a hearing that took place on July 19, 2023, the Applicants' refugee claim was rejected by the RPD on the grounds that they had not rebutted the presumption of state protection and the risk to the Applicants had decreased significantly by the time they left Colombia in 2022.

[16] On appeal to the RAD, the Applicants argued that the RPD had failed to properly consider their subjective fear, erred in its analysis of state protection, and failed to consider the co-Applicants' risk.

[17] The Applicants also attempted to file new evidence, consisting of personal evidence and country condition evidence. The personal evidence included:

a police complaint filed by an apparent relative of the Applicants in Columbia, dated July 25, 2023. It reports receiving a threatening message in January 2023 from the ELN and a visit from ELN members on July 17, 2023, referencing Mr. Morales by name;

A threatening hand-written message from the ELN dated July 17, 2023, referencing "the matters" of Mr. Morales; and

a UNP Risk Analysis and resolution for Mr. Morales dated August 1, 2022, which appears to find his risk level is "extraordinary." The Risk Analysis references threats to his family but states "it is something that he can learn to manage, and he cannot be provided with comprehensive protection for his life and that of his family due to high budget cut of the entity (UNP)".

[collectively, Personal Evidence].

The country condition evidence consisted of five news articles about the ELN: three are undated and two are dated November 2023 [collectively, Country Condition Articles].

[18] The RAD declined to admit the new evidence finding that the Personal Evidence was reasonably available to the Applicants before the RPD denied their claim, and the Country Condition Articles were irrelevant because there was no dispute that the ELN is dangerous and they did not provide any information that could not be found in the National Documentation Package [NDP].

[19] The RAD upheld the RPD's decision. The RAD found that the Applicants had not rebutted the presumption of state protection and had not provided sufficient evidence of forward-facing risk.

III. ISSUES AND STANDARD OF REVIEW [20] The application raises the following issues:

- 1) Did the RAD err in not admitting new evidence and not holding an oral hearing?
- 2) Did the RAD err in not conducting an independent analysis?
- 3) Were the RAD's conclusions on state protection and forward-looking risk unreasonable?
- 4) Remedy.

[21] The standard of review on the substance of the RAD's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[22] During oral arguments, the Applicants submitted that the standard of review for questions of law is correctness. However, this is a misinterpretation of the exceptions to the presumptive standard of reasonableness set out in *Vavilov*. A correctness standard only applies to questions of law where there is a statutory right to an appeal or where there is a general question of law of central importance to the legal system as a whole: *Vavilov* at paras 37 and 53. Neither of these conditions apply here. Thus, the presumption of reasonableness as the standard of review has not been rebutted: *Vavilov* at paras 10 and 70.

[23] Reasonableness asks the reviewing court to consider whether the impugned decision was justified, intelligible and transparent in relation to the facts and law that constrained the decision-maker: *Vavilov* at para 10. It is a deferential standard but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability: *Vavilov* at para 13.

IV. ANALYSIS [24] The central issues are whether the RAD drew reasonable conclusions about the availability of state protection and the existence of forward-facing risk. I conclude that the RAD’s perfunctory assessment of state protection for the co-Applicants was not responsive to the evidence and is unreasonable. I further find that the RAD reasonably concluded that the Applicants have not established that they face an ongoing risk of persecution in Colombia outside of Saravena.

[25] This gives rise to the question of remedy: in the absence of a forward-looking risk to the Applicants, the question of state protection is arguably immaterial. Ultimately, I have concluded that because the RAD drew unreasonable conclusions on a critical aspect of the Applicants’ claim, and the RAD’s analysis of forward-facing risk was inextricably tied to its conclusions on state protection, this matter must be remitted for reconsideration.

[26] Before addressing these issues, I first consider the other grounds for review raised by the Applicants.

A. New Evidence [27] The RAD’s refusal to admit the new evidence is reasonable: it is consistent with the requirements in the legislation and the governing jurisprudence.

[28] At the outset I would note that deference is owed to the RAD’s determinations on the admissibility of evidence: *Morales v Canada (Citizenship and Immigration)*, 2024 FC 133 at para 14 [*Morales*], citing *Frank v Canada (Citizenship and Immigration)*, 2023 FC 696 at para 25; *Asim v Canada (Citizenship and Immigration)*, 2022 FC 517 at para 23; *Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 at para 32. The role of a judicial review court is not to revisit whether the new evidence ought to have been admitted, but rather to assess whether the RAD’s admissibility determination is reasonable: *Morales* at para 14.

[29] The general rule is that the RAD “must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division”: IRPA, s. 110(3).

[30] Section 110(4) of the IRPA provides an exception to the general rule and allows the RAD to admit new evidence in limited circumstances. New evidence may only be admitted by the RAD if:

- 1) it arose after the rejection of their claim by the RPD;
- 2) it was not reasonably available before the rejection of their claim; or
- 3) the person could not reasonably have been expected in the circumstances to have presented the evidence at the time the claim was rejected.

[31] The RAD does not have discretion to disregard these criteria: *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 63 [Singh]. This aligns with the role of the RAD, which is to “allow for errors of fact, errors in law or mixed errors of fact and law to be corrected,” and “not to provide the opportunity to complete a deficient record submitted before the RPD”: Singh at para 54.

[32] In submitting the proposed new evidence, the Applicants (who it appears were not represented by counsel at the RPD or RAD) paraphrased subsection 110(4) but unfortunately failed to provide any meaningful explanation for why the new evidence met the criteria in the provision. Their submission on the admission of the new evidence stated:

The appellants intend to present new evidence that aligns with the criteria outlined in subsection 110(4) of the IRPA. This evidence encompasses information that either did not exist or was not accessible to the appellant at the time their refugee protection claim was denied.

[33] The RAD’s reasons provide:

I do not find any of the new evidence admissible. The Appellants fail to explain why the personal evidence was not submitted to the RPD before the RPD rendered its decision on October 13, 2023. I find the personal evidence was reasonably available at the time of the decision.

[34] The RAD goes on to conclude that the Country Condition Articles were not relevant.

[35] The RAD’s conclusions on the admissibility of the evidence are reasonable, particularly in light of the sparse submissions before them on this issue.

[36] The Applicants argue that the Personal Evidence is highly probative and material as it provides evidence of a continuing risk to the Applicants in Columbia. They assert that the RAD erred in failing to consider the materiality of the Personal Evidence and in failing to flexibly apply s. 110(4) to safeguard procedural fairness. They submit that this was a reviewable error, relying on *Ariyo v Canada (Citizenship and Immigration)*, 2023 FC 1200 [Ariyo] and *Husseen v Canada (Minister of Citizenship and Immigration)*, 2015 FC 845 [Husseen].

[37] I do not dispute the materiality and probative nature of the Personal Evidence as it relates to the Applicants’ forward-looking risk in Columbia. Harsh as the result may seem for the Applicants who were without legal representation at the RPD or RAD, the law is clear: the

probative value of the evidence does not permit the Court or the RAD to ignore the plain language of subsection 110(4): Singh at para 36. Indeed, a similar argument (Singh at para 56) was considered and rejected by the Federal Court of Appeal in Singh. At paragraph 63, the Court held:

....subsection 110(4) is not written in an ambiguous manner and does not grant any discretion to the RAD. As mentioned above... the admissibility of fresh evidence before the RAD is subject to strict criteria and neither the wording of the subsection nor the broader framework of the section it falls under could give the impression that Parliament intended to grant the RAD the discretion to disregard the conditions carefully set out therein.

[38] In the circumstances, Aryio does not assist the Applicant. In that case the RAD failed to address the applicant's substantial and compelling explanations for why he hadn't raised the evidence in question before the RPD issued its decision. In the present case however, the Applicants provided no explanation for why they did not provide their Personal Evidence earlier.

[39] The Applicants also rely on the following statements in Hussein, at paragraphs 16 and 17:

In my view, the door should not slam shut on all those who fail to meet ordinary procedural requirements. Such a restrictive reading would undermine Canada's commitment to its refugee system and underlying international obligations (section 3(2) of the Act). Indeed, one of the purposes of the Refugee Convention, to which Canada is a signatory, is to allow refugees the widest possible exercise of fundamental rights and freedoms (*Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68, at para 27).

The opportunity to free a family from the scourge of persecution ... should not rest on an overly rigid application of procedural requirements. This is particularly where, as I shall explain, the Rules themselves allow for the flexibility to safeguard fairness.

[40] In Hussein, Justice Diner considered whether the RPD's refusal to re-open a refugee claim was a violation of natural justice. The claim was closed because of the applicants' failure to file their Basis of Claim on time or attend the abandonment hearing. After considering the sympathetic facts in that case, and the applicable rules from the Refugee Protection Division Rules, SOR/2012-256, which expressly require the RPD to consider natural justice and "relevant factors" in assessing requests to reopen a claim, Justice Diner concluded that the RPD had breached the principles of natural justice by refusing to reopen the claim.

[41] In contrast to Hussein, the governing provision in the present case, IRPA s. 110(4), provides no such discretion. As noted, this has been confirmed by the Federal Court of Appeal in Singh, which is binding on me, and consistently followed by decisions of this Court: see for example, *Nteta-Tshamala* 2019 FC 1191 (per Pamel, J.); *Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175, at para 41 (per Kane, J.); *Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 at paras 17-19 (per Gascon J); *Nmashie v Canada (Citizenship and Immigration)*, 2025 FC 90 at para 9 (per Pentney, J.); *Conliffe v Canada (Immigration,*

Refugees and Citizenship), 2023 FC 731 at paras 7-8 (per Aylen, J.).

[42] Accordingly, the RAD's decision on the new evidence must stand.

B. Independent Assessment by the RAD [43] The Applicants argue that the RAD failed to conduct an independent assessment and simply upheld the conclusions reached by the RPD. The Applicants point to the following in support of this argument: (1) the RAD's reasons were brief and rigid, (2) the conclusions reached by the RAD were the same as those reached by the RPD, and (3) the RAD failed to address most of the key issues raised in the appeal.

[44] There is a rebuttable presumption that the RAD has considered all the evidence and carried out an independent analysis of the claim: *Gomes v Canada (MCI)*, 2020 FC 506 at para 36 [Gomes]. The Applicants have not rebutted this presumption.

[45] The length of a decision is not, by itself, indicative of a failure by the RAD to undertake an independent analysis: *Gomes* at para 34. Likewise, the fact that the RAD reached the same conclusions as the RPD does not, without more, indicate that the RAD failed to undertake an independent analysis: *Tan v Canada (Minister of Citizenship and Immigration)*, 2022 FC 807 [Tan] at paras 9 and 12.

[46] As in *Tan*, the Applicants have not pointed to "any example where the RAD did not engage in an independent assessment. They have pointed the Court to parts of the RAD's decision that they disagree with and which they argue were unreasonable findings but they have not shown that the RAD failed to conduct an independent assessment" (at para 9).

[47] The assertion that the RAD failed to consider certain arguments is more appropriately dealt with under the issue discussed below.

C. Reasonableness of the RAD's conclusions on state protection and forward-looking risk (1) State Protection [48] I am not persuaded that the RAD failed to apply the appropriate legal test to determine whether the Applicants had rebutted the presumption of state protection. However, I agree with the Applicants' submission that the RAD misapprehended evidence about the availability of state protection for the co-Applicants in light of their own particularized risk.

[49] Given that the refugee protection regime is remedial, refugee claimants must provide clear and convincing evidence to rebut the presumption that the state in their country of origin can protect them from persecution: *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC) at pages 724 and 726. This is a heavy burden and challenging to rebut for democratic countries like Colombia: *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 26.

[50] That said, claimants can rebut the presumption of state protection even where the state has undertaken serious efforts to protect them if the protection is not adequate in the circumstances: *Camargo v Canada (Citizenship and Immigration)*, 2015 FC 1044 at para 26 [Camargo]. The requisite standard is not perfection, but rather adequate protection: *Camargo* at para 11. The fact that a state has taken serious efforts is not determinative:

Camargo at para 26. “The appropriate test involves an assessment of the adequacy of that protection at the operational level; is the level of protection adequate within the context of the person seeking to rely on that protection?”: Camargo at para 26.

- [51] At the outset, I note that the RPD failed to consider whether the co-Applicants benefited from state protection. Contrary to the conclusion of the RAD, this was an error.
- [52] Furthermore, the RAD’s findings about the adequacy of state protection for the co-Applicants were not responsive to the evidence.
- [53] First, in response to the Applicants’ argument that the RPD failed to consider the risk to the co-Applicants, the RAD noted that the co-Applicants had based their claim on the Principal Applicant’s narrative in his Basis of Claim. This is true but, given the content of the narrative, this does not justify the RPD’s conclusion. The RAD failed to address the fact that the narrative explains the distinct circumstances of the co-Applicants as compared to the Applicant. The narrative contains evidence that the ELN posed a risk to the Principal Applicant’s family members, specifically:
1. The ELN came to the Principal Applicant’s home while he was away and threatened his wife while his children were at home.
 2. The ELN kidnapped the Principal Applicant’s father. While Mr. Morales’ father is not a co-Applicant, this demonstrates that the ELN is willing to use violence against his family as part of their extortion efforts.
 3. The Principal Applicant’s denunciation notes that the ELN specifically stated that they know where his children attend school.
- [54] Further, his narrative expressly raises (more than once) that while the UNP provided the Applicant with some protection, it did not provide any to the co-Applicants.
- [55] Second, the RAD found that the documents from the UNP show that the Principal Applicant’s entire family was being protected. I am unable to ascertain how the RAD came to this conclusion in light of the evidence on the record.
- [56] The UNP documentation only assesses the risk for the Principal Applicant, not his family members. The only reference to his family is in a UNP document that deals with compensation (not protection) for displacement caused by paramilitary violence. Moreover, the Principal Applicant’s testimony, which the RAD did not contest, was that the bodyguards were available only to him when he left the house but not available to his family members, and that the bodyguards were not stationed at the house. The car, vest, and cellphone were similarly only provided to the Principal Applicant.
- [57] Third, the RAD relies on the finding by the UNP that only the Principal Applicant was at risk from the ELN. As noted, there is evidence on the record that was not addressed in the RAD’s reasons, showing that, while the Principal Applicant may have been the ultimate target of the ELN, there were risks to his wife and children as well. Moreover, the mere fact that the

UNP chose not to extend protection to the co-Applicants is not enough evidence to conclude that they were not meaningfully at-risk from the ELN. The RAD decision acknowledges that the evidence about the UNP's ability to effectively protect Colombian citizens is "mixed." Tab 1.8 of the Colombia NDP states that the UNP's protection is not always "proportionate to the risk faced by victims." The NDP goes on to note that the UNP "only manages to provide protection to a [translation] "very low" percentage of those who request it." Taken together, this indicates that the fact that the UNP decided not to grant protection to the co-Applicants is not enough to show that they were not, in fact, meaningfully at risk.

- [58] The RAD is presumed to have weighed and considered all the evidence presented unless the contrary is shown; a failure to mention a particular piece of evidence in a decision does not mean that it was ignored and does not constitute an error: *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 25 [Penez], citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 16-17 [Cepeda-Gutierrez].
- [59] However, if the RAD is silent on evidence clearly pointing to an opposite conclusion and squarely contradicting a central finding, the Court may infer that they overlooked the contradictory evidence: *Penez* at para 25, citing *Cepeda-Gutierrez* at para 17.
- [60] I conclude that the RAD either overlooked, or was not alive to, material details in several documents provided by the Applicants, including the narrative in their Basis of Claim - a foundational document in refugee claims. This rebuts any presumption that it carefully weighed and considered all the evidence.
- [61] While the RAD reasonably concluded that there was adequate state protection for the Principal Applicant in Colombia, its perfunctory assessment of the adequacy of state protection available for the co-Applicants in light of the evidence of their individual risk was unreasonable.
- (2) Forward-Facing Risk [62] Refugee claimants must be able to show that they have grounds to fear ongoing persecution. While evidence of past persecution may be highly relevant and useful for demonstrating forward-facing risk, it is not necessarily enough on its own to establish a valid claim for refugee status: *Fernandopulle v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91 at paras 23-25.
- [63] The RAD explained that the RPD considered the evidence regarding the family's reports of being followed and being approached after they left Saravena. The RPD dismissed these concerns based on the UNP's findings that the threats were not validated and that the risk had decreased fundamentally, resulting in reduced protective measures by the UNP. The RAD agreed with the RPD that the risk to the Applicants had decreased significantly by the time they left for Canada in 2022.

[64] The RAD also considered the RPD's treatment of the June 2022 threatening text. It found this text to be insufficient to establish that the ELN was continuing to pursue the Applicants. The RAD's reasons also state that, even if it were to accept the June 2022 text to be evidence of the ELN's continuing interest in the Applicants, "I find there is evidence of state protection in their case."

[65] I am not persuaded that the RAD's conclusion on forward-looking risk, in itself, reveals a reviewable error. It is not the role of the Court to reweigh the evidence (Vavilov at para 125) and there is evidence on the record to support the conclusion it reached on this issue.

D. Remedy and the Overall Reasonableness of the RAD Decision [66] It is settled law that even where an error has been identified, this Court retains discretion not to grant relief on a judicial review: *Canadian Pacific Ltd. v Matsqui Indian Band*, 1995 CanLII 145 (SCC), [1995] 1 SCR 3 at paras 30 and 31. For example, relief may be refused if the final result would be the same regardless of the error identified: *Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202, 1994 CanLII 114 (SCC) at p 228; *Cartier v. Canada (Attorney General)*, 2002 FCA 384 at para 33 – 34; *Marinaj v. Canada (Citizenship and Immigration)*, 2020 FC 548 at para 72 – 78; *Thaneswaran v. Canada (Citizenship and Immigration)*, 2007 FC 189 at para 25 – 29.

[67] I have determined that the RAD's conclusion on the existence and adequacy of state protection for the co-Applicants is unreasonable. I have also concluded - when considered in isolation - the reasons provided by the RAD on forward-looking risk reveal no reviewable error.

[68] The Respondent submits that the issue of state protection is ultimately immaterial if the RAD found that the Applicants have not demonstrated that there is a forward-facing risk. It is asserted that if the RAD's assessment on forward-looking risk is found to be reasonable, the judicial review ought to be dismissed.

[69] I appreciate the logic of the Respondent's argument, however, I am not persuaded that this is a case where the Court should exercise its discretion to refuse relief.

[70] I have determined that the RAD's decision, considered in its entirety, cannot be upheld by this Court. The errors identified in the RAD's assessment on state protection are fatal to the decision's overall reasonableness.

[71] For one thing, the RAD's findings on forward-facing risk were closely linked with its findings on the adequacy of state protection. For instance, when assessing the RPD's analysis of the Applicants' evidence about being followed in Bogota or having their family members be approached and asked questions, the RAD stated the following:

The UNP considered these reported concerns and found the threats not validated. The report also indicates that the intensity of the risk had “decreased fundamentally”, and the recommendation was made for reduced protective measures.” The RPD found, and I agree, that the risk the Appellants faced had decreased significantly by the time they left for Canada in 2022.

[72] Here, the RAD is essentially relying on their conclusions about the adequacy of state protection by the UNP– which, as explained, were not reasonable with regard to the co-Applicants– to determine that the Applicants face a reduced forward-facing risk. The RAD assumes that the UNP has conducted an appropriate risk analysis for all the Applicants and, therefore, relies on the UNP’s conclusions about ongoing risk.

[73] Moreover, as noted above, in reviewing the text message that the Applicants received in June 2022 purportedly from the ELN, the RAD stated:

I agree with the RPD analysis and find that the text of June 2022 to be insufficient to establish that the Appellants are continuing to be sought. Even if I were to accept this to be the case, I find there is evidence of adequate state protection in their case. [emphasis added]

[74] Again, the unreasonable conclusions on state protection are intertwined with the conclusions on forward-facing risk.

[75] Thus, while the RAD’s assessment of forward-facing risk may withstand scrutiny in isolation, there are some grounds to believe that their analysis may have been tainted by their underlying flawed assessment of state protection.

[76] This is not a case where the errors identified are inconsequential, trivial or of a mere technical nature (*Uniboard Surfaces Inc v Kronotex Fussboden GmbH and Co KG*, 2006 FCA 398 at para 24), nor can the errors on state protection be cleanly compartmentalized from other conclusions reached by the RAD. The RAD reasons on state protection indicate that it overlooked important details in several key documents provided by the Applicant.

[77] In these circumstances, I am not convinced that upon redetermination the RAD would unavoidably or inevitably reach the same conclusion on forward-looking risk: *Liu v Canada (Citizenship and Immigration)*, 2022 FC 1691 at para 15. Put another way, the flaws identified in the reasons have caused me to lose confidence in the overall outcome: *Vavilov* at para 106.

V. Conclusion [78] The matter will be remitted to a different decision-maker at the RAD to reconsider, and the Applicants shall be provided an opportunity to propose that new evidence be admitted, including an opportunity to provide submissions on the admissibility of any proposed new evidence under subsection 110(4) of the IRPA.

JUDGMENT in IMM-3637-24

THIS COURT’S JUDGMENT is that:

The application for judicial review is granted.

The matter shall be remitted to a different decision-maker at the RAD to reconsider.

The Applicants shall be provided an opportunity to provide fresh submissions on the admissibility of any proposed new evidence.

There is no question for certification.

"Meaghan M. Conroy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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