

Federal Court



Cour fédérale

Date: 20250508

Docket: IMM-404-24

Citation: 2025 FC 853

Ottawa, Ontario, May 8, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**PAULA DENISSE MARILAF ARANCIBIA
CARLOS ALBERTO HERNAN GARRIDO
GONZALEZ
CARLOS AMRAM GARRIDO MARILAF**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family: the Principal Applicant, Paula Denisse Marilaf Arancibia, her husband, and their minor child. They fear the ex-partner of Ms. Marilaf's sister, CD, and allege the police in Chile will not provide them with adequate protection from his violence. Ms.

Marilaf's sister, her sister's immediate family, and her mother also fled Chile and were accepted as Convention refugees in Canada because of their fear of CD's violence and the lack of protection in Chile.

[2] The Applicants' refugee claims were refused. They appealed to the Refugee Appeal Division ("RAD") who also dismissed their claims. The RAD found the Applicants' allegations credible but determined that they had not established that they could not obtain state protection from CD's violence.

[3] The Applicants raise a number of arguments challenging the RAD's decision. The determinative issue is the RAD's state protection analysis. I agree with the Applicants that the RAD's analysis was unreasonable and needs to be redetermined. Reading the decision as a whole, the RAD placed too heavy a focus on the Applicants' steps to engage the police, failing to assess the key issue as to whether adequate state protection would be forthcoming at an operational level.

II. Background to Refugee Claim and RAD Decision

[4] Ms. Marilaf's sister began a relationship with CD approximately twenty years ago. They share two children. CD was abusive very soon after the relationship began. Over the course of the next 12 years of their relationship, because of CD's ongoing abuse, Ms. Marilaf's sister relocated multiple times, contacted the police, testified in Court, and brought a civil claim against him. On occasion, CD was arrested and incarcerated for a short period. There were also times when a restraining order was in place. But as noted by the RPD in Ms. Marilaf's sister's

case: “[CD] appears to have the motivation to continue harassing these claimants, despite the many times the[y] moved and despite the orders of protection.”

[5] The Applicants also faced threats and attacks from CD over the course of many years. In 2014, after CD’s attempt to strangle Ms. Marilaf’s sister, he broke into the Applicants’ family home and tried to attack Ms. Marilaf and her mother. They called the police, who promised to send someone, but no one showed up. The Applicants had to relocate on a number of occasions because of CD’s threats and attacks. Eventually in 2016, they left the country and went to the United States.

[6] While the Applicants were in the United States, Ms. Marilaf’s sister and her immediate family fled Chile for Canada in October 2017. Later, after she received another threat from CD, Ms. Marilaf’s mother also fled Chile to Canada. Ms. Marilaf’s mother’s refugee claim was joined to that of her sister’s and her immediate family.

[7] In December 2019, the Refugee Protection Division (“RPD”) found that Ms. Marilaf’s sister, her immediate family, and her mother were Convention refugees. The RPD found that the family had established that the Chilean police are unable to protect them from CD’s violence.

[8] The Applicants remained in the United States. Then, in November 2021, Ms. Marilaf was approached by a group of people while she was waiting to pick up her husband who told her that they had a message from CD. These people continued to threaten her, asserting that she had to

tell them where her sister is or her family would pay the consequences, noting that they knew where both her husband and son studied.

[9] After that incident, the Applicants decided they needed to leave the United States and came to Canada, where they made refugee claims.

[10] The Applicants' hearing before the RPD took place on January 18, 2023. Ms. Marilaf testified. Ms. Marilaf's sister was also available to testify as a witness at her hearing, but the RPD found it unnecessary to hear from her.

[11] The RAD accepted some new evidence. In particular, the RAD accepted evidence related to Ms. Marilaf's Indigenous identity. Ultimately, like the RPD, the RAD found the determinative issue to be state protection and dismissed the appeal on December 19, 2023.

III. Analysis

[12] In general, states are presumed to be able to protect their own citizens. Prior to making a refugee claim in another country, a claimant must demonstrate "with clear and convincing" evidence that their home country is unable or unwilling to protect them or that they had a valid basis to have not approached the police in their home country (*Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC) at p. 724-725).

[13] In evaluating a claimant's efforts at obtaining state protection, the purpose of the exercise cannot be forgotten. As noted by Justice O'Reilly, "the real question is whether, considering the

whole of the evidence about the state's capacity to protect its citizens, the claimants will be exposed to a serious risk of persecution if returned to their home country" (*Horvath v Canada (Citizenship and Immigration)*, 2017 FC 90 at para 13). In my view, the RAD lost sight of the "real question" and focused too heavily on the claimants' ability and failure to approach the police after particular incidents and not whether adequate state protection would be available at an operational level (*A.B. v Canada (Citizenship and Immigration)*, 2018 FC 237 [A.B.] at para 19).

[14] This same problem was identified by Justice Zinn: "...instead of treating the applicants' interactions with the police as having evidentiary relevance to the legal issue – *Is state protection available?* – the Board treated the applicants' (in its view) inadequate efforts in relation to the police as a disqualifier for refugee protection" (*Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421 at para 20 [Emphasis in original]).

[15] The RAD's focus on the Applicants' ability to access some sort of a protection mechanism, without a view to its adequacy, is apparent throughout the decision. For example, the RAD's conclusion on the country condition evidence focuses on the availability of protection mechanisms and not their operational adequacy. The RAD reviewed the evidence in detail and acknowledged that "there is mixed evidence on the availability of state protection for victims of domestic violence." Some of the evidence pointed to the lack of responsiveness of the police and the mistrust of the authorities, while another source stated that domestic violence laws were generally effectively applied. The RAD made no finding about which evidence it preferred. After its review of this evidence, the RAD concluded that it was "mixed" but that "it is at least clear

that there are a variety of mechanisms through which the Appellants could have sought protection.” The RAD went on to evaluate the Applicants’ efforts to obtain state protection within this context. That is, with a focus on whether the Applicants could make a complaint instead of whether adequate protection would be available in their circumstances.

[16] In evaluating the Applicants’ past experiences with the police, the RAD acknowledged the family called the police in 2014 when CD broke into the family home, tried to attack Ms. Marilaf, and threatened to kill her and her mother. The police promised to show up but they did not. When the family tried to later file a report about the incident, the police did not accept the report and told the Applicants that it had to be filed in the same area where the crime had occurred. The RAD focused on the Applicants’ failure to file the report at the correct station instead of the Applicants’ experience of being attacked, calling the police in the moment, and the police failing to show up. As recently noted in *Ralek Horodiuk v Canada (Citizenship and Immigration)*, 2025 FC 112 [*Ralek Horodiuk*] at paragraph 24, the focus was misplaced on the additional steps the applicants could have taken, instead of an evaluation of the lack of police response.

[17] The RAD then turned to the next two incidents with CD that took place in 2015 and 2016. In 2015, CD came to Ms. Marilaf’s home and threatened to break in and take his children, whom she was watching at the time. Ms. Marilaf hid in the home with the children and called her husband. He arrived with the security guard from the property. Following this incident, the Applicants moved. Then in 2016, at the family home in a different location, CD jumped over a fence and chased Ms. Marilaf while she was holding her newborn baby. Ms. Marilaf’s husband

was able to push him off the property. The Applicants did not report this to the police but relocated again.

[18] The RAD found the failure to report in these circumstances to be unreasonable because adequate protection may have been forthcoming if they had reported. The RAD explained that, by not reporting both incidents, “the physical safety and the safety of young children were placed in jeopardy.” This is similar to the RPD’s reasoning in *Ralek Horodiuk*, where the RPD criticized the claimants for moving instead of contacting the police again. I share Justice Grammond’s concern with this reasoning and find it applies here as well (*Ralek Horodiuk* at para 26):

I have trouble with the RPD’s dim view of this move when it seems to confirm the seriousness of the applicants’ fears at the time and their feeling that the police were not adequately protecting them. One must not forget that the goal of the analysis is to determine whether state protection is adequate and not to judge the applicants’ behaviour in light of what a “reasonable refugee” would or should have done.

[19] The RAD relied on the occasions that CD had been arrested, sentenced to serve time in prison, and issued restraining orders as evidence that the “criminal complaints against CD have not simply been ignored.” The difficulty with this reasoning is that the “real question” is lost – is adequate state protection available in the Applicants’ circumstances? The fact that the state has been willing to respond in some way is not an answer to this question (*Ralek Horodiuk* at para 31; at para 19).

[20] Further, these state actions must be considered alongside CD’s breach of orders and continued pursuit of Ms. Marliaf’s sister through the Applicants. It should be noted that even

years after Ms. Marliaf's sister had fled and received protection in Canada, CD continued to threaten the Applicants in another country.

[21] Overall, the RAD's state protection analysis requires redetermination. It is overly focused on the Applicants' interactions with the police and fails to holistically consider the central question which is whether state protection would be operationally adequate in their circumstances.

[22] Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-404-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated December 19, 2023 is quashed and sent back to redetermined
by a different decision maker; and
3. No serious question for general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-404-24

STYLE OF CAUSE: PAULA DENISSE MARILAF ARANCIBIA, CARLOS ALBERTO HERNAN GARRIDO GONZALEZ, AND CARLOS AMRAM GARRIDO MARILAF v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 5, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MAY 8, 2025

APPEARANCES:

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Nadine Silverman	FOR THE RESPONDENT

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