

Federal Court



Cour fédérale

Date: 20250612

Docket: IMM-13321-24

Citation: 2025 FC 1059

Toronto, Ontario, June 12, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

**OSCAR ALBEIRO TOVAR CASAS
ANDRES FELIPE TOVAR VARGAS
ANA SOFIA TOVAR VARGAS
JOSE ALEJANDRO TOVAR VARGAS
LORENA ANGELICA VARGAS DE AGUAS**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are seeking a Judicial Review of the rejection of their refugee protection appeal by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada.

[2] The Applicants are citizens of Colombia. They allege that the principal applicant's father was killed by the Revolutionary Armed Forces of Colombia or *Fuerzas Armadas Revolucionarias de Colombia* [FARC] many years ago, and his uncle in 2011 by another armed group, the Gulf Clan. The principal applicant then started operating the farms the family owned and operated in the department of Magdalena.

[3] The Applicants allege that the Gulf Clan and another armed group, Los Pachenca, operated in their area, and Los Pachenca started extorting them in or about 2018, which calmed down during the Covid pandemic. However, by 2022, the Gulf Clan also moved into the area and in March 2022, both armed groups made extortion demands and threatened to kill the Applicants if they did not comply. In May 2022, two men approached the principal applicant's wife and reminded her what the family owed and that they knew about the family's coordinates and personal information. The family stopped its usual activities and left Colombia in June 2022, and after a period in the United States, they arrived in Canada and made a refugee claim.

[4] In summary, the Applicants allege that they were victims of extortion from the illegal armed groups, Los Pachenca and the Gulf Clan. The Refugee Protection Division [RPD] heard the case and rejected the claim on credibility. However, after properly notifying the Applicants of the determinative issue being internal flight alternative [IFA], and the prospective risk in Colombia, the Refugee Appeal Division [RAD] rejected the appeal on the availability of IFA in Bogota.

[5] The Applicants argue on judicial review that the RAD's decision is unreasonable.

II. Decision

[6] I dismiss the Applicant's judicial review application because I find the decision made by the RAD to be reasonable.

III. Standard of Review

[7] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

IV. Analysis

A. *Legal Framework: IFA*

[8] The two-prong test for an IFA is well established. An IFA is a place in an applicant's country of nationality where a party seeking protection (i.e., the refugee claimant) would not be at risk. This is decided in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] – and to which it would not be unreasonable for them to relocate.

[9] When there is a viable IFA, a claimant is not entitled to protection from another country. More specifically, to determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that:

- a. the claimant will not be subject to persecution (on a “serious possibility” standard), or a section 97 danger or risk (on a “balance of probabilities” standard) in the proposed IFA; and

- b. in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[10] Once IFA is raised as an issue, the onus is on the refugee claimant to prove that they do not have a viable IFA. This means that to counter the proposition that they have a viable IFA, the refugee claimant has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to relocate there. The burden for this second prong (reasonableness of IFA) is high. As held by the Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration)* (C.A.), 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [Ranganathan] the standard requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions.

[11] For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); *Ranganathan*; and *Rivero Marin v Canada (Citizenship and Immigration)*, 2023 FC 1504 at para

V. Analysis

- A. *1st Prong: Was the RAD analysis in finding that the Applicant did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA in the IFA reasonable?*

[12] The RAD correctly applied the standard of correctness to the RPD's findings to find that several of the key credibility findings of the RPD on the Applicants' evidence on their past experiences were incorrect. These included the father's kidnapping and murder of the principal applicant's father by the FARC, his uncle's murder by an armed group in 2011, the threats in March and May 2022. After seeking the Applicants' submissions on the newly identified determinative issue, the availability of IFA in Bogota, the RAD rejected the claim on this basis.

[13] The RAD also applied the criteria in section 110(4) of the Immigration and Refugee Protection Act [IRPA] admitted the new evidence the Applicants submitted on appeal that was relevant to the issue of IFA. However, after applying the test set out in section 110(6) of the IRPA, the RAD rejected the Applicants' request to hold an oral hearing. The Applicants are not taking issue with these findings.

[14] The RAD spelled out the legal framework of the IFA analysis and showed how the facts of this case applied to the test. The RAD largely based its reasons on the availability of the IFA on explaining why the armed groups' interest in the Applicants was linked to their properties, and on why relinquishing their property would eliminate motivation, and therefore the risk of being targeted by them. The RAD had specifically sought submissions on this very issue and engaged with the Applicant's response.

[15] In their response, the Applicants argued that even if sold their properties, the agents of harm would continue to pursue them. This is because the properties are located in an area where the Los Pachencia and the Gulf Clan are competing for territory, and that when they sell, they would learn about it demand to be paid a commission on the sale. In fact, this is how the sale of a portion of the land had escalated the threats in the first place.

[16] The Applicants' response did not contemplate that they would relinquish their wealth by selling, and only objected to having to pay a commission on the sale of the properties. The RAD relied on the relevant jurisprudence to find that the Applicants have to make the difficult choice of selling their properties to avoid the risk and pay the agents of harm the commission requested or the proceeds of the sale. The RAD reasonably concluded that the Applicants were speculating that if they sold and paid the commission the risk would remain. I find this to be a reasonable analysis.

[17] The RAD fully grappled with the Applicants' arguments to find that the Applicants' fear was related to their property, and that the Applicants had not established that the agents of harm had the motivation to pursue them in Bogota. The RAD's analysis was responsive to the submission, noted that the Applicants had made no attempts to sell, or renounce any pecuniary or managerial role with respect to their farms. Based on a thorough analysis, the RAD reasonably concluded that the interest of the armed group the Applicants feared was connected to the property, and that in the absence of such a link, they lacked the motivation to pursue them in Bogota.

[18] The RAD further commented that while it accepted the principal father's kidnapping and murder, but that was done by the FARC, a group the Applicants did not identify as their agents

of harm. It also engaged with the evidence the Applicants had filed and stated that they demonstrated that the threats by the Gulf Clan were consistent with their motivation to gain control of the area where the farms were located and to derive the revenues from them

[19] I find that that RAD member understood under the IFA test, it was the Applicants' onus to establish that they did not have a viable IFA in the proposed city. The RAD provided a clear chain of reasoning connecting the evidence to the legal test.

[20] I find that in finding the Applicants' credible with respect to their lived experiences in the past is not inconsistent with disagreeing with their opinion, inferences or speculations. The RAD's analysis and conclusion was consistent with the facts it found to be credible. Contrary to the Applicants' argument, the RAD did not ignore their profile in assessing the assessing the viability of the IFA, and applied the two prongs of the IFA test to their profile. It was reasonable for the RAD to analyse the Applicant's evidence on the non-payment of extortion in the context of the totality of their evidence. The RAD explained clearly why they saw a link between the ownership of the property and the Applicants' duty to relinquish it.

[21] The applicants bore the onus of establishing both the factual and legal basis for their claim. They allege that they were subject to extortion demands by the armed groups and that their failure to pay those demands placed them at risk. However, their own position is that the armed groups wanted their money, and therefore, compliance with the demand — had it occurred at the time — would have resolved the threat. In that light, their nonpayment cannot reasonably be characterized as a distinct act of “defiance” independent of their continued ownership of the land.

[22] They now argue that even if they were to sell the property and pay the armed group, the risk would persist because the damage has already been done — that is, the group has been provoked by their earlier failure to comply. This is a significant shift in theory, and one that is entirely speculative. There is no evidence before the RAD to support the idea that the threat now operates independently of the property interest or that it has crystallized into irreversible retaliation. The applicants provided no evidence that they attempted to sell the land or otherwise take steps to eliminate the basis of the threat. The Applicants' reference to the country documents on the continued interest of the armed groups against those they perceive to have defied them is not helpful in this case, as their non-compliance is only related to the ownership of property.

[23] In these circumstances, the onus was not on the RAD to infer continuing risk in the absence of evidence. As the RAD reasonably indicated, the Applicants had a duty to take reasonable measures to mitigate the threat they faced, including relinquishing the land if doing so would have removed the basis for the extortion. They failed to do so and failed to establish that the threat would persist even if they had. The onus rested squarely with them, and they did not discharge it.

[24] I find that the RAD's reasons on its finding for the first prong of the IFA to be reasonable.

B. *2nd Prong: Was it reasonable for the RAD to conclude that it would be reasonable for the Applicant, in his particular circumstances, to relocate to the proposed IFAs?*

[25] The Applicants argue that even though the principal applicant's mother continues to live in Colombia, his brother relocated to Argentina after he found Bogota very unsafe. They argue that the lack of safety in Bogota renders the IFA to be unreasonable.

[26] I disagree with the Applicant's characterization that the RAD ignored the questions of security or internally displaced persons [IDPs] in Bogota. The RAD reasonably engaged with their submissions and acknowledged the struggles of the Colombian government to provide adequate protection and humanitarian assistance to the IDPs who faced limited access to their basic needs. The RAD provided reasons for why it found that the Applicants had not established that their move to Bogota would not characterize them as IDPs who are a distinct and recognizable social group. The RAD engaged with the objective country documents that stated that approximately 96% of the citizens were included in the national social security health and social programs, and while there are some limitations, such services are available in cities. Given that the onus is on the Applicants, the RAD reasonably found that they had not provided any evidence or more specific submissions as to why one of them, including the minor applicants would not have access to adequate health care.

[27] At the judicial review hearing, I asked the Applicants to point me to the evidence they argue the RAD ignored in finding that they would likely not be considered IDPs in Bogota. They argued that the plain reading of the word suggest that any person displaced internally would qualify. Then, they referred me to the country documents before the RAD on "Displacement" that stated: "Over 9.3 million Colombians have been recognised by the government Victims Unit

as having been victims of forced displaced due to the conflict in the period from 1985 to the present”. There was nothing before the RAD to suggest that the Applicants’ move to Bogota would involve the “Victims Unit’s” recognition of them as IDPs.

[28] In addition, it is a well-established principle that the reviewing court must presume that the tribunal considered the entire record (see *Ayala Alvarez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 703 at para 10; *Guevara v Canada (Minister of Citizenship and Immigration)*, 2011 FC 242 at para 41; *Junusmin v Canada (Minister of Citizenship and Immigration)*, 2009 FC 673, 2009 CF 673 at para 38). Thus, those advancing arguments like that made by the Applicant in this case bear a high burden of persuasion. In this particular case, the documentary evidence shows that Colombia has a high number of IDPs, that as the member has found, are a particular group. There was no evidence or argument before the member to form a reasonable foundation that the Applicants would belong to this group. The document the Applicants rely on clearly shows that there is something more needed than a plain reading of the term for someone to become an IDP. Therefore, it was reasonable for the RAD to find that the conditions faced by the IDPs would not necessarily apply to the Applicant. Again, the Applicants bore both the evidentiary and the legal onus.

[29] The Applicants relied on *Arias Ultima v. Canada (Citizenship and Immigration)*, 2013 FC 81 at paras 35-36 to argue that the RAD member made the same error, namely that they did not acknowledge the Applicants’ argument that they would become IDPs if forced to return to Colombia and that the documentary evidence demonstrated that IDPs in Colombia lead a very fragile and vulnerable existence. I disagree. In this case, the RAD fully engaged with the

argument and found that they would not be considered IDPs. The Applicants simply disagree with the way the RAD weighed the evidence, with which this Court cannot interfere.

[30] At the judicial review hearing, I also asked whether the Applicants take the position that the condition in Bogota are such that it would be unreasonable for the IDPs to live there. The Applicants took the position that this was for the RAD to analyse, and the RAD's failure to do so would render the decision unreasonable. I find that the RAD fully analysed the profile of the Applicants, found that they had not established that they would be IDPs, looked at their profile including their employment and work history to find that their relocation to Bogota would not be unreasonable. The onus was not on the RAD member to make a finding on the situation of the IDPs, particularly when it had clearly found that the Applicants had not established that they would be defined as such.

[31] The RAD also engaged with the evidence on security and acknowledged the existence of generalized crime that has impacted schools and other institutions. However, in the absence of concrete evidence that would substantiate the existence of conditions which would jeopardize the life and safety of the Applicants in Bogota, the RAD's findings and analysis were reasonable.

[32] The Applicants relied on *Vazquez Cruz v. Canada (M.C.I)*, 2023 FC 684, at paras 34-35 [*Vazquez Cruz*] to argue that the RAD in this case conflated the first and second branches of the IFA test with respect to its analysis on a generalized risk of violence. I disagree. In *Vazquez Cruz*, the RAD had found that the principal applicant was personally targeted by the agents of harm because he had witnessed a key incident at his in-laws' home, and that his agents of harm had identified him as a police officer (at paras 29 and 30). It then found that the RAD's analysis on finding that the agents of harm lacked motivation was unreasonable (at para 31). It is with this

factual context that it found that the Court had conflated the first and second prongs of the IFA test when it applied whether it was reasonable for him to move to the IFA when it had erred on the profile of the applicant and on the motivation of the agent of harm. None of these errors occurred here. In the case before me, the RAD member reasonably looked at the totality of the Applicants' profiles, including that they included women and children, considered the relevant country conditions, and explained why it found that they had not discharged their onus that the IFA would be unreasonable in their particular circumstances with a clear chain of reasoning.

[33] I find that it was reasonable for the RAD not to find the case on an individual (*Vazquez Cruz*) facing a risk not faced generally by others in the IFA to not be persuasive when it had made the contrary finding in this case, that the Applicants had not established that the risk in Bogota would be anything but a generalized risk of violence, and that they had not provided concrete evidence in a non-speculative manner.

[34] The RAD member looked at the totality of the evidence, including the profiles of the Applicants to conclude that it was reasonable for them to relocate to the proposed IFA, Bogota. The RAD looked at their health conditions, extensive employment history and education. I find that the RAD member fully engaged with the Applicants' particular circumstances in a reasonable manner and by taking the relevant evidence and arguments into account. They articulated a clear chain of reasoning.

[35] I therefore find that the RAD's analysis of the second prong to be reasonable.

VI. Conclusion

[36] The RAD reasons are transparent, intelligible and justified. The Application for Judicial Review is, therefore, dismissed.

[37] The parties did not propose a certified question, and I agree that there is no question to be certified.

JUDGMENT IN IMM-13321-24

THIS COURT’S JUDGMENT is that:

1. The application for Judicial Review is dismissed.
2. There is no question for certification.

“Negar Azmudeh”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13321-24

STYLE OF CAUSE: OSCAR ALBEIRO TOVAR CASAS ET AL. V. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: JUNE 12, 2025

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