

Federal Court



Cour fédérale

Date: 20250613

Docket: IMM-10070-24

Citation: 2025 FC 1076

Ottawa, Ontario, June 13, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JEISSON DAVID MARQUEZ POSSO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*], of a decision [Decision] made by the Refugee Protection Division [RPD]. The RPD found that the Applicant was not a Convention refugee under section 96 of the *Act* nor a person in need of protection under subsection 97(1) of the *Act*, and had viable internal flight alternatives [IFA] in Colombia in the cities of Barranquilla, Sincelejo or Medellin.

[2] The Applicant is a citizen of Colombia. He entered Canada from the United States after fleeing Colombia on June 26, 2022, with his wife [YP] and her two children. They fled because they felt their lives were threatened by a gang known as the ELN.

[3] The Applicant claims that he and YP started dating in May 2021 and she and her two children moved in with the Applicant in his apartment in Bogota in July 2021. In August 2021, he was threatened at knife point and told to leave and forget about YP. Upon telling YP what had happened, she explained her past involvement with a senior member of the ELN gang [EAMG], that her oldest child is the son of EAMG, that EAMG was dangerous, that the police had never helped her despite her numerous domestic violence complaints against EAMG, and that the father of her second child had also been threatened and left the country out of fear.

[4] The Applicant states that he received two threatening phone calls in the weeks that followed. On March 17, 2022, he was attacked by two men who claimed they were with the ELN. He was taken to hospital, where he was told he had almost died. He received another threatening phone call around 45 days after the attack, where he was told that since he had not ended his relationship with YP, he would be killed.

[5] On June 16, 2022, the Applicant and YP got married. They fled Colombia with YP's two children on June 26, 2022, travelling first to Mexico, then crossing to the United States on foot, where they requested asylum. The Applicant alleges that he had paid all their expenses along their journey and that YP broke up with him after he asked her to contribute financially. The Applicant claims that he then travelled to Maryland, where he stayed with his aunt for five

months. At the encouragement of his mother and sister, who were residing in Canada, he entered Canada on December 15, 2022, and claimed refugee status.

[6] The Applicant claims that he faces a continued risk to his life in Colombia even if he is no longer with YP, because he is likely responsible for having “permanently separated” EAMG from his son and from YP.

[7] The RPD found the Applicant to be generally credible and accepted that, on the balance of probabilities, the Applicant’s allegations with regards to the ELN’s threats were true, including the near-fatal attack on March 17, 2022.

[8] The RPD applied the test for an internal flight alternative [IFA] as developed by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, and found that the proposed IFAs of Barranquilla, Sincelejo or Medellin were neither unsafe nor unreasonable.

[9] On the first prong of the test, the RPD found that the Applicant had not demonstrated that he had “permanently separated EAMG from his son and from YP” as he had provided no evidence that YP and her sons had remained outside Colombia. The Applicant had not made a serious effort to locate or contact YP since their break-up and could not confirm that EAMG remained separated from YP and her son.

[10] The RPD also found that the Applicant could not demonstrate that he had been targeted at the behest of EAMG, as he had no information that EAMG was looking for him or for YP and her son, and no information about EAMG's status or whereabouts. The Applicant failed to establish that EAMG or other individuals tied to EAMG will be motivated to track him to the proposed IFAs, as he is no longer in a relationship with YP. The Applicant also did not establish that his refusal to leave YP after receiving threats constitutes an act of "open defiance" that would motivate the ELN to find him to protect its power and reputation.

[11] On the second prong of the test, the RPD found that there was no evidence that the proposed IFAs were objectively unreasonable or unduly harsh. At the RPD hearing, counsel for the Applicant conceded the second prong of the test and made no submissions.

[12] Since the Applicant entered Canada through the United States, a country designated as a safe third country, the RPD's Decision is not subject to appeal to the Refugee Appeal Division.

[13] The Applicant submits that the Decision is unreasonable because the RPD failed to apply an analysis of subsection 108(4) of the *Act* to the circumstances of this case.

Paragraph 108(1)(e) and subsection 108(4) provide that:

**Cessation of Refugee
Protection**

Rejection

108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection,

Perte de l'asile

Rejet

108 (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

in any of the following
circumstances:

...

[...]

(e) the reasons for which the person sought refugee protection have ceased to exist.

e) les raisons qui lui ont fait demander l’asile n’existent plus.

...

[...]

Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

Exception

(4) L’alinéa (1)e) ne s’applique pas si le demandeur prouve qu’il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu’il a quitté ou hors duquel il est demeuré.

[14] In other words, subsection 108(4) applies when there are “compelling reasons” to grant refugee status even if the country conditions no longer justify an applicant’s refugee status claim.

[15] The Applicant submits that his break-up with YP is a significant change of circumstances warranting a subsection 108(4) analysis. The Respondent says that the Applicant does not meet the necessary criteria of qualifying for refugee status at the time of his persecution and before the change in his circumstances occurred: *Zuniga v Canada (Citizenship and Immigration)*, 2020 FC 488 at paras 19-20; *Pazmandi v Canada (Citizenship and Immigration)*, 2020 FC 1094 at para 50.

[16] I agree with the Respondent.

[17] While the RPD's reasons do rely on the breakdown in the Applicant's relationship since fleeing Colombia to determine that the risk to his life is at best unclear, the RPD also found that the Applicant was neither a Convention refugee nor a person in need of protection pursuant to s. 97 of the *Act* because there was insufficient evidence that the agents of persecution would be motivated to track him in the proposed IFAs.

[18] Indeed, the Applicant made specific submissions to the RPD about how he "will continue to be at risk, regardless of the status of his relationship with YP or whether YP and her children remain outside Colombia, because he committed an act of 'open defiance' that undermines and weakens the ELN and will not be tolerated by them" [emphasis added]. The RPD found that the Applicant failed to establish that the agents of harm will be motivated to track him and persecute him in the IFAs whether he remained in a relationship with YP or not.

[19] I also agree with the Respondent's submission that the existence of a valid IFA at the time of the Applicant's persecution is also determinative of his refugee claim and precludes a subsection 108(4) analysis: *Velez v Canada (Citizenship and Immigration)*, 2018 FC 290 at para 20.

[20] The Respondent also argues that for subsection 108(4) to apply, the change in circumstances must be a change in the country of origin's conditions and not merely a change in personal circumstances: *Horvath v Canada (Citizenship and Immigration)*, 2012 FC 1132 at para 64. As the Respondent correctly notes, this argument is not determinative of the issue, as

the Applicant did not meet the first necessary criteria of qualifying as a Convention refugee or a person in need of protection under s. 97 of the *Act*. Thus, I do not find the need to determine this issue.

[21] In sum, the Applicant has not demonstrated that the Decision was unreasonable. The RPD did not fail to apply subsection 108(4) of the *Act* in its analysis of the Applicant's claim, as this provision does not apply when an applicant is not found to be a Convention refugee or a person in need of protection within the meaning of the *Act* at the time of persecution. The RPD did not improperly consider the change in the Applicant's relationship status and reasonably found that there was a viable IFA when he fled his home in Colombia.

[22] No question was proposed for certification.

JUDGMENT in IMM-10070-24

THIS COURT'S JUDGMENT is that this application is dismissed, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10070-24

STYLE OF CAUSE: JEISSON DAVID MARQUEZ POSSO v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 15, 2025

JUDGMENT AND REASONS: ZINN J.

DATED: JUNE 13, 2025

APPEARANCES:

Lisa Winter-Card	FOR THE APPLICANT
Pavel Filatov	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lisa R.G. Winter-Card Barrister and Solicitor Welland, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT