

Federal Court



Cour fédérale

Date: 20250620

Docket: IMM-10358-23

Citation: 2025 FC 1116

Ottawa, Ontario, June 20, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

**JAVIER EDUARDO TAMAYO ABONDANO
SANDRA JEANNETTER RODRIGUEZ
DIAZ
CHRISTIAN JAVIER TAMAYO
RODRIGUEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Javier Eduardo Tamayo Abondano [Principal Applicant], his wife Sandra Jeannette Rodriguez Diaz [Co-Applicant] and their son, Christian Javier Tamayo Rodriguez [Minor Applicant], seek judicial review of a decision of the Refugee Protection

Division [RPD] dated July 25, 2023 [Decision], in which the RPD rejected the Applicants' claims under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] finding that they are neither Convention refugees nor persons in need of protection as they have a viable internal flight alternative [IFA] in the city of Cali, Valle del Cauca Department [Cali].

[2] For the reasons that follow, I am dismissing this application as the Applicants have not shown the Decision to be unreasonable or procedurally unfair. Contrary to the Applicants' arguments, the RPD's finding that the agent of persecution lacked the means and motivation to pursue them to the IFA was properly considered and justified on the record.

II. Facts

A. *The Agents of Persecution*

[3] The Applicants are Colombian citizens who claim refugee protection based on the targeting they received from a criminal organization, the Carreteros. The Carreteros is a bicycle gang whose members disguise themselves as garbage collectors and rummage through neighborhood garbage collecting scraps, but whose business also includes selling drugs and conducting other criminal activities.

[4] The Applicants described three incidents where they say they were the targets of harassment by the Carreteros between February 2022 and August 11, 2022, which involved members of the Carreteros threatening to burn down the Applicants' neighbourhood, threatening

the Principal Applicant with what appeared to be a weapon and approaching the Minor Applicant while brandishing a knife.

[5] The Principal Applicant made a report regarding the last incident with the office of the Attorney General [AG] of the Engativa locality on August 11, 2022. The Principal Applicant was told that a lawyer would get in contact with him but never did. Eventually, the AG sent a notice advising that the case was closed.

[6] The Applicants fled Colombia on August 31, 2022 and travelled to the United States where they stayed for 18 days before coming to Canada on September 20, 2022, where they made a refugee claim.

B. *The RPD Decision*

[7] The RPD found that the Applicants are not Convention refugees or persons in need of protection, with the determinative issue being the availability of an IFA in Cali.

[8] The Applicants submitted evidence that they say shows that the Carreteros are affiliated and supported by a larger criminal organization, Los Maracuchos. Los Maracuchos originates from Venezuela and operates in Bogota and other areas of the country, and are known to engage in drug trafficking, robbery, burglaries and murder. The Applicants submitted that both the Carreteros and Los Maracuchos had the means and motivation to pursue them to Cali.

[9] The RPD found that there was insufficient evidence to show that: (i) the Carreteros had influence outside of the Applicants' local community; (ii) there was a connection between the threats made by the Carreteros and Los Maracuchos; and (iii) the Carreteros have "an alliance" or are "affiliated" with Los Maracuchos. The RPD also found that even if a link had been established between the Carreteros and Los Maracuchos, the Applicants had not established that the agents of harm had the means or motivation to pursue the Applicants in Cali, noting in particular the Principal Applicant's lack of profile and the lack of evidence that local Carreteros are connected between cities, towns or villages in their respective departments.

[10] On the second prong of the IFA test, the RPD found that it was not unreasonable for the Applicants to relocate to Cali, finding that there were no barriers to their relocation as they are well-educated and would be able to find employment.

III. Legislative Framework

[11] The determinative issue in the underlying decision of the RPD was the existence of an IFA in Cali.

[12] The test for determining whether a claim for protection under either section 96 or 97 of the *Act* should be rejected because the claimant has a viable IFA derives from three decisions of the Federal Court of Appeal, and can be broadly stated as follows:

- 1) Can it be said, on a balance of probabilities, that there is no serious possibility of the Applicants' persecution in the proposed IFA? [First Prong]

- 2) If so, would it be objectively unreasonable or unduly harsh for the Applicants to relocate to the proposed IFA, taking into account all the circumstances? [Second Prong]

(*Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*], *Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), [1992] 1 FC 706 (FCA) [*Rasaratnam*]; and *Ranganathan v Canada (Minister of Citizenship and Immigration)* (2000), [2001] 2 FC 164 at 710-711 (FCA)) [the IFA test].

[13] Once the existence of an IFA has been identified, the onus is on the applicant to prove that he or she is at serious risk of being persecuted throughout the country (*Thirunavukkarasu* at paras 2, 6) or that it is unreasonable to expect the applicant to relocate to the IFA. This latter condition requires actual and concrete evidence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to the IFA (*Ranganathan* at para 15).

IV. Issues and Standard of Review

[14] The issues raised by the Applicants relate to whether the RPD's Decision is reasonable in its application of the First Prong of the IFA test and whether the Applicants were denied procedural fairness in connection with the RPD's consideration of the Applicants' post-hearing submissions and evidence.

[15] The applicable standard of review of the merits of a decision of the RPD is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision bears the hallmarks of justification, transparency and intelligibility with the burden resting on the challenging party to show otherwise (*Vavilov* at paras 99-100).

[16] Issues of procedural fairness, on the other hand, are considered on a standard akin to correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [Canadian Pacific] at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The Court looks to ensure that those affected by the decision understand the case they have to meet and have the opportunity to respond before an impartial decision maker (*Canadian Pacific* at para 41).

V. Analysis

A. *Was it reasonable for the RPD to find that the Applicants failed to make out a link between the Carreteros and Los Maracuchos?*

[17] The Applicants submit that the RPD erred by denying the “reasonable inference” that the Carreteros are linked to Los Maracuchos. This link was critical: the evidence established that Los Maracuchos operate in Cali, but without proof of an affiliation between Los Maracuchos and the Carreteros, there was no basis for the Applicants’ argument that the agents of persecution have the means and motivation to pursue them there.

[18] The Applicants cite *KK v Canada (Minister of Citizenship and Immigration)*, 2014 FC 78 [KK] for various descriptions regarding the drawing of inferences, which includes, *inter alia*, the instruction stating that “[i]nferences need not be the most obvious or the most easily drawn; all that is required is that the inference be reasonable and logical” (KK at para 61). The Applicants argue that it is reasonable to draw an inference that the Carreteros and Los Maracuchos are connected based on the Principal Applicant’s experiences living in Bogota and his knowledge of

the “criminal activity that plagues the city,” coupled with the country condition evidence that was submitted.

[19] I find that it was reasonably open to the RPD to find the Principal Applicant’s evidence to be of no assistance in establishing the necessary link between the Carreteros and Los Maracuchos, as it consisted of nothing more than a bald assertion that there was a connection between the two organizations, which was speculative and unsupported by objective documentary evidence.

[20] As for the National Documentation Package for Colombia and the country condition evidence adduced by the Applicants, the RPD noted that there is nothing about either the Carreteros or Los Maracuchos in either. The RPD found as follows:

The panel put to the principal claimant that none of the country condition evidence adduced referenced the *carreteros*. The principal claimant testified that there were no newspaper articles, media reports, or expert reports that could help clarify the association between the *carreteros* and gangs or armed groups in Colombia. He further testified that it was necessary to read between the lines to understand that the *carreteros* are backed by Los Maracuchos.

The panel only has the speculation of the principal claimant to tie the *carreteros* to Los Maracuchos criminal organization. Therefore, it was not unreasonable or illogical for the RPD to have found that the Applicants did not provide a sufficient evidentiary basis for the suggestion that the Carreteros and Los Maracuchos operate as affiliated organizations.

B. *Was it unreasonable or procedurally unfair for the RPD not to address the Applicants' post-hearing evidence and submissions?*

[21] As the location of an IFA was only disclosed to the Applicants at the RPD hearing, the Applicants made an application to submit post-hearing evidence and submissions related to the viability of the proposed IFA. Their application was granted, and they provided both new evidence and submissions. The Applicants point out, however, that no mention is made in the Decision of either. They submit that the RPD's failure to acknowledge this evidence was unreasonable, or if it was not received and/or considered, it constitutes a breach of procedural fairness.

(1) The failure to mention the post-hearing evidence was not unreasonable

[22] The Applicants rely on authorities that hold that it is unreasonable for a decision maker to fail to address evidence that contradicts the decision maker's reasoning (citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17 [*Cepeda-Gutierrez*]). They urge the Court to find the failure to mention their post-hearing evidence and submissions sufficient to remit the matter back for redetermination.

[23] However, this Court has made it clear that the exception in *Cepeda-Gutierrez* is a narrow one. As Justice Gleason (as she then was) explained in *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 39:

[*Cepeda-Gutierrez*] does not stand for the bald proposition, advanced by the Applicant in this case, that the mere fact that a tribunal does not refer to an important piece of evidence in its decision will necessarily result in the decision being overturned. In

fact, *Cepeda-Gutierrez*, to the extent it makes categorical statements at all, actually says the opposite and holds that a tribunal need *not* refer to every piece of evidence; rather, it is only where the non-mentioned evidence is critical and contradicts the tribunal's conclusion that the reviewing court *may* decide that its omission means that the tribunal did not have regard to the material before it.

[24] I agree with the Respondent that the Applicants' evidence does not rise to the level of significance that engages the inference referred to in *Cepeda-Gutierrez*, since the Applicants' evidence is not probative of the link between the two criminal organizations and therefore not critical to the Decision. The post-hearing evidence included two articles which confirm that Los Maracuchos: (i) is an international organization; (ii) has a presence in Bogota as well as Cali; and (iii) engages in "gruesome violence" and are connected to several murders in Bogota. Neither article makes any reference to the Carreteros and therefore does not take on the significance the Applicants urge.

[25] The Applicant's submissions to the RPD are equally vague and speculative, alleging, "the Claimants ...deduced from the threats made by the members of the Carreteros of being affiliated with a larger group that it likely was the Maracuchos that was being spoken about."

(2) There was no breach of procedural fairness

[26] I also do not find that there is any basis for the Applicants' argument that there was a breach of procedural fairness based on the Applicants' suggestion that the RPD did not receive or consider their post-hearing submissions.

[27] First, this argument is based on nothing more than speculation. Immigration officers are presumed to have considered the entirety of the evidence received in support of an application and are not required to enumerate the details of the evidence relied on (or not relied on for that matter) in their decision (*D’Almeida v Canada (Citizenship and Immigration)*, 2019 FC 308 at paras 42-43; and *Vavilov* at para 301). Not only as this presumption not been rebutted, but the fact that the post-hearing evidence and submissions are reflected in the Certified Tribunal Record, supports a finding that they were received and therefore considered.

[28] Second, the Applicants cannot be said to have been denied procedural fairness when they knew the critical issue they needed to address in their post-hearing submissions and were given a fair chance to do so (*Canadian Pacific* at para 41).

VI. Conclusion

[29] The Applicants have not met their onus of showing that the RPD’s IFA analysis is unreasonable, nor have they demonstrated a breach of procedural fairness. Accordingly, this application is dismissed.

JUDGMENT in IMM-10358-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. There is no question for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10358-23

STYLE OF CAUSE: JAVIER EDUARDO TAMAYO ABONDANO,
SANDRA JEANNETTER RODRIGUEZ DIAZ,
CHRISTIAN JAVIER TAMAYO RODRIGUEZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 17, 2025

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: JUNE 20, 2025

APPEARANCES:

Karim Escalona	FOR THE APPLICANTS
Margherita Braccio	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT