

Federal Court



Cour fédérale

**Date: 20160324**

**Docket: IMM-4353-15**

**Citation: 2016 FC 349**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, March 24, 2016

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**CRISTHIAN ALBERTO DELGADO MOLINA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review made under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA] of a decision made by a Refugee Protection Division [RPD or panel] officer on September 2, 2015, [the decision] dismissing the applicant's

claim for refugee protection. The RPD found that the applicant is not a Convention refugee, nor a person in need of protection. The applicant is asking the Court to set aside the RPD's decision and refer his matter back for reconsideration by a different panel.

[2] For the reasons that follow, the application is dismissed.

## II. Background

[3] The applicant, Mr. Molina, is a citizen of Nicaragua, which is also the country where he lived until he arrived in Canada on March 30, 2015.

[4] In 2004, the applicant's father was recognized as a Convention refugee in Canada, but he had not declared Mr. Molina as his son.

[5] In 2008, following his mother's death, the applicant went to live with his father's sister.

[6] In 2011, the applicant's father tried to sponsor him, but since he had not declared him as his son, the application was refused.

[7] The facts that led Mr. Molina to file his refugee claim when he arrived in Canada are as follows:

- on December 12, 2012, a few days after he had been threatened, Mr. Molina was assaulted by four youths wearing military uniforms;

- on August 8, 2014, he was bitten by a dog belonging to the youths as he was running to escape them;
- on December 18, 2014, Mr. Molina was assaulted again near his home by armed youths who allegedly forced him to promise that he would participate in selling drugs with them;
- on March 17, 2015, Mr. Molina left Nicaragua accompanied by his father, a Canadian resident, for the United States where they stayed for approximately two weeks; and
- on March 30, 2015, Mr. Molina went to the Lacolle Border Crossing Station and claimed refugee protection.

[8] The refugee claim was heard on June 9, 2015, and subsequently dismissed on September 2, 2015.

### III. Decision being challenged

[9] First, on the whole, the panel found Mr. Molina's claims to be generally credible, in spite of a few credibility problems regarding the measures he took to protect himself in Nicaragua. Next, the panel noted that the analysis was conducted under section 96 of the IRPA, rather than section 97 of the IRPA, given that the applicant's fear was not shared by the entire population,

and that he had been personally targeted. Lastly, the panel found that an internal flight alternative [IFA] existed in Managua, the capital of Nicaragua.

[10] The panel took into account the following facts when it found no existence of a reasonable possibility that Mr. Molina would be persecuted if he established residence in Managua: 1. The documentary evidence showed that the forced recruitment phenomenon in Nicaragua was marginal; 2. Mr. Molina had not established that the gang that tried to recruit him would find him in Managua, or that these individuals were reportedly conducting activities on a large scale that would enable them to locate Mr. Molina in the capital; 3. Mr. Molina had not established that the gang was interested enough in him to the extent that they would try to find him in Managua; 4. He had not established that the authorities, both civilian and military, could allegedly help the gang find him. Lastly, the panel found that the applicant's behaviour did not suggest that he subjectively feared for his safety since he had decided to voluntarily return to live in a location known to the gang.

[11] As regards the second prong of the IFA, the panel found that the conditions that the applicant would be facing in Managua would not place his life or safety in danger. Among other things, the panel took into account his young age, the fact that he had completed his secondary studies and that he wanted to pursue his studies in medicine. The panel specifically indicated that his lack of family in the IFA location is not an acceptable reason to conclude that it would be unreasonable for him to establish residence there.

IV. Issue in dispute

[12] The only issue raised in this application is whether the IFA analysis was reasonable.

V. Standard of review

[13] It has been established that the Court must apply the correct standard of review to a decision when evaluating whether the RPD applied the correct legal test for determining IFA existence: *Estrada Lugo v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 170, at paragraph 30 [*Lugo*]; *Kamburona v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 1052, at paragraph 17 [*Kamburona*]. However, the standard of review of an RPD decision regarding application of the legal test to the facts is the standard of reasonableness (*Lugo*, at paragraph 31; *Kamburona*, at paragraph 18).

VI. Analysis

A. *Was the panel's decision reasonable?*

[14] I agree with the respondent that the criteria stated by the RPD complies with case law, i.e. that the applicant must set a very high threshold to show that the IFA was unreasonable (*Aznar Alvarez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1164, at paragraph 10; *Guerilus v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 394, at paragraph 20). As regards the second prong of the IFA test, this threshold was established in *Ranganathan v.*

*Canada (Minister of Citizenship and Immigration)*, [2001] 2 FCR 164 (FCA), at paragraph 15 as follows:

[15] We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It 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. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.

[16] ... To expand and lower the standard for assessing reasonableness of the IFA is to fundamentally denature the definition of refugee: one becomes a refugee who has no fear of persecution and who would be better off in Canada physically, economically and emotionally than in a safe place in his own country.

[15] The applicant claims that the panel did not apply the correct legal test as set out in case law regarding the second prong of the IFA analysis. A panel must take into account the applicant's specific situation, such as socio-economic factors and age, to determine whether it is reasonable for him to seek refuge in the proposed location. In support of his submissions, the applicant cites the following comments by Rennie J. in *Chand v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 212, at paragraph 9:

... realistically accessible to the claimant. The claimant is not expected to risk physical danger or undue hardship in travelling or staying in that IFA.

[16] In this case, the applicant argues that the panel erred by failing to consider that Mr. Molina was a minor before arriving in Canada, having reached age 18 the month prior to his hearing before the RPD, that he has no family support in the proposed location and that he only has limited financial means. At the time, it was unreasonable to conclude that Mr. Molina could establish himself in Managua given that, with no means of surviving or supporting his needs, he would expose himself to danger or place his life at risk.

[17] The respondent argues that the applicant submitted very little real, concrete evidence in support of his claims regarding his socioeconomic situation in Nicaragua, or of his father's or his aunts' capacity to provide him with support while living in Managua. Moreover, the Court found that little evidence was presented on file by the applicant about the factors regarding hardships he would apparently face while living in the IFA.

[18] The absence of family in Managua is not the sole factor to consider when analyzing the second prong of the test, unless evidence is filed demonstrating that this absence of family support would endanger the applicant's life or safety. In any case, the applicant's aunts live only a two-hour drive from Managua. Furthermore, the evidence on file shows that the applicant completed his secondary studies in Nicaragua. Therefore, the conclusions that he should be able to find a job, or even pursue his studies in medicine, are not speculative in nature.

[19] I am also excluding the submission that the Court should take into account the decision rendered by my colleague, Manson J., in *Arias Ultima v. Canada (Minister of Citizenship and*

*Immigration*), 2013 FC 81. The applicant in that case was a six-year-old child when he left his country and was only 15 years old at the time of his application before the RPD.

[20] In short, the RPD's decision is in line with a range of reasonable outcomes and therefore does not require the Court's intervention.

## VII. Conclusion

[21] For the above reasons, the application for judicial review is dismissed because the RPD's decision is in line with a range of possible solutions.



**JUDGMENT**

**THE COURT ORDERS THAT** the application for judicial review is dismissed and no question is certified.

“Peter Annis”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4353-15

**STYLE OF CAUSE:** CRISTHIAN ALBERTO DELGADO MOLINA v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MARCH 21, 2016

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** MARCH 24, 2016

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