

Federal Court



Cour fédérale

Date: 20181207

Docket: IMM-340-18

Citation: 2018 FC 1233

Ottawa, Ontario, December 7, 2018

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

**MARCELA NATALY CERRA GOMEZ
TOMAS SANTIAGO MORENO CERRA
MARIA EFELIA GOMEZ VARGAS
IDIER CORREA MONCADA
EMELLYN THATYANA CORREA GOMEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are citizens of Columbia. They seek judicial review of a decision (Decision) of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada. The RPD found that the Applicants were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97, respectively, of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 (IRPA). The application for judicial review is brought pursuant to subsection 72(1) of the IRPA.

[2] For the reasons that follow, I find that the RPD committed no reviewable error in its Decision. This application will be dismissed.

I. Background

[3] The Applicants are Marcela Nataly Cerra Gomez (Principal Applicant), her son, Tomas Santiago Moreno Cerra (Minor Male Applicant), her mother, Maria Efelía Gomez Vargas (Female Applicant), her mother's common law partner, Idier Correa Moncado and the Principal Applicant's sister, Emellyn Thatyana Correa Gomez. The Applicants' identities as nationals of Columbia were established by their Columbian passports.

[4] The basis of the Applicants' claims is that they were targeted and threatened by members of the Revolutionary Armed Forces of Columbia (FARC). The Applicants allege that FARC has demanded they pay a significant debt owed by the Principal Applicant's brother, Juan Cerra Gomez, who was kidnapped for ransom by FARC in July 2015. Juan escaped FARC without paying the ransom and fled to Canada where he made a refugee claim.

[5] The Applicants state that they were approached and threatened by FARC members numerous times after Juan left Columbia. Each time, FARC demanded payment of the ransom. The threats began at the family residence in Guadalupe, Columbia in early 2016 and continued in Puerto Carreno, Columbia after the Principal Applicant left Guadalupe in May 2016 in search of

safety. The Female Applicant and the minor applicants remained in Guadalupe until the end of the school year. The Female Applicant testified that she was approached by FARC a number of times in Guadalupe prior to their relocation to Acacias, Columbia. The Principal Applicant states that she was approached by FARC one final time in Puerto Carreno in April 2017. The Applicants left Columbia on May 13, 2017 and applied for refugee protection in Canada.

II. Decision under review

[6] The RPD heard the Applicants' claims on July 10, 2017 and August 21, 2017. The Decision is dated January 2, 2018. As stated above, the panel found that the Applicants were neither Convention refugees nor persons in need of protection for the purposes of sections 96 and 97 of the IRPA. The determinative issue in the RPD's findings was the credibility of the Applicants' evidence.

[7] The RPD assessed the credibility of the claims before it by reviewing the series of confrontations with FARC asserted as underlying the Applicants' fear of persecution and risk to life. The panel found a significant discrepancy between the Principal Applicant's testimony regarding her initial contact with FARC members and the description provided in her Basis of Claim (BOC) form. The RPD also noted that none of the three police reports filed by the Applicants mentioned any approach or threat by FARC between January and August 2016. The panel concluded that these inconsistencies and omissions negatively impacted the Principal Applicant's credibility and that the Applicants were not approached by members of FARC at their residence in Guadalupe.

[8] The RPD then considered the alleged threats against the Principal Applicant in Puerto Carreno. The Principal Applicant testified that she was first threatened in Puerto Carreno in September 2016. Despite the threat, she brought her son, the Minor Male Applicant, to Puerto Catania in December 2016. The Principal Applicant stated that she was again threatened on January 25, 2017 after which her son left for Acacias to join the other Applicants. The Principal Applicant spent some time in Acacias but returned to Puerto Carreno in April 2017 with the Female Applicant and her son. The RPD found this behaviour inconsistent and unreasonable as the Principal Applicant had knowingly brought her son to a more dangerous location. The RPD also noted that the Principal Applicant had not disclosed the January 25, 2017 threat in the police report she filed in April 2017. The lack of mention of this threat in any of the police reports filed by or on behalf of the Principal Applicant undermined her credibility and led to the conclusion that she was not threatened by FARC in January 2017.

[9] The RPD reviewed the testimony of the Female Applicant regarding threats made against her and noted discrepancies in the date in August 2016 on which the threats began. The panel did not accept the Female Applicant's explanation for the discrepancies as she was asked specifically to confirm the dates and was unable to do so. The Female Applicant also testified about threats by FARC members in September and October 2016. The panel noted confusion in her testimony regarding both whether the threats occurred in September and/or October and why the September incident was not listed in the police report she filed on March 15, 2017. The RPD did not accept her explanation for the discrepancies and omissions and found that the Female Applicant's testimony evolved when she was confronted. There were also inconsistencies in her evidence

regarding the dates during which she stayed with a friend following the September 2016 threat by FARC. Again, her testimony changed when questioned about the inconsistencies.

[10] The RPD placed little weight on the police reports filed by the Applicants as the reports did not reflect the testimony and BOCs before it. The panel also found that the sworn statements from friends and family filed by the Applicants were written in general terms and provided little corroborative evidence of the alleged threats by FARC. Finally, the RPD referred to the July 4, 2016 decision of another panel of the RPD allowing Juan's Canadian refugee claim. The panel in the present case reviewed the decision but stated that each refugee claim must be considered on its own merit.

[11] The RPD concluded that the Applicants had not been targeted and were not being pursued by FARC. Therefore, they would not face a serious possibility of persecution in Columbia nor would they, on a balance of probabilities, be subjected personally to risk to their lives, to risk of cruel and unusual treatment or punishment, or to a danger of torture.

III. Issues

[12] The Applicants submit that there are four issues to be addressed in this application, including two issues regarding the RPD's assessment of the evidence which the Applicants cast as issues of procedural fairness. In my opinion, the Applicants have not identified any issues of procedural fairness in the RPD's assessment of the evidence before it. Rather, the Applicants' arguments are more properly concerns with the reasonableness of the Decision. Therefore, the three issues to be addressed in this judgment are:

1. Did the RPD apply the wrong test to its analysis of the Applicants' claims under section 96 of the IRPA?
2. Was the RPD's analysis of the evidence and its conclusions regarding the credibility of the Applicants reasonable?
3. Did the RPD err in failing to conduct a separate analysis of the Applicants' claims pursuant to section 97 of the IRPA?

IV. Standard of review

[13] The first issue raised by the Applicants above is a question of law which is reviewable for correctness (*Ndjizera v Canada (Minister of Citizenship and Immigration)*, 2013 FC 601 at para 22 (*Ndjizera*); *Mugadza v Canada (Minister of Citizenship and Immigration)*, 2008 FC 122 at para 10).

[14] With regards to the second issue, it is well-established that the RPD's findings regarding the Applicants' credibility are to be reviewed by this Court on a standard of reasonableness (*Behary v Canada (Minister of Citizenship and Immigration)*, 2015 FC 794 at para 7; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 22 (*Rahal*); *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4, 160 NR 315 (FCA)). The review of a tribunal's credibility findings against a standard of reasonableness requires me to give significant deference to the findings of the tribunal, recognizing that "the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence" (*Rahal* at para 42).

[15] The issue of whether the RPD was required to conduct a separate section 97 analysis is also reviewed against the standard of reasonableness (*Paramananthalingam v Canada*

(*Citizenship and Immigration*), 2017 FC 236 at para 10; *Ikeme v Canada (Citizenship and Immigration)*, 2018 FC 21 at para 16 (*Ikeme*)).

V. Analysis

1. Did the RPD apply the wrong test to its analysis of the Applicants' claims under section 96 of the IRPA?

[16] The Applicants submit that the RPD erred in law by applying the wrong test for the purposes of section 96 of the IRPA. They cite the following excerpt from the Decision (para 6):

Having considered the totality of the evidence, the panel finds that the claimants are not Convention refugees pursuant to section 96 as they have not credibly established that they are at risk of a reasonable chance of persecution in Columbia.

[17] The Applicants argue that there is no test of a “risk of a reasonable chance of persecution” and that the proper test for section 96 is the bipartite test established in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689. The test is whether the Applicants have a well-founded fear of persecution.

[18] The Respondent submits that the RPD committed no error in its consideration of whether the Applicants have a well-founded fear of persecution. The Respondent cites the case of *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 (*Adjei*), which sets out the legal test an applicant must meet, referring to whether there is a “reasonable chance” that persecution would take place if the applicant were returned to his or her country of origin. The Respondent argues that the Applicants have confused the requirement that an applicant must establish the facts of his or her case on a balance of probabilities (the standard of proof) with the

requirement that the applicant must demonstrate that such facts meet the legal test under section 96 of the IRPA.

[19] I find that the RPD made no error in its reference to a “reasonable chance of persecution” in Columbia. This Court has often considered the nature of the test and standard of proof placed on refugee claimants in establishing a well-founded fear of persecution for the purposes of section 96. The words “reasonable chance” and “serious possibility”, as opposed to mere possibility, are often used to explain the legal test a claimant must meet (*Ndjizera* at para 26; *Urbano v Canada (Citizenship and Immigration)*, 2016 FC 1258 at para 5; *Adjei* at para 5). Justice Gagné best summarized the law in *Ndjizera* at paragraph 26:

[26] I agree with the respondent that a distinction must be made between the applicable standard of proof and the applicable legal test. Although the legal test is that of a “serious possibility” or a “reasonable chance” of persecution, a claimant must still establish his or her claim on the balance of probabilities. As Justice Mosley held in *Lopez*, above, at para 20, which is cited by the respondent:

To establish a well-founded fear of persecution a claimant must prove that they have (1) a subjective fear of persecution; and (2) that this fear is well-founded in an objective sense; *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74 at para. 47 (QL) [*Ward*]. The applicant must demonstrate on a balance of probabilities that they meet this test: *Saverimuttu v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1021, [2002] F.C.J. No. 1329, at para. 18 (QL). That being said, the applicant does not have to demonstrate that the persecution would be more likely than not, as noted by the Court of Appeal in *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680 (F.C.A.): "there need not be more than a 50% chance (i.e., a probability), and ... there must be more than a minimal possibility. We believe this can also be expressed as a "reasonable" or even a

"serious possibility", as opposed to a mere possibility." (emphasis added)

See also *Adjei*, above, at para 5.

[20] The RPD in the present case correctly stated that the Applicants were required to establish that they were subject to (or at risk of) a reasonable chance of persecution in Columbia in order to be found Convention refugees pursuant to section 96 of the IRPA. The concluding paragraphs of the Decision demonstrate the panel's understanding of the requirements described by Justice Mosley in the excerpt above. The RPD found that the Applicants had not established, on a balance of probabilities (the standard of proof), that they were targeted by FARC. In other words, they had not established the factual basis of their claims. Therefore, the Applicants would not face a serious possibility (or reasonable chance) of persecution in Columbia (the legal test for persecution).

2. Was the RPD's analysis of the evidence and its conclusions regarding the credibility of the Applicants reasonable?

[21] The Applicants submit that the RPD breached their right to procedural fairness in failing to properly assess the evidence before it. More specifically, they argue that the RPD made no independent assessment of the evidence. However, I find no breach of procedural fairness in the RPD's consideration of the evidence. The Applicants' concerns in this regard are more accurately characterized as arguments contesting the reasonableness of the panel's assessment of the evidence. The determinative issue in this application is whether the RPD's adverse conclusions regarding the credibility of the Applicants and their evidence were reasonable.

[22] The Applicants submit that the RPD engaged in a microscopic analysis of their evidence, seizing on minor discrepancies in detail and dates and failing to analyze the substance of the claims (*Jamil v Canada (Citizenship and Immigration)*, 2006 FC 792). They argue that the RPD ignored the central fact that the Applicants were repeatedly threatened by members of FARC in Guadalupe and Puerto Carreno. Inaccuracies in the dates of the events in question were not sufficient to undermine the credibility of the Applicants' narrative or the police reports submitted as corroboration.

[23] I find that, when read as a whole, the analysis and conclusions of the RPD regarding the Applicant's narrative, testimony and supporting documentary evidence were reasonable. The reasons given by the panel are detailed and intelligible. While I agree with the Applicants that the RPD focused unduly on certain discrepancies in the Female Applicant's testimony, this one error does not render the Decision as a whole unreasonable.

[24] I will address two preliminary points from the Applicants' submissions. First, the Applicants submit that the RPD did not take into account the fact that the Female Applicant was 60 years old and testified through an interpreter. They argue that the panel ignored the guidelines on assessing credibility issued by the Immigration and Refugee Board and did not properly allow for the Female Applicant's nervousness in testifying or the trauma she suffered in Columbia. I do not find the Applicants' submissions persuasive. There was no evidence before the panel that the Female Applicant had difficulties in testifying or that the concerns raised by the Applicants were either brought to the RPD's attention or should have been evident during the hearing. In order to impugn a decision on this basis, more is needed than an assertion that the panel failed to take

these considerations into account. In addition, the panel turned its mind to the difficulties faced by claimants in testifying, noting the issues of nervousness and the use of an interpreter in the Decision.

[25] Second, the Applicants submit that the RPD erroneously rejected the sworn statements filed by the Applicants. The RPD found that the statements did not describe any of the incidents in which the Applicants were allegedly confronted by members of FARC. They spoke only in generalities. I agree with the RPD's characterization of their content. The statements refer to harassment and persecution suffered by certain of the Applicants and to the fact that they had been offered places to stay by the various affiants. None of the affiants were witness to threats made against the Applicants. As a result, the RPD reasonably found that the sworn statements provided little corroborative evidence of the alleged threats by FARC. The panel did not reject the statements; it afforded them little weight.

[26] I now turn to my analysis of the RPD's credibility findings. The substance of the panel's analysis focused on the testimony and BOCs of the Principal and Female Applicants and on the contents of three police reports. The RPD placed little weight on the police reports because they did not corroborate specific aspects of the Applicants' testimony. The panel also found that inconsistencies between the Applicants' testimony and the police reports undermined their credibility. The Applicants submit that the RPD erred in focusing on what the police reports did not say rather than what the reports did say (*Diaz v Canada (Citizenship and Immigration)*, 2014 FC 389 at para 11). They argue that the police reports corroborated a series of threats against the Applicants by FARC in different cities in Columbia.

[27] For ease of reference, the police reports can be summarized as follows:

1. Report filed by Nelson Enrique Gomez Vargas in Puerto Carreno on September 29, 2016, stating that members of FARC had begun to harass his mother, the Female Applicant, and his sister, the Principal Applicant. Mr. Vargas stated that the Female Applicant was accosted by a man on a motorcycle outside her residence in Guadalupe. The man mentioned Juan and demanded he pay money or would suffer the consequences. Another man threatened the Principal Applicant in Puerto Carreno, asking about Juan and demanding payment. On both occasions, the women felt intimidated and threatened. There is no mention in the report that the men identified themselves as members of FARC, nor does the report indicate the dates of the two occurrences.
2. Report filed by the Principal Applicant in Puerto Carreno on April 24, 2017, detailing an incident on April 7, 2017 in Puerto Carreno. The Principal Applicant was accosted by two individuals on a motorcycle who identified themselves as members of FARC. They threatened her with a firearm. They asked about her brother and stated that he owed them but that she would bear the consequences. The Principal Applicant stated that she was forced to quit her job and move from Puerto Carreno as a result of this incident.
3. Report filed by the Female Applicant in Guadalupe on March 15, 2017, describing an incident that occurred around August 26, 2016. The Female Applicant was riding her motorcycle with her daughter in Guadalupe and was intercepted by two individuals who brandished a gun and asked about her son, Juan. The report also refers to an incident in October 2016 in which four men on two motorcycles intercepted her and again asked for the whereabouts of Juan, stating that he would be shot if he did not carry out their agreement. When asked if the men were members of an outlaw group, the Female Applicant responded that she did not know as she could not recall if they identified themselves as FARC.

[28] The RPD structured its credibility analysis in six sections. The RPD first reviewed the evidence of the Principal Applicant regarding her initial contact with FARC. She testified that she began to see people she recognized as members of FARC around the family's residence in Guadalupe in January 2016. The Principal Applicant was asked if any of the men spoke to her or anyone else at the house and she testified that they did not. In contrast, she stated in her BOC that FARC members would arrive frequently at their Guadalupe home during that period and ask for her brother in a threatening way. This discrepancy was raised to the Principal Applicant at the

hearing and stated she had forgotten during her testimony that the men had asked questions about her brother. The RPD did not find the explanation of the discrepancy reasonable, stating:

The principal claimant indicated that it was as a result of these men asking about Juan that she decided to move. The panel does not find it reasonable that such a significant incident as being specifically asked by someone about her brother Juan would be overlooked when she was testifying about the incidents, and the incident had already been included in the BOC. While the panel recognizes that testifying at the hearing can be stressful, the claimant was directly asked whether she or her family had been spoken to and she replied distinctly in the negative.

[29] The panel also noted that none of the three police reports mentioned FARC's approaches to the family between January and August 2016. The panel concluded that these various inconsistencies negatively affected the Principal Applicant's credibility. Given the importance of the Principal Applicant's initial interactions with FARC in her narrative, I find the RPD's conclusion that she had not established the approach by FARC members at the family's residence in Guadalupe reasonable. Contrary to the Applicants' arguments, the panel focused on the central elements of the Principal Applicant's testimony in reaching its conclusion: whether the FARC members had spoken to her and whether she was threatened, precipitating her move to Puerto Carreno.

[30] The RPD considered the Principal Applicant's allegations of threats against her in Puerto Carreno. She testified as to incidents in September 2016 and January 2017. After the incident in September 2016, the Principal Applicant moved to a new address and brought her son, the Minor Male Applicant, to reside with her in Puerto Carreno. She stated that she thought the move would be sufficient protection. The RPD found the Principal Applicant's behaviour unreasonable as, if the events occurred as described, she would be knowingly putting her son at risk in Puerto

Carreno. The son had been living with family in Acacias where there had been no incidents with FARC. The panel found that “the claimant’s inconsistent behaviour regarding her son negatively affects her credibility and in addition demonstrates a lack of subjective fear”. The panel also noted that the April 24, 2017 police report filed by the Principal Applicant made no mention of a January 2017 incident. The panel did not accept her explanation that she had forgotten about the incident out of fear and nervousness when filing the report as she was asked directly by the police officer whether she had been subject to any other threats. The Principal Applicant’s behaviour, coupled with the lack of corroborating evidence regarding the January 2017 incident, led the panel to find that she was not threatened by FARC in January 2017 in Puerto Carreno.

[31] The Applicant argues that the RPD ignored the substance of the Principal Applicant’s testimony but the panel’s analysis of the alleged events in Puerto Carreno focused on whether the Principal Applicant established a continuing pattern of threats and intimidation by FARC. This is the essence of the Applicants’ claims.

[32] The RPD then reviewed the September 29, 2016 police report filed by the Principal Applicant’s brother. The Principal Applicant testified that she and the Female Applicant had relayed to her brother certain incidents with FARC. He filed a police report for them as the Applicants were afraid to file police reports in Guadalupe and Puerto Carreno. The panel placed little weight on the report as it contained no detail regarding the two incidents it referenced and was inconsistent with the Principal Applicant’s testimony and BOC as to how many men approached her in September 2016 in Puerto Carreno. The RPD did not accept the Principal Applicant’s explanation that she had not noticed the mistake as it was an obvious error. I have

reviewed the police report in the record and find the panel's description and assessment of the report reasonable. There is very little detail in the report. It contains a general narrative of two alleged incidents, one in Guadalupe involving the Female Applicant and one in Puerto Carreno involving the Principal Applicant. No dates or details are provided in the report.

[33] The next section of the RPD's analysis focused on the Female Applicant's testimony regarding an incident that occurred in August 2016. The RPD questioned her initial testimony that the incident occurred on August 1, 2016 while the police report she filed indicated that the incident occurred on August 21, 2016. In my opinion, this inconsistency is not material and does not go to the essence of the Female Applicant's description of this incident. The panel's finding that the discrepancy undermined her credibility can be accurately characterized as a microscopic examination of her testimony. I will return to this issue in my summary of the RPD's credibility findings regarding the Female Applicant.

[34] The RPD then assessed the Female Applicant's testimony regarding an incident involving FARC on September 25, 2016. She stated that FARC members came into her home, threatened her and demanded she cook them a meal. The Female Applicant was asked whether she had reported both the August 2016 incident referred to above and that of September 25, 2016 to the authorities and she responded that she had. However, her March 15, 2017 police report referenced only the August 2016 incident and an incident in October 2016. It made no mention of a September 2016 incident. The Female Applicant explained the omission of this event by stating that the police told her to report only the first and last threats she received. The RPD then asked the Female Applicant why she had omitted the October 2016 incident from the BOC. She

responded that she had forgotten to inform the Principal Applicant of the incident. As a result, the Principal Applicant omitted this incident from the detailed account of the Applicants' narrative in her BOC.

[35] The RPD did not accept the Female Applicant's explanations for the discrepancies and omissions regarding the events of September and October 2016. She was provided the opportunity to explain the inconsistencies and omissions and did not do so. The panel found that the Female Applicant's "testimony regarding the incidents evolved when confronted with inconsistencies".

[36] The Female Applicant also testified that she stayed with friends after she was threatened in September 2016, including her friend, Omar. The Female Applicant was asked at the hearing if she had stayed with Omar before August 2016 and she initially testified that she had not. However, the sworn statement provided by Omar stated that she had stayed with him in May and June 2016. When the Female Applicant was asked about this inconsistency, she stated that she had forgotten about her earlier stay with Omar and was getting mixed up. The panel found that, again, the Female Applicant only changed her testimony once she was presented with the inconsistency and asked to clarify her evidence.

[37] While I have found that the RPD's analysis of the discrepancies in the Female Applicant's evidence regarding the August 2016 incident was unduly a microscopic, its assessment of her evidence as a whole was not. It is important to recall that the RPD is in the best position to assess the testimony of those appearing before it (*Rahal* at para 42). When read

as a whole, the issues identified by the panel in the testimony of the Female Applicant are reasonable. It is clear from the Decision and the transcript of the hearing that the Female Applicant was provided fair opportunity to consider and explain the issues put to her by the panel. Her testimony changed as she was confronted with inconsistencies in the documentary evidence. The RPD focused on significant omissions in the Female Applicant's evidence, including her BOC and police report, to draw a negative inference regarding her credibility and narrative as a whole.

[38] The Applicants submit that the RPD improperly relied on omissions in the police reports in the record to undermine their credibility. They argue that the panel ignored the content of the police reports that corroborated a series of threats against the Applicants by FARC. The Respondent submits that the RPD did not ignore the content of the police reports but examined them in the context of all the evidence and found that the Applicants' evidence was not credible. I agree with the Respondent. The RPD did not discount the three police reports based on what they did not say. Rather, the panel relied on the Applicants' accounts in the reports of incidents involving FARC to ask questions of the Principal and Female Applicants. The questions centred on the events that formed the basis of their alleged fear of persecution and injury at the hands of FARC members. The RPD found that the Applicants could not provide adequate explanations for discrepancies between their testimony and the incidents as related in the police reports. The fact that the RPD accorded the police reports little weight because they did not corroborate the Applicants' narrative in significant respects is not a reviewable error.

[39] In summary, the RPD conducted an extensive review of the testimony and documentary evidence provided by the Applicants. It noted specific discrepancies in the evidence in relation to material aspects of the Applicants' narrative. The panel focused on inconsistent dates, omissions, evolving testimony and changing details in the events relayed by the Principal and Female Applicants. The Applicants argue that the RPD ignored their central story of harassment by FARC but the central story must be established through credible evidence of specific incidents. The cumulative effect of the issues identified by the RPD supports its conclusion that the alleged incidents involving the two women and FARC did not occur as described.

3. Did the RPD err in failing to conduct a separate analysis of the Applicants' claims pursuant to section 97 of the IRPA?

[40] The Applicants submit that the RPD erred in failing to conduct a separate analysis of their claims pursuant to section 97 of the IRPA. They argue that the panel erroneously assessed their evidence and, while it had credibility concerns with the evidence, the RPD was required to consider whether certain facts established by the evidence could nonetheless support a section 97 claim. The Applicants cite the decision of this Court in *Bouaouni v Canada (Citizenship and Immigration)*, 2003 FC 1211 at paragraph 41, for the proposition that a negative credibility finding that was determinative of a refugee claim pursuant to section 96 of the IRPA is not necessarily determinative of a claim under section 97.

[41] The Respondent submits that a separate section 97 analysis was not required and that the analysis of the RPD in this case addressed the Applicants' claims under both sections. There was no independent evidence that could support a claim pursuant to section 97 (*Canada (Citizenship*

and Immigration) v *Sellan*, 2008 FCA 381 at para 3 (*Sellan*); *Kugaperumal v Minister (Citizenship and Immigration)*, 2004 FC 881 at para 17).

[42] The Federal Court of Appeal in *Sellan* set out the test for whether a decision-maker must conduct a separate section 97 claim (at para 3):

[3] In our view, that question should be answered in the following way: where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.

[43] The question before me is whether the Applicants provided independent and credible evidence capable of supporting a positive section 97 finding. The RPD's central conclusion was that the Applicants had not established they had been targeted or pursued by FARC. The panel's conclusion rested on its adverse credibility findings regarding the oral and documentary evidence of the Applicants. The negative credibility findings extend to both sections 96 and 97 because they refute the core of the Applicants' claims for protection (*Ikeme* at para 42).

[44] The purpose of a section 97 analysis of the Applicants' claims was to determine whether they were in need of protection in Canada due to danger or risk if they returned to Columbia. The RPD's finding that the Applicants were not at risk from FARC was dispositive of their section 97 claim and was in fact part of a commingled analysis by the panel (see *Dag v Canada (Citizenship and Immigration)*, 2017 FC 375 at paras 11-13, citing *Sellan*; see also *Jiang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 222 at para 37, citing *Kugaperumal*). I find that the RPD's analysis of the Applicants' evidence reasonably addressed their section 96 and section 97

claims. While there was general country condition evidence before the RPD that family members of FARC targets could face serious risks, the Applicants did not provide credible and independent evidence that they personally faced such risks. The successful refugee claim of the Principal Applicant's brother did not establish the necessary personal risk to the Applicants.

VI. Conclusion

[45] The application is dismissed. The RPD's adverse credibility findings were reasonable and justified on the evidence. The panel committed no errors of procedural fairness.

[46] No question for certification was proposed by the parties and no issue of general importance arises on the record.

JUDGMENT in IMM-340-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Elizabeth Walker"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-340-18

STYLE OF CAUSE: MARCELA NATALY CERRA GOMEZ
TOMAS SANTIAGO MORENO CERRA
MARIA EFELIA GOMEZ VARGAS
IDIER CORREA MONCADA
EMELLYN THATYANA CORREA GOMEZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 16, 2018

JUDGMENT AND REASONS: WALKER J.

DATED: DECEMBER 7, 2018

APPEARANCES:

Cemone Morlese FOR THE APPLICANTS

Margherita Braccio FOR THE RESPONDENT

SOLICITORS OF RECORD:

Grice and Associates FOR THE APPLICANT
North York, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario