Federal Court  Cour fédérale

Date: 20221104

Docket: IMM-6250-21

Citation: 2022 FC 1507

Ottawa, Ontario, November 4, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

NICOLL STEFFANY PENA CAMACHO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Colombia who, fearing her abusive ex-boyfriend sought protection upon her arrival in Canada. The Refugee Protection Division [RPD] of the Immigration and Refugee Board found she was neither a Convention refugee nor a person in need of protection because the Applicant had a viable Internal Flight Alternative [IFA] in

Colombia. In its August 23, 2021 decision, the Refugee Appeal Division [RAD] upheld the RPD's conclusion.

[2] The Applicant applies under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the RAD's decision.

[3] For the reasons that follow, the Application is dismissed.

II. Background

[4] The Applicant reports that her ex-boyfriend, who she started dating in 2014 and began living with in 2015, was abusive, and a drug dealer and user. In June 2017, she fled their shared residence, moving into her cousin's home, which was located in a different city. She then moved in with her grandmother who lived in the same city as her cousin.

[5] In August 2017, she reports her ex-boyfriend located her at her grandmother's house and threatened to kill her if she did not return home with him. The Applicant complied and was subsequently the victim of a serious assault. She sought and received medical treatment and told the RPD the medical clinic required her to inform the police about the assault. She states her ex-boyfriend had police connections linked to his involvement in the drug trade, and she was therefore reluctant to report the assault. She did not follow-up on the initial complaint.

[6] The Applicant reports that she continued to experience abuse on a regular basis. Her ex-boyfriend threatened her life and the lives of her family members when she displeased him. He

also threatened to kill her if she left him. In January 2018, she was forced to move to Spain with him. She suspected the move was related to his drug dealing.

[7] In September 2018, the Applicant fled from Spain to Mexico because she was concerned her ex-boyfriend was becoming involved in sex trafficking. She felt she could not remain in Mexico because her ex-boyfriend had connections to the drug trade in that country. She later entered Canada and sought refugee protection.

[8] In October 2019, the RPD denied the Applicant's claim, finding there were viable IFAs in the Colombian cities of Cartagena and Barranquilla. The RPD's decision was upheld by the RAD on August 31, 2020.

[9] The Applicant filed an Application for Leave and for Judicial Review of the August 31, 2020 decision. By Order dated January 29, 2021, this Court allowed the Application on consent, being satisfied the RAD's failure to assess a newly identified risk rendered the decision unreasonable. The Court returned the matter to a different member of the RAD. It is the reconsideration decision that is the subject of this Application.

III. Decision under Review

[10] In considering the appeal, the RAD first addressed and granted the Applicant's request to submit new evidence. The RAD noted an oral hearing had not been requested and found the new evidence did not raise a serious issue with respect to the Applicant's credibility. The RAD held an oral hearing was not required.

[11] The RAD noted “an unusual amount of conflicting evidence” and found this weighed against the Applicant’s credibility in several areas (RAD Decision at para 16). However, the RAD was satisfied the weight of evidence supported the conclusion that the Applicant had experienced domestic violence perpetrated by her partner. The RAD also concluded state protection was likely not available for the Applicant. In support of this conclusion, the RAD relied on the evidence of apparent inaction by the police upon receiving the Applicant’s report of an assault, the claims that the applicant’s ex-boyfriend has police connections and the documentary evidence regarding Colombia’s ineffectual response to domestic violence. Nonetheless, the RAD found that if the Applicant had a viable IFA, state protection would not be a consideration and the Applicant’s claim could not succeed.

[12] The RAD set out the two-pronged IFA test, and held the RPD had properly raised Cartagena and Barranquilla as possible IFAs (*Rasaratnam v Canada (Minister of Employment & Immigration*), [1992] 1 FC 706 (CA)).

[13] In applying the first prong of the test, the RAD found no serious possibility of persecution in either of the proposed IFAs. The RAD noted they are both large cities, and concluded there was insufficient evidence to demonstrate the Applicant’s ex-boyfriend had the means to locate her within the proposed IFAs.

[14] Upon reviewing the second branch of the IFA test, the RAD concluded there was insufficient evidence to establish the Applicant would face undue hardship by relocating to or living in either of the IFA locations. The RAD noted the Applicant is young, healthy, has some

post-secondary education and work experience and speaks Spanish and English. She has lived in different countries and travelled internationally. The Applicant's religion and the availability of housing in the IFAs were not factors. Although the Applicant has experienced domestic violence in the past, she was found not to be at a greater risk of gender-based violence than other women in Colombia within the proposed IFAs.

[15] The RAD dismissed the appeal, confirming the RPD's finding that the Applicant was neither a Convention refugee nor person in need of protection.

IV. Issues and Standard of Review

[16] The Application raises a single issue: Was the RAD's IFA analysis reasonable?

[17] In written submissions, the Applicant identified a breach of the principle of *stare decisis* as a second issue. In oral submissions, counsel for the Applicant advised the Court that the Applicant was not pursuing this argument and I therefore, have not considered it.

[18] The parties submit, and I agree, that the appropriate standard of review is reasonableness. A reasonable decision is one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). Both the reasoning process and outcome must be intelligible, justified and transparent (*Vavilov* at para 86).

V. Analysis

[19] The Applicant takes issue with the RAD's treatment and analysis of the evidence. In its assessment of the first prong of the IFA test, the Applicant broadly argues that the RAD unreasonably discounted evidence tending to support the possibility of persecution; engaged in speculation when finding that the Applicant's ex-boyfriend would be unable to locate the Applicant in the proposed IFAs; unreasonably focused on whether the ex-boyfriend had returned to Colombia; and misinterpreted the documentary evidence as it related to descriptions of Colombian surveillance systems. In its assessment of the second prong of the test, the Applicant submits the RAD erred by failing to sufficiently consider the Applicant's profile as a survivor who fled severe domestic abuse. The Applicant submits she will not feel safe anywhere in Colombia and that it is not reasonable for an individual to have to live in fear.

[20] These submissions essentially reflect disagreement with the RAD's conclusions and the weight attributed to the evidence.

[21] For example, the Applicant states the RAD overemphasized a minor error in her cousin's retelling of an incident in which she was shot, namely whether the shooting took place en route to, or at the hospital. The Applicant's cousin accused the ex-boyfriend of shooting her. The Applicant relies on this evidence to demonstrate the ex-boyfriend has returned to Colombia and is seeking to locate her. The inconsistency in the cousin's evidence was not disputed.

[22] In addressing the shooting incident, the RAD summarized the evidence, noted the inconsistency and found that neither of the cousin's two statements indicate she saw the Applicant's ex-boyfriend. The RAD found the cousin was shot but concluded the evidence failed to establish that it was more likely than not that the ex-boyfriend was the assailant. The RAD further noted that the cousin's evidence was the strongest advanced to demonstrate the ex-boyfriend's presence in Colombia. Having noted problems with the cousin's evidence, the RAD concluded it was insufficient to show the ex-boyfriend had returned to Colombia from Spain. The RAD's treatment and analysis of the evidence was transparent and justified and the conclusions reached were reasonably available to it.

[23] In her evidence, the cousin also stated her assailant had inquired about the Applicant and her mother. The RAD engaged with this evidence and acknowledged the possibility that the shooting was connected to the Applicant's relationship with her ex-boyfriend. However, noting the significant distance between Bogota, where the shooting occurred, and the proposed IFAs, the RAD concluded the evidence was of little probative value in assessing the risk of the ex-boyfriend locating the Applicant in the IFAs. Again, the analysis is transparent, the treatment of the evidence is consistent, and the conclusions reached were reasonably available to the RAD.

[24] The RAD also considered and addressed the evidence that the ex-boyfriend had previously located the Applicant at her grandmother's home. It concluded that his ability to locate the Applicant at her grandmother's home in her city of habitual residence was of limited probative value when assessing that risk within the proposed IFAs.

[25] Similarly, the RAD addressed the evidence of the ex-boyfriend's police contacts and the risk of locating the Applicant by way of cell phone registration or police infiltration of personal devices. The RAD noted the Applicant's evidence established that the ex-boyfriend had local police contacts in 2017. The RAD considered the documentary evidence and concluded it would be speculative to assume the chain of events necessary that would first allow access to government databases and result in the ex-boyfriend locating the Applicant in the proposed IFAs. In considering device infiltration technology in Colombia, the RAD found the Applicant did not fit the profile of those the police might target using this technology.

[26] Again, the Applicant may disagree with the RAD's conclusions regarding these risks, but that disagreement does not render the analysis or conclusions unreasonable.

[27] Nor am I convinced that the RAD unreasonably focused on the question of whether the ex-boyfriend had returned to Colombia. In the absence of any evidence that the ex-boyfriend had recruited others to threaten or harm the Applicant, the RAD was reasonably focused on whether the ex-boyfriend personally posed a "serious possibility" of risk within the proposed IFAs. Evidence of whether or not the ex-boyfriend was present in Colombia was reasonable for the RAD to consider and address in this context.

[28] The Respondent submits, and I agree, that the RAD explicitly accounted for the Applicant's profile as a female survivor of severe domestic violence in evaluating the second branch of the IFA test. Having done so, it was open to the RAD to conclude these factors did not suggest a greater likelihood that the Applicant would be at risk of persecution. The Applicant's

argument that she should not have to live with a subjective fear of persecution within the IFA fails to recognize that a well-established fear of persecution exists where the claimant establishes both an objective and a subjective fear (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 723). The Applicant's subjective fear alone is insufficient to render the IFA unreasonable.

[29] The Applicant argues having found that state protection was not likely available to her in Colombia, it was unreasonable for the RAD to find an IFA existed. The RAD addressed this concern, noting that because there was no serious possibility of persecution in the proposed IFA, the question of state protection was not a consideration. The availability of either state protection or an IFA is enough to determine a refugee claim (*Campos Shimokawa v Canada (Minister of Citizenship and Immigration)*, 2006 FC 445 at para 18).

[30] This is not to say that the Applicant's prior victimization was not addressed as part of the IFA analysis. Although issues of state protection and the viability of an IFA engage separate tests, both involve a consideration of an Applicant's circumstances. In this instance, and as noted above, the RAD's analysis under the second branch of the IFA test included consideration of both the Applicant's prior victimization and the objective documentary evidence.

[31] The RAD did not err on this issue.

VI. Conclusion

[32] The application for judicial review is dismissed.

[33] In written submissions the Applicant proposed the following question for certification:

> Where a claimant has suffered repeated, severe and prolonged domestic abuse, including sexual assault and physical assaults that require hospitalization, and where there is no state protection available, when and in what circumstances is it reasonable to expect that victim to seek an Internal flight anywhere in their country of origin.

[34] The Respondent opposed the question on the basis that it does not engage a dispositive issue. The Applicant, after consideration of the Respondent's position, withdrew the proposed question and I am satisfied no serious question arises.

JUDGMENT IN IMM-6250-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6250-21
STYLE OF CAUSE:	NICOLL STEFFANY PENA CAMACHO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 4, 2022
JUDGMENT AND REASONS:	GLEESON J.
DATED:	NOVEMBER 4, 2022

APPEARANCES:

D. Blake Hobson	FOR THE APPLICANT
Edward Burnet	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hobson and Company Barristers and Solicitors Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT