

Federal Court



Cour fédérale

**Date: 20221213**

**Docket: IMM-848-22**

**Citation: 2022 FC 1716**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, December 13, 2022**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**MARLY JASSIEL LEAL GONZALEZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant is a citizen of Colombia. She is seeking judicial review of a decision of the Refugee Protection Division (RPD) dated January 12, 2022, rejecting her claim for refugee protection on the ground of an internal flight alternative (IFA) in Cali or Neiva.

I. **Background**

[2] The applicant was living in Bucaramanga, Colombia, where she was a member of CORDATEC, an organization dedicated to protecting the environment, water, land and ecosystems in Colombia. She defines herself as an environmental activist and a [TRANSLATION] “social leader”. If the applicant were to return to Colombia, she fears she would be killed by the Autodefensas Gaitanistas de Colombia (AGC), which have threatened and physically assaulted her for her involvement in CORDATEC.

[3] All the alleged incidents took place in Bucaramanga and in San Martín, Cesar, between August 2017 and June 2018. In August 2017, the applicant received two threatening telephone calls. Fearing for her life, she moved to her father’s home in Ocaña for a few weeks before returning to Bucaramanga.

[4] On November 20, 2017, the applicant received another threatening call, prompting her to move to Riohacha, where she lived for three months. She testified that she then returned to Bucaramanga because odd strangers had been asking her neighbours in Riohacha questions about her.

[5] In February 2018, the applicant attended a conference in San Martín as a CORDATEC activist. After attending, she received two pamphlets containing threats. The first pamphlet was signed by the AGC, and it named the applicant as one of 17 activists who were [TRANSLATION] “military objectives”. The second pamphlet was slid under the door of the house where she was staying temporarily during the conference. It threatened the applicant and her family directly.

The applicant therefore relocated to Barrio Villa Rocio Mosquera for a short time before returning to Bucaramanga.

[6] On June 9, 2018, the applicant was physically assaulted by an armed man who told her to stop her activism and who punched her multiple times. Nevertheless, the applicant stayed in Bucaramanga until she left Colombia on September 14, 2018.

## II. Decision under review

[7] The RPD rejected the refugee protection claim, concluding that (1) the applicant had failed to establish, on a balance of probabilities, that the agents of persecution would have the motivation to locate her in the proposed IFAs of Cali and Neiva; and (2) the proposed IFAs were objectively reasonable locations to which the applicant could relocate. The RPD continued its analysis under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), because it was of the view that the refugee protection claim had a nexus to one of the Convention grounds, namely imputed political opinion.

[8] The relevant conclusions of the RPD concerning the first prong of the IFA test and the motivation of the agents of persecution are as follows:

1. The fact that the applicant was able to relocate to three different cities (Ocaña, Riohacha and Mosquera) without being subjected to threats or attacks from the agents of persecution while she was still working for CORDATEC demonstrates a lack of interest in the applicant in the proposed IFAs.
2. The proposed IFAs are even further from Bucaramanga and San Martín than the cities of Ocaña, Riohacha and Mosquera, where the applicant was able to live safely.
3. The applicant stayed in Bucaramanga for three months (June to September 2018) without receiving any further threats even though she continued her activities with

CORDATEC. In addition, the applicant gave an interview as an activist for CORDATEC at a benefit event on June 22, 2018, called [TRANSLATION] “*Cinema to Benefit Victims of Armed Conflict*”. The claimant filed a screenshot from her own Twitter account where she had reposted a photograph of herself at the event. Despite this public appearance a few days after the June 2018 attack, she did not receive any further threats.

4. She also continued to live in Bucaramanga with her mother in the same location after the attack without being threatened. The last threat was therefore more than three years earlier (2018 to 2021), and the lack of incidents and contact by the agents of persecution since then demonstrates once again their lack of interest in the applicant.

[9] As for the second prong of the test, regarding the reasonableness of the IFAs, the RPD noted that the applicant had simply stated that Colombia was dangerous. Although the RPD acknowledged that there was violence in Colombia, it found that the applicant had not demonstrated, on a balance of probabilities, that her life would be at risk because of that violence were she to live in the proposed IFAs. The criminality raised by the applicant was not such that it would make the IFAs unreasonable. The RPD also considered the applicant’s personal circumstances in its analysis of the second prong, including her age, religion, language abilities and education, as well as certain economic factors.

### III. Analysis

[10] The applicant submits that the RPD’s conclusion that there are IFAs in Cali and Neiva is unreasonable.

[11] The parties agree that the RPD’s reasons and conclusions regarding viable IFAs in Colombia for the applicant are reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Aliaj v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1325 at para 8). I agree. When reasonableness

is the applicable standard, the Court focuses on “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[12] The applicant raises multiple arguments against the RPD’s decision. However, one will be enough to determine this application for judicial review.

[13] The applicant submits that the RPD erred in characterizing the nexus between her refugee protection claim and the Convention under section 96 of the IRPA, and in assessing the evidence and the motivation of the agents of persecution. Specifically, she argues that the RPD failed to consider her membership in the particular social group of [TRANSLATION] “social leaders” in Colombia and that the RPD’s analysis was overly narrow. The applicant submits that, even though a political opinion inevitably stems from her actions as an activist for CORDATEC, it is not the only element that emerges from the facts in this case. She relies on documents in the National Documentation Package for Colombia indicating that social leaders cannot live safely anywhere in the country.

[14] Having reviewed the record, I agree with the applicant. The RPD assessed the claim for refugee protection under section 96 of the IRPA and in light of the applicant’s imputed political opinion owing to her activities within CORDATEC. However, an imputed political opinion suggests an opinion that is not tolerated by the country’s authorities and a fear of reprisals by state authorities or by members of a political party. In this case, the applicant fears persecution

by a criminal group, not by the Colombian authorities, as a result of her environmental activism and her profile as a social leader. She identifies herself in her Basis of Claim Form (BOC Form) as a social leader, and this is not disputed by the RPD or the respondent.

[15] The profile of a claimant and the characteristics of the agents of persecution are important factors in an IFA assessment (*Montano Alarcon v Canada (Citizenship and Immigration)*, 2022 FC 395 at para 48). The RPD did not mention the applicant's statement that she was [TRANSLATION] "a social leader [and] an environmental activist" for CORDATEC. Consequently, it did not refer to the information in the National Documentation Package regarding the risks and persecution of social leaders in Colombia.

[16] The respondent submits that the RPD implicitly determined that the applicant is not a social leader; however, this argument is not persuasive and does not comply with the framework for reasonableness.

[17] The respondent submits that the RPD's reasons show that it had a clear understanding of the substance and nature of the applicant's activities. The respondent argues that the applicant's statement in her BOC Form that she is a social leader does not in itself establish that she is one. I agree with the respondent. Ultimately, the onus was on the applicant to support her claim with evidence so that the RPD could consider whether she had a social leader profile that would put her at risk anywhere in Colombia if she were to return (*Gutierrez v Canada (Citizenship and Immigration)*, 2022 FC 7 at para 23). However, it was also up to the RPD to deal with the

arguments put forward by the applicant concerning her alleged profile and to provide reasons in support of its own characterization of that profile.

[18] The applicant also submits that the RPD failed to consider the brief periods she stayed in Ocaña, Riohacha and Mosquera in its analysis of the first prong of the test. She points out that the RPD failed to consider the facts in her explanations as to the identity of the strangers who asked the neighbours about her in Riohacha.

[19] These arguments are not persuasive. In my opinion, the first argument is basically an invitation to reassess the evidence. I acknowledge that the applicant disagrees with the RPD's conclusions. However, it is not for this Court to reassess and reweigh the evidence in order to reach a conclusion that would favour the applicant (*Vavilov* at para 125). The second argument also fails to identify a reviewable error. The RPD asked the applicant to further explain her determination that the strange people in Riohacha were members of the AGC. The panel considered her explanation but concluded that the applicant had not established, on the balance of probabilities, that the people in question were the agents of persecution, who had located her in Riohacha. In my opinion, it was open to the RPD to come to this conclusion. The applicant's statements were speculative in nature.

[20] Although deference is indeed owed to the RPD's decisions, I am of the opinion that the RPD's failure to consider the applicant's statement regarding her profile as a social leader is an error sufficiently significant to undermine the conclusion regarding the AGC's motivation to locate the applicant and to undermine the justification and transparency of the decision (*Vavilov*

at para 100). The outcome of the case may be the same on reconsideration. However, it is not enough for the outcome of a decision to be justifiable. The decision must also be justified in relation to the relevant facts, and it must be intelligible and contain reasons that are understandable (*Vavilov* at para 86).

[21] The application for judicial review is therefore allowed. No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.



**JUDGMENT in IMM-848-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division dated January 12, 2022, is set aside.
3. The case is referred back to the Refugee Protection Division for reconsideration by a differently constituted panel.
4. No question of general importance is certified.

“Elizabeth Walker”

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Judge

Certified true translation  
Vincent Mar

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

**DOCKET:** IMM-848-22

**STYLE OF CAUSE:** MARLY JASSIEL LEAL GONZALEZ v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 2, 2022

**JUDGMENT AND REASONS:** WALKER J

**DATED:** DECEMBER 13, 2022

**APPEARANCES:**

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