

Federal Court



Cour fédérale

Date: 20240730

Docket: IMM-6516-21

Citation: 2024 FC 1209

Ottawa, Ontario, July 30, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**ROCIO MAGALY MOLINA MENDOZA
JULIO CESAR ARBIETO RODRIGUEZ
VALENTINA XIMENA ARBIETO MOLINA
DYLAN EZEQUIEL ARBIETO MOLINA
VALERIA ROCIO ARBIETO MOLINA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of the decision of the Refugee Appeal Division [RAD] affirming the determination of the Refugee Protection Division [RPD] that the Applicants are not Convention Refugees nor persons in need of protection, pursuant to s 96 and s 97(1), respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] The Applicants are a family of two parents and three children. Ms. Rocio Magaly Molina Mendoza [Principal Applicant] and the couple's youngest daughter, Valentina, are citizens of Peru. Her husband, Mr. Julio Cesar Arbieto Rodriguez, their adult child, Dylan, and other minor child, Valeria, have dual Peruvian and Argentinian citizenship. Before the RPD and the RAD Ms. Mendoza was the designated representative of her minor children, Valeria and Valentina. The RPD summarised the Applicants' claim, detailed in their Basis of Claim [BOC] forms, as an allegation by the Principal Applicant of fear of persecution at the hands of members of her former employer, the Regional Government in the city of Callao [Regional Government], in Lima, Peru. In 2018, she testified as a witness in a criminal trial against the Regional Government relating to a corruption scandal. After the trial, members of the Regional Government and their associates began following the Principal Applicant. She reported the incidents to the police who told her that she should look into applying for refugee protection in other countries. The other Applicants claimed that, as family members of the Principal Applicant, they fear being harmed by the agents of persecution. In March 2020, the Applicants fled to Canada where they applied for refugee protection. They did not seek refuge in Argentina as they claimed their agents of persecution would send hitmen to harm them if they relocated there.

[3] Before the RPD, the Minister intervened submitting that the Principal Applicant and Valentina had access to permanent residence in Argentina. The RPD found that the Principal Applicant's claim was excluded from refugee protection pursuant to section 98 of the *IRPA* and

Article IE of the Convention on the basis that she has access to permanent residence in Argentina, and did not establish that she faces a forward-looking risk of persecution or of harm in Argentina. Further, that Valentina has access to Argentinian citizenship. As she did not establish that she faces a risk of persecution or of harm in her second country of nationality, her claim must also fail. The remaining Applicants also did not establish that they face a risk of persecution or of harm in their second country of nationality, Argentina. For that reason, their claims for refugee protection also failed.

[4] As to forward-looking risk, the RPD found that by opposing corruption and testifying as a witness against a corrupt faction of the government, the Principal Applicant established an imputed political opinion (nexus) in the eyes of the agents of persecution. In the case of the other four Applicants, their claims have a nexus to the Convention ground of membership in a particular social group, as family members being targeted by reason of their family tie to the Principal Applicant. The RPD had no credibility concerns about the Principal Applicant's central allegations but found that her allegations of prospective risk in Argentina to be speculative. The RPD found, on a balance of probabilities, that the agents of persecution would not have the motivation to locate the Applicants and harm them if they relocated to Argentina.

[5] The RAD confirmed the decision of the RPD that the Applicants are excluded from refugee protection given the availability in Argentina of permanent residence for the Principal Applicant, or the availability or existence of citizenship for the other Applicants. As to their prospective risk in Argentina, the RAD rejected the Applicants' argument that the RPD had misconstrued evidence regarding the outcome of the trials for some of the agents of persecution.

Specifically, that some of those trials are still ongoing, the Principal Applicant's testimony will be sought and, therefore, the risk continues.

[6] The RAD also rejected the Applicants' submission that the RPD misconstrued evidence of motivation and means to harm the Applicants, in both Peru and Argentina. That is, that the RPD had misconstrued evidence about the murder of a witness in Argentina, which the Applicants had submitted was a situation similar to their own. The RAD found that the essence of the Principal Applicant's testimony and evidence had already been delivered and the sentencing of the individuals who were hierarchically linked to her was complete. The Principal Applicant's testimony and evidence at the trial of outstanding hearing of the jailed (for other reasons) regional government official would be minimal, even if pertinent (relevant).

[7] The RAD concluded that, considering the absence of measures taken against her or her family both in Peru during the period she resided there, or family members living in Argentina, the conclusion reached by the RPD that the Applicants do not face a serious possibility of persecution in Argentina is correct, dismissing the appeal.

[8] The RAD's decision is the subject of this judicial review.

Issue and standard of review

[9] The Applicants submit that the issue before this Court is whether the RAD's decision was reasonable. The parties submit, and I agree, that in assessing the merits of the RAD's decision, the reasonableness standard applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*,

2019 SCC 65 at paras 23, 25 [*Vavilov*]). On judicial review, the Court “asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99).

Preliminary Point

[10] In their written submissions made in support of their application for judicial review the Applicants concede that the Principal Applicant has access to permanent residence status in Argentina. That is, they concede that the Principal Applicant’s claim is excluded from refugee protection pursuant to section 98 of the *IRPA* and Article IE of the Convention. When appearing before me, counsel also conceded that Valentina has access to Argentinian citizenship.

[11] The remaining issue, which is not conceded, is whether the RAD reasonably found that the Applicants do not face prospective risk in Argentina.

Decision was reasonable

Applicants’ position

[12] On judicial review, the Applicants submit that both the RPD and the RAD overlooked a key element of the claim being that, as a state witness, the Principal Applicant was afforded police protection in Peru as demonstrated by the transcript of the RPD hearing. They submit that it is a relevant and material fact that, if the Principal Applicant was receiving police protection in Peru, then this would restrict the ability of the agents of persecution to harm her there. However,

this fact was blithely ignored by both the RPD and the RAD. The RAD believed it to be an indicia of a lack of interest by the agents of persecution that the threats did not escalate into violence between 2018 and 2020. Rather than attributing this to a lack of motivation, the RAD should have considered how the police protection afforded to the Principal Applicant may have impacted the ability of persecutors to target her in Peru. The Applicants say that the RAD erred by failing to consider and assess this material fact.

[13] When appearing before me, the Applicants also argued that the RAD erred in its determination that the risk had not escalated.

[14] The Applicants also submit that while it is correct that the governor of the Regional Government of Callao was in prison at the time of the Applicants' refugee hearing, he was imprisoned on other charges, and his trial on corruption had not yet occurred. And, while two of the Principal Applicant's superiors have been sentenced at trial, they are fugitives. Further, the trial is ongoing for other individuals but is paused due to COVID. The Principal Applicant could be recalled to testify at those trials. While the RAD found that the Principal Applicant's role in these matter is "somewhat completed", the motivation to target the Principal Applicant may not simply be to prevent her from testifying in future proceedings and protect the guilty, but to seek retribution for her previous testimony, as supported by the Principal Applicant's BOC and her testimony before the RPD. The Applicants submit that the RAD ignored this motivation and therefore failed to come to terms with a fundamental element of the claim for protection.

[15] Finally, the Applicants take issue with the RPD and the RAD distinguishing the circumstance where a protected witness was murdered in Argentina. They say there was evidence before the RAD that there were multiple Chilean gangs/hit squads in Argentina that have murdered several individuals in Argentina who did not have a high profile and that the RAD erred in ignoring this evidence.

Respondent's position

[16] The Respondent submits that the issues that were raised on appeal, as noted and addressed by the RAD, were that the RPD erred by failing to appreciate ongoing risk as the Principal Applicant was still to testify against certain officials, and, erred by failing to appreciate, in light of the ongoing trial, that the agents of persecution possess the motivation and means to harm the Applicants in Argentina.

[17] The Respondent submits that the RAD's analysis of the issues raised on appeal are central to the issues raised on judicial review. However, in this case, the Applicants have not included in their application record the submissions they made to the RAD on appeal. Therefore, it is unclear if certain concerns that they now raise were put to the RAD, or, if they were, how the Applicants' arguments were framed. This is significant because a decision of the RAD cannot normally be impugned on the basis of an issue that was not put to it. Judicial review does not serve as an opportunity to add additional, or shift previous, arguments on the merits of a refugee claim.

[18] Thus, while on judicial review the Applicants raise the issue of police protection in Peru, it is not apparent that this was raised on appeal to the RAD. Further, the argument is without merit. The Principal Applicant's evidence was that she did not have ongoing police protection. Accordingly, the RAD could not have ignored this allegedly relevant fact as its existence is not supported by the record.

[19] As to the alleged ongoing risk posed by the Regional Governor and the convicted fugitives, the Respondent submits that the Applicants' position fails to recognize that the determination of risk was based on multiple factors. The RAD found that: the Principal Applicant had already provided evidence in the corruption proceedings and had a limited role remaining to play in continued proceedings against the regional governor; the agents of persecution had never carried out threats against the Applicants in Peru, despite multiple apparent opportunities over an extended time; and, no action was taken against family in Argentina. These factors supported the RAD's finding that the agents of persecution lacked sufficient motivation to pursue the Applicants in Argentina. And, while the Applicants assert that the agents of persecution may still wish to harm them out of vengeance, this does not detract from the RAD's overall assessment of the risk in Argentina.

[20] As to the RAD's analysis of the Principal Applicant's profile, given the absence of the Applicants' RAD submission in their record, it is unclear if they made appeal arguments based on the articles that they now reference. Nor do the articles require specific comment from the RAD. They appear, on the face of the descriptions provided, to have even less relevance to the Applicants' particular circumstances than the matter of the Argentinian official discussed by the

RAD. In any event, the Applicants' argument, which largely turns on general country conditions as to the availability of Peruvian hitmen for hire in Argentina, does not undermine the RAD's finding as to whether the Applicants, in their particular circumstances, face risks from the agents of persecution. The availability of hitmen, or other resources, to carry out an attack was not central to the analysis. The RAD considered multiple factors in assessing risk and concluded that, taken together, the Applicants had not established that the agents of persecution would have sufficient motivation to target them in Argentina.

Analysis

i. Police Protection

[21] The Refugee Appeal Division Rules, SOR/2012-257 [RAD Rules] set out the required content of an appellant's record. This includes a memorandum providing full and detailed submissions regarding the errors that are the grounds of the appeal and where those errors are located in the RPD decision under appeal (s 3((3)(g)(i) and (ii)). The appeal record submitted to the RAD is contained in the certified tribunal record [CTR]. This identifies the substantive issues on appeal as being whether the RPD: ignored or misconstrued evidence that some of the agents of persecution in this case are still awaiting trial; and, whether the RPD ignored or misconstrued evidence that, in light of the ongoing trial, the agents of persecution have the motivation and means to harm the Applicants in both Peru and Argentina.

[22] In asserting these grounds of appeal before the RAD the Applicants made no mention of an error by the RPD in failing to consider the role of police protection afforded to the Principal

Applicant in Peru and how this may have impacted the ability of the agents of persecution to carry out the threats made against her. Rather, on the first ground, the Applicants submitted that the RPD's finding that the agents of persecution lack motivation was mainly drawn from the incorrect belief that the trial is over and the agents of persecution have been sentenced. Their submission was that, despite the testimony of the Applicants, the RPD did not implicitly or explicitly acknowledge that the trial is ongoing, yet this is a large motivating factor for the agents of persecution to harm the Applicants, and would be a significant factor in the RPD's decision of whether to extend refugee protection. The Applicants argued that in ignoring or misconstruing evidence about the ongoing trial, the RPD made an error of fact.

[23] Similarly, nor does the second ground address police protection. There, the Applicants argued that the significance of the trial being ongoing was that it ensured the agents of persecution were motivated to harm the Applicants in Peru or Argentina – both to prevent the Principal Applicant from testifying and to deter other would-be witnesses. The Applicants argued that the RPD's failure to acknowledge that the trial is ongoing impacted the manner in which it analyzed the evidence before it, specifically, in distinguishing the case involving a trial of the Vice President in which a witness was murdered. The Applicants argued that the RPD erred when it concluded that the agents of persecution lacked motivation and means to harm the Applicants in Peru and Argentina. No reference was made in these submissions to the RAD as to an error in failing to consider that the Principal Applicant was afforded police protection in Peru.

[24] I agree with the Respondent that this is a new argument not raised on appeal to the RAD and, accordingly, that it is not appropriately before this Court. As I held in *Cao v Canada*

(*Citizenship and Immigration*), 2019 FC 231 [*Cao*], the reasonableness of a decision by the RAD cannot normally be impugned on the basis of an issue that was not put to it (*Cao* at para 47, citing *Canada (Citizenship and Immigration) v RK*, 2016 FCA 272 at para 6; *Abdulmaula v Canada (Citizenship and Immigration)* 2017 FC 14 at para 15; see also *Al-Sarhan v. Canada (Citizenship and Immigration)*, 2019 FC 1438 at para 37). Accordingly, the RAD cannot be criticised for failing to address the issue in its reasons (*Cao* at para 47).

[25] In any event, even if there is some evidence that the Principal Applicant was afforded some limited police protection, the Applicants have not established that the RAD's failure to address how that the police protection may have impacted the agents of persecution's ability to target the Applicants renders the decision unreasonable. Indeed, if protection was available and successfully protected the Principal Applicant in Peru, this raises the question of the need for protection in Canada. However, this is an issue I need not address as the issue of police protection in Peru was not raised as an appeal ground. I do not agree with the submission made at the hearing that this issue is implicit within the appeal grounds.

ii. Motivation

[26] The RAD addressed the Applicants' assertion on appeal that RPD ignored or misconstrued evidence that some of the agents of persecution in this case are still awaiting trial.

[27] In her BOC, the Principal Applicant indicated that in 2015, while she was working for the Regional Government, she was given documents by Veronica Adriana Garcia Santillan to be destroyed. However, when the Principal Applicant saw that they seemed to relate to corruption in

the Regional Government's office, she kept several of the documents in case someone tried to implicate her in the corruption. In or around 2018, she was subpoenaed to testify in a criminal trial against the Regional Government. During her testimony she gave the court the documents that she had retained. She stated that she believed that her testimony was used to convict certain people such as Jose Garcia Santillan, whom she believed remained at large.

[28] The RPD noted that the Principal Applicant testified that the agents of persecution in Peru are high-ranking members of the Regional Government. Although Felix Moreno Caballero, the former governor, is in jail, his associates Veronica Adriana Garcia Torres, Jose Garcia Santillan and others working for them are fugitives. The Principal Applicant believed that they are highly motivated to locate and harm her anywhere, including in Argentina. She submitted that there have been several reported cases of Peruvian hitmen being sent to kill wanted individuals in Argentina. Further, that there had been a recent reported case of the ex-secretary of the Vice-President of Argentina, being murdered after participating in a trial as a protected witness. Counsel for the Applicants submitted before RPD that this case is similar in nature to that of the Principal Applicant and that if Argentina could not protect its own citizens and its own protected witnesses, then it would not be able to offer state protection to the Applicants.

[29] The RPD did not agree. It found that the cases were quite different on a number of levels. First, in the Argentinian case, the accused was the Vice-President of the country who had not yet been sentenced, as opposed to the circumstance in the Applicants' case being that of the former governor of a regional government in different country who was already in jail. Further, that the information held by the ex-secretary to the Vice-President of Argentina was likely more

detrimental to the Vice-President than the few documents held by the Principal Applicant which she had already provided to the court in 2018. Moreover, the ex-secretary was himself a high-profile individual, therefore highly recognizable.

[30] Ultimately, the RPD found that, on a balance of probabilities, the agents of persecution in this case would not have the motivation to locate and harm the Principal Applicant and her family if they relocated to Argentina. The RPD noted that the Principal Applicant found out about the embezzlement in or about 2015, testified as a witness in 2018 and remained living between Callao and Lima until March 2020. From 2016 to the date of the hearing, there was no incidents suggesting that the agents of persecution would carry out their threats against her or her family. The RPD accepted, on a balance of probabilities, that the Principal Applicant received threats from unknown individuals over this period and that her spouse received a threat at some point as well. However, the fact that the threats did not escalate between 2016 and 2020 was not indicative of highly motivated agents of persecution. The RPD accepted that the Applicants may face a risk in Callao, where the Regional Government is located, but that there was insufficient credible evidence adduced to establish that the agents of persecution would be sufficiently motivated to locate and harm the Applicants in Argentina.

[31] The RAD noted the RPDs findings and addressed the Applicants assertion on appeal that the RDP misconstrued the evidence regarding the outcome of the trials for some of the agents of persecution. Specifically, that the trials are still ongoing for some of them. The RAD stated that the Principal Applicant testified that the consequence of her testimony was that those who were not in jail were on the run, having already been sentenced – specifically Veronica Adriana Garcia

Torres and Jose Garcia Santillan. The RAD did not agree that the RPD misconstrued the evidence regarding the outcome of the trials for some of the agents of persecution. It found that with respect to those directly affected by the Principal Applicant's testimony – those who interacted directly with her in a supervisory capacity and against whom she testified – her evidence seemed to be complete, as they had been sentenced. That others may be involved in the corruption trial for which the Principal Applicant submitted evidence did not change this. The RAD found that the RPD correctly determined that the opportunity to silence the Applicant to protect the named individuals had passed.

[32] I note that the transcript indicates that when asked who had threatened her, the Principal Applicant indicated the public servants of the Regional Government, Veronica Adriana Garcia Torres and Jose Garcia Santillan. The Principal Applicant testified that their boss, the former governor, was already in jail for different reasons when the Principal Applicant testified at trial. She testified that the threats by Veronica Adriana Garcia Torres and her associates began in 2015 and were intended to silence her because it was known that she would be a witness and had incriminating documents. Further, that after she testified at the trial she received threats come from other people. Asked why she believed that Veronica Adriana Garcia Torres and her associates are still pursuing her, the Principal Applicant testified that they wanted to teach a lesson and because there are other people who are witnesses and who, because of fear, do not speak out.

[33] The Principal Applicant testified that the documents she submitted at trial proved corruption of the Regional Government “from the top”. She believed that, as a result of her testimony, people were convicted and were fugitives. Asked who was on the run, she stated

Veronica Adriana Garcia Torres and Jose Garcia Santillan and others, that there was a group of public servants who were on the run. When questioned by her own counsel, the Principal Applicant was asked what was the status of the trial in which she gave evidence. She testified that it is still ongoing because there are more people involved. Asked if she knew when it was scheduled to continue, she testified that she did not know. Then asked if she would be expected to return as a witness, she testified that if she were called she would be expected to go but that because of COVID everything was on standby. When asked why the agents of persecution would be looking for her in Argentina, she testified that they did not want her to give evidence.

[34] What is clear from the Principal Applicant's testimony is that the Principal Applicant provided the documents in her possession and testified at a trial that resulted in the conviction of Veronica Adriana Garcia Torres and Jose Garcia Santillan, and possibly others. It is unclear to me why she would have to testify again in the same trial or why convictions would be entered against some of the accused prior to the end of what she seems to suggest is a joint trial. However, and in any event, the RPD found that the Principal Applicant claimed that the agents of persecution had been convicted and are now fugitives and that the former governor was in jail as of the time of the RPD hearing. In that regard, based on the Principal Applicant's testimony, the RPD did not err. While the RPD did not make a specific finding as to the status of the trial, as the RAD found, the trial status did not impact the RPD's finding as to motivation.

[35] This was that the threats did not escalate between 2016 and 2020 while the Applicants remained living in Callao, Lima and Magdalena which was not indicative of highly motivated agents of persecution. The RPD accepted that the Principal Applicant may face risk in Callao but

not that the agents of persecution were sufficiently motivated to locate and harm her in Argentina.

[36] As to the RAD, it referenced the Principal Applicant's testimony and found that the RPD did not misconstrue evidence regarding the outcome of the trials for some of the agents of persecution. I agree that it did not to the extent that it did not make a finding in that regard. The RAD also did not err in finding that the opportunity to silence the Applicant with respect to the convicted agents of persecution has passed. More significantly, whether the intent of the agents of persecution was to silence the Applicant with respect to the trial in which she testified, as the RAD found, or to prevent her from testifying at the same or any other trials; to send a message to other potential witnesses; or, as the Applicants now submit, to seek retribution, this does not impact the RPD or the RAD's ultimate finding that the evidence demonstrated a lack of motivation by agents of persecution. Specifically, that they had not acted on any of their threats from 2015 to 2020 while when the Applicants were in Peru. There was no evidence in the record that the agents of persecution had changed or differed with respect to the former governor.

[37] Nor do I agree that the RPD and the RAD erred in their findings as to the movement of the Applicants within Peru. The RPD found that notwithstanding the threats against them the Applicants remained in Peru until March 2020 and that they "lived for the most part in Callao, and also attempted to relocate to Lima and to Magdalana for a short period of time, approximately one hour away from Callao." The RAD described this aspect of the RPD's decision, finding that the Principal Applicant and her family remained in Peru until March 2020, living for the most part in Callao, and also relocating to an area one hour away. Again, the RPD

and the RAD's relevant finding was that at no time did the agents of persecution act on their threats while the Applicants remained in Peru which belied any motivation to pursue them in Argentina.

[38] Similarly, while the Applicants assert that the two individual "who pose the greatest threat" to them, Veronica Adriana Garcia Torres and Jose Garcia Santillan, are fugitives and are still able to strike at the Applicants, the fact remains that both before and after their conviction they did not act on any threats to the Applicants, which is the underlying finding of the RPD as to a lack of motivation to harm them in Argentina.

[39] As to the Applicants submission before me that the RAD erred in its determination that the risk had not escalated, again, this is an issued that was not raised on appeal to the RAD. Accordingly, it is not properly before this Court. Nor is the role of this Court to reweigh the evidence.

iii. Profile/Hitmen

[40] As to the Principal Applicant's profile, the Applicants submit that this was not the issue. Rather, that the evidence that was before the RAD was that there were multiple Chilean gangs/hit squads in Argentina that murdered individuals there who did not have a distinguishing profile. They submit that the RAD erred in attempting to use an example of an individual with a dissimilar profile to the Principal Applicant and ignored the penetration of Chillan gangs for hire in Argentina.

[41] The RPD noted that the Principal Applicant testified that the agents of persecution in Peru were high-ranking members of the Regional Government in Callao. And, while the former governor was in jail, his associates Veronica Adriana Garcia Torres, Jose Garcia Santillan and others working for him are fugitives. The Principal Applicant believed that they are highly motivated to locate and harm her anywhere, including Argentina. She submitted that there have been several reported cases of Peruvian hitmen being sent to kill wanted individuals in Argentina and that the cost of hiring hitmen is low. The RPD footnoted the articles submitted by the Applicants in support of this argument. The RPD also noted that the Applicants submitted that the Argentinian case involving the Vice President of that country was similar in nature to that situation of the Principal Applicant as she could unveil important information that could help prove embezzlement by the Regional Government under the former governor.

[42] The RPD found that the case was distinguishable because there the accused had not been sentenced, while the former governor of the Regional Government was in jail, and because the information that the ex-secretary to the Argentinian Vice-President was likely more detrimental to him than the few documents that the Principal Applicant had already submitted in 2018. Further, that the ex-secretary had a high profile and, therefore, was a recognizable individual.

[43] The Applicants argued in their written appeal submissions to the RAD that the RPD's failure to acknowledge that the trial is ongoing impacted the manner in which it analyzed the evidence before it, specifically, in distinguishing the case involving a trial of the Vice President of Argentina. The Applicants argued that while the former governor was in jail on other matters, he still awaits trial on corruption matters. Thus, he and his allies, Veronica Adriana Garcia

Torres and Jose Garcia Santillan, who are fugitives, remain motivated to silence the Principal Applicant to prevent a conviction. Further, the Applicants pointed out that in its reasons the RPD had referenced their evidence concerning Peruvian hitmen being sent to target individuals in Argentina. They submitted as the agents of persecution have high-level government connections and know the Applicants have ties to Argentina, and in light of the evidence of Peruvian hitmen, there was a serious possibility of persecution there.

[44] The RAD summarized the RPD's finding and did not agree that the RPD misconstrued the evidence as to the ongoing trials thereby impacting its finding as to the motivation and means of the agents of persecution. The RAD noted that the essence of the Principal Applicant's testimony and her evidence had already been delivered, resulting in the sentencing of Veronica Adriana Garcia Torres and Jose Garcia Santillan. The RAD found that the submission that outstanding hearings constituted motivation for concerned individuals to seek out the Applicants in Peru or Argentina to avoid her testifying was purely speculative. The RPD had correctly noted that the individuals principally concerned with her testimony had already been convicted. The RAD held that her involvement in other trials, if any, appeared to be minimal, if pertinent. The RAD concluded, considering the absence of measures taken against the Principal Applicant or her family in Peru during the period that she lived there and her family members in Argentina, that the conclusion of the RPD that the Applicants do not face a serious possibility of persecution in Argentina was correct.

[45] The Applicants now argue that the RAD failed to engage with the news articles indicating that Peruvian narco-gangs were killing for hire in the city of Cordoba, Argentina; that two

Peruvians were arrested in Argentina and accused of being hired assassins in the death of a security official; and, that Peruvian hitmen were being hired in Argentina by Chinese mafia to target reluctant merchants who did not pay extortion money and that the RAD erred by relying on a dissimilar profile to the Applicant ignoring the penetration of Chilean gangs for hire in Argentina.

[46] However, in their appeal the Applicants did not argue that the RPD erred in its treatment of the Chilean gang evidence. Accordingly, it is not now open to them to assert that the RAD erred in failing to address that evidence. Moreover, as the Respondent submits, the Applicants essentially argue evidence of country conditions divorced from their own particular circumstances. The Applicants have no connection to gang territorial disputes, they are not involved in the drug trade nor are they the victims of extortion by drug lords, which is the substance of the articles upon which they rely. There is no connection between their circumstances and the circumstances described in any of these articles.

[47] Further, I note that it was the Applicants who put forward the case concerning the Argentinian Vice-President suggesting it was a circumstance similar to their own. It was open to the RPD to distinguish the case on the basis of differing profile or otherwise, which it did. It may be that the former governor will stand trial for corruption or that the trial in which Veronica Adriana Garcia Torres and Jose Garcia Santillan were convicted is ongoing against others. However, as the RPD and the RAD found, the Principal Applicant's evidence has already been put forward, there is nothing new to come out. And, regardless of why the agents of persecution may wish to cause harm to the Principal Applicant – either to silence her in other trials, as

intimidation to other potential witnesses or as retribution – the fact remained that at no time have the agents of persecution escalated their threats.

[48] In that regard, the RAD found, considering the absence of measures taken against the Principal Applicant or her family in Peru during the period that she lived there and her family members in Argentina, that the conclusion of the RPD that the Applicants do not face a serious possibility of persecution in Argentina was correct. This is the central finding of the RAD and, based on the record, this conclusion was reasonable. While the RAD's reasons could certainly have been clearer, they are intelligible.

JUDGMENT IN IMM-6516-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. The Court declines to certify the question proposed by the Applicant for certification.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6516-21

STYLE OF CAUSE: ROCIO MAGALY MOLINA MENDOZA, JULIO
CESAR ARBIETO RODRIGUEZ, VALENTINA
XIMENA ARBIETO MOLINA, DYLAN EZEQUIEL
ARBIETO MOLINA, VALERIA ROCIO ARBIETO
MOLINA v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JULY 16, 2024

JUDGMENT AND REASONS: STRICKLAND J.

DATED: JULY 30, 2024

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