

Federal Court



Cour fédérale

**Date: 20241011**

**Docket: IMM-12531-23**

**Citation: 2024 FC 1615**

**Toronto, Ontario, October 11, 2024**

**PRESENT: Madam Justice Whyte Nowak**

**BETWEEN:**

**A.B.C.D.**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant is a citizen of Uruguay who claimed refugee status based on the risk to his life posed by a criminal narcotics gang in Uruguay. Both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] found that the Applicant was neither a convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. In its decision dated September 15, 2023 [the RAD

Decision], the RAD found that the Applicant had not demonstrated with clear and convincing evidence that the state was unwilling or unable to protect him. This is a judicial review of the RAD Decision.

[2] For the reasons that follow, I find that the RAD Decision is not internally coherent and is flawed in its chain of analysis rendering it unreasonable. Accordingly, this application is granted.

## II. Legal Principles

[3] To obtain refugee status in Canada, a person must be either a convention refugee or a person in need of protection. A refugee claimant must establish a subjective fear of persecution that is objectively reasonable and therefore well-founded (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 723 [*Ward*]).

[4] Since refugee protection is a form of “surrogate or substitute protection activated only upon failure of national protection,” a claimant must show that their country of nationality is unable or unwilling to protect them (*Ward* at 709, 726).

[5] In assessing the availability and adequacy of state protection, an administrative decision maker starts from the presumption of adequate state protection in a democratic nation (*Ward* at 724-726). The burden of showing the absence of state protection is on the claimant. The claimant must present clear and convincing evidence of the state’s inability to provide adequate

protection (*Ward* at 724 and *Mudrak v Canada (Citizenship and Immigration)*, 2015 FC 188 at para 56 [*Mudrak*]).

### III. Preliminary Issue

[6] The Applicant, with the consent of the Respondent, seeks an Anonymity Order pursuant to Rule 8.1 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. Such an order would require that the identity of the Applicant and the agents of harm be anonymized in documents prepared by the Court that may be made public.

[7] I am satisfied that such an order is appropriate as there is evidence of a risk of harm that rises above mere inconvenience or embarrassment (*Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 681 at para 21). Accordingly, the style of cause and these reasons for judgment shall be anonymized to protect the Applicant's identity as well as those of the agents of harm. I consider this to be necessary to prevent the alleged harm and I believe that the beneficial effects of such an order outweigh its deleterious effect on the open court principle.

### IV. Facts

[8] The Applicant is a citizen of Uruguay. He lived in Montevideo at his parents' property and after their deaths, he fought with his siblings over his share of his inheritance. One of the Applicant's siblings [the Sibling] began to threaten him in connection with his claim over his apartment on the property.

[9] After the Applicant separated from his wife in April 2017, the Applicant moved in with his Sibling at which point he learned that his Sibling had ties to an international criminal narcotics gang [the Gang] and a relationship with one of its leaders [the Gang Leader]. The police raided the parents' house looking for the Gang Leader on two occasions but did not find him. The Applicant believed that corrupt police had tipped the Gang Leader off in advance of the raids.

[10] In August 2017, after learning of his Sibling's connection to the Gang Leader, the Applicant started to receive threats to his life from members of the Gang. These threats continued between August 2017 and December 2018, even after he moved to a friend's house outside of Montevideo.

[11] In December 2018, the Applicant started work in a city closer to his family home. He successfully filed a case in court in January 2019 to regain control of his apartment on the property. However, he could not return because the Gang had been using the apartment to sell drugs and store money and guns.

A. *The Applicant's police reports*

[12] In September 2019, the Applicant was visiting his daughter in Montevideo when two men on a motorcycle fired two gunshots and said next time they would not miss him. The Applicant did not make an immediate complaint to the police because he feared that the police were corrupt and the officers would tip the Gang off. Eventually, however, he did go to the police station and

on December 3, 2019, he filed a report in connection with the threats he had received from his Sibling. The police took the report and said they would investigate the matter.

[13] Two weeks later, the Applicant made another report. This time, he specifically mentioned that he knew where the Gang Leader was operating from and told the police it was at his family's property. The officer said he needed to verify something and asked the Applicant to come back the following day. That night when the Applicant went home, he received a call from an unknown number. The caller identified himself as the Gang Leader who told the Applicant he was aware that the Applicant had made a complaint and called him an "informer." The Gang Leader threatened the Applicant's life. The Applicant did not return to the police station and the police did not follow up on the Applicant's complaint.

[14] The Applicant left Uruguay on February 7, 2020, as soon as he had money to pay for his travel.

B. *The RPD decision*

[15] The RPD rejected the Applicant's refugee claim finding that the Applicant had failed to rebut the presumption of state protection, as he had not taken reasonable steps to seek protection. The RPD was not persuaded by the Applicant's arguments that the police were not trustworthy and that the objective country evidence for Uruguay showed high levels of police corruption.

C. *The RAD decision*

[16] The RAD accepted new evidence filed by the Applicant relating to his physical and mental health as well as new country condition evidence. The latter evidence consisted of two articles from *The Economist* and Amnesty International, which describe the increase in organized crime in Uruguay and reports of corruption. The RAD considered the documents to have come from credible sources and found they were relevant to the issue of state protection. Ultimately, however, it did not consider the evidence to change the outcome of the appeal.

[17] The RAD assessed whether the Applicant had rebutted the presumption of state protection and gave positive weight to the profile of the agents of harm and the nature of the human rights violations. The RAD considered the objective country evidence to be “mixed” on state protection for victims of criminal gangs.

[18] The determinative factor for the RAD in rejecting the Applicant’s refugee claim was its assessment of the Applicant’s efforts to seek state protection. The RAD found that the Applicant did not take reasonable steps in the circumstances to obtain protection and therefore found that he had not demonstrated with clear and convincing evidence that the state is unwilling or unable to provide him with adequate protection. The RAD considered that it was objectively unreasonable for the Applicant not to have followed up on his second police report, including by reporting the threat made to his life by the Gang Leader. The RAD did not consider there to be support for the Applicant’s lack of trust in authorities and his belief in widespread corruption.

V. Issues and Standard of Review

[19] The only issue raised by the Applicant is whether the RAD erred in finding that the Applicant had not rebutted the presumption of state protection.

[20] I agree with the parties that the applicable standard of review of the RAD Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 23-25 [*Vavilov*]).

[21] While this Court's review is deferential, it is nevertheless a robust review (*Vavilov* at paras 13, 75) which considers both the outcome and rationale of the decision with an eye to the hallmarks of public power, requiring that it be transparent, intelligible and justified (*Vavilov* at para 95). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85).

VI. Analysis

[22] The issue raised by the Applicant engages two well-accepted legal principles related to state protection: first, it is objectively unreasonable for a person to risk their life to seek state protection; and second, a claimant is not required to risk their life seeking ineffective protection of the state to demonstrate that ineffectiveness (*Ward* at 724).

[23] The Respondent points to the fact that the RAD acknowledged both these legal principles, which it considers sufficient to dispose of the Applicant's arguments. I disagree. While the RAD acknowledged these legal principles, its reasoning does not display the requisite coherence and intelligibility in their application.

A. *The RAD's analysis lacks coherence*

[24] The RAD's analysis of the agents of persecution and the objective country evidence lacks coherence in three respects.

[25] In assessing the profile of the agents of persecution, which the RAD acknowledged was a "long-standing criminal organization" operating in Uruguay, the RAD noted that while the Gang did not operate with impunity (the Gang leader had been successfully prosecuted and as of February 2023, was still serving a prison sentence), the Gang Leader was still running the Gang from prison and was able to communicate with his accomplices from prison. The RAD went so far as to acknowledge that:

The evidence [on state protection for victims of criminal gangs] is indeed mixed. This leaves it somewhat unclear whether, despite the state's efforts, the protection offered by authorities in the [Applicant's] situation would have been operationally adequate, given the profile of the [Applicant's] agents of harm.

[26] Despite questioning the ability of the police to protect the Applicant at the operational level, the RAD went on to analyze the objective country evidence at a systemic level, starting with its statement that "[o]f particular importance in this case is the level of democracy" in Uruguay. The RAD found that the country had low levels of corruption and police corruption



and the judicial system was “one of the strongest in the hemisphere.” However, on the issue of state protection for victims of criminal gangs, it acknowledged that the evidence was “mixed” and amongst its various findings, it accepted that “[m]any victims and witnesses may not have gone to the police for fear of retaliation.” Despite this, the RAD ultimately concluded that:

In light of evidence about very low levels of corruption within the police and state apparatus, and in light of evidence that the state is actively combatting organized crime in Uruguay, including by successfully prosecuting ... the two leaders of the gang – I find that it would have been objectively reasonable for the [Applicant] to follow through on his report. The [Applicant] should also have informed the police about receiving a threatening call directly from [the Gang Leader].

[27] First, the RAD’s reliance on country and systemic levels of effectiveness while acknowledging the ineffectiveness of the local police to protect the Applicant lacks coherence.

[28] Secondly, the RAD’s reasoning fails to account for the RAD’s earlier acceptance of objective country evidence that confirmed that despite the successful prosecution of the Gang Leader and his brother, these criminals continued to run their criminal organization from prison.

[29] Finally, the RAD’s undue focus on the Applicant’s allegations of corruption led it to lose its focus: it is irrelevant whether the Gang Leader learned about the Applicant’s police report because of police corruption (as the Applicant believed) or through a police investigation (as the RAD suggested). Both theories were speculative. What matters is that the further threat received directly from the Gang Leader heightened the risk to the Applicant’s life and constituted objective support for the Applicant’s fear that the police were not able to protect him regardless of how the Gang Leader learned of the Applicant’s report.

[30] These errors in the RAD's analysis undermine its finding that it would have been objectively reasonable for the Applicant to have followed through on his police report.

B. *The RAD erred in its undue focus on the state's willingness to protect*

[31] The RAD points to the fact that there is nothing to indicate that the police were unresponsive to the Applicant's first police report about his Sibling and the fact that the state has prosecuted the Gang Leader successfully in the past. In the same vein, the Respondent submits that the evidence does not reveal a single instance in which the police refused to assist the Applicant.

[32] This focus of the RAD and the Respondent on the state's willingness to pursue and prosecute the Gang and its leader does not meet the test for assessing the adequacy of state protection, which requires an assessment of not only the efforts of the state, but also the effectiveness of those efforts (*Bledy v Canada (Citizenship and Immigration)*, 2011 FC 210 at para 47). As the Applicant points out, the risk of harm to the Applicant increased significantly after he made a police report about the Gang and its leader and that risk was directly linked to the Applicant's approach to the police.

[33] The RAD's conclusion that it was unreasonable for the Applicant not to have returned to the police after having been threatened by the Gang Leader for having made a police report does not make sense in light of: (i) the RAD's own acknowledgement that the evidence regarding state protection of victims was "indeed mixed"; and (ii) the RAD having expressly questioned

whether the protection offered by authorities in the Applicant's situation would have been operationally adequate, given the profile of the Applicant's agents of harm.

VII. Conclusion

[34] I find the RAD Decision to contain a breakdown in logic that does not permit the accepted facts to rationally support the decision (*Mudrak* at para 53). The Applicant is not required to risk his life seeking ineffective protection of the state to demonstrate that ineffectiveness (*Ward* at 724). Accordingly, the application for judicial review is granted.

**JUDGMENT in IMM-12531-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted;
2. The matter shall be remitted back for redetermination by a different decision maker;
3. An Anonymity Order is hereby issued such that the style of cause in this matter shall be amended to *A.B.C.D. v Canada (Minister of Citizenship and Immigration)*;
4. Pursuant to the Anonymity Order, the parties shall be permitted to replace materials already filed with the Federal Court with agreed upon copies that redact the names of the Applicant and the agents of persecution and any other information that would allow for their identification; and
5. There is no question for certification.

"Allyson Whyte Nowak"

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Judge

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

**DOCKET:** IMM-12531-23

**STYLE OF CAUSE:** A.B.C.D. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF ZOOM VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 2, 2024

**JUDGMENT AND REASONS:** WHYTE NOWAK J.

**DATED:** OCTOBER 11, 2024

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