



X (Re), 2019 CanLII 132724 (CA IRB)

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Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXX	Demandeur(e)(s) d’asile
Date(s) of Hearing	January 17, 2019	Date(s) de l’audience
Place of Hearing	Toronto, Ontario	Lieu de l’audience
Date of Decision and reasons	February 21, 2019	Date de la décision et des motifs
Panel	M. A. McColl	Tribunal
Counsel for the Claimant(s)	Michael F. Loebach	Conseil(s) du (de la/des) demandeur(e)(s) d’asile
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)

**Counsel for the
Minister**

N/A

**Conseil du (de la)
ministre**

REASONS FOR DECISION

[1] This is a decision in the claim of XXXX XXXX XXXX XXXX (hereinafter referred to as the “claimant”) who is claiming refugee protection pursuant to [section 96](#) and [97](#) of the *Immigration and Refugee Protection Act* (IRPA).^[1]

ALLEGATIONS

[2] The claimant is a 26 year old man who lived with his parents in XXXX, XXXX, Colombia and commuted to Bogota, Capital District, for work. He alleges that he started working for a company called XXXX as an industrial engineer and, because of his employment, came to the attention of the National Liberation Army (ELN).

[3] The claimant alleges that almost a year into his employment, he was called by the ELN and told that they had important work for him to do. The claimant alleges that he thought they had the wrong telephone number and hung up on them.

[4] Approximately two and a half weeks later, on XXXX XXXX, 2018, the claimant alleges that he was taken by force while leaving the mall with his girlfriend. He claims that he was driven to the road of XXXX (XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX). Once there, the claimant alleges that the ELN demanded that he provide information to them regarding the projects XXXX had with XXXX. When the claimant told the ELN that he did not have this type of information, the ELN pointed a gun at his head, hit him in the stomach and told him that he did not have any choice. The ELN left him there.

[5] Five days later, the claimant went to live with a friend in Bogota. He also changed his cell phone number. However, on XXXX XXXX, 2018, his parents received a pamphlet, addressed to the claimant, demanding that he answer his cell phone. The claimant alleges that his parents left their home and rented a house in XXXX, XXXX. As a precautionary measure, the claimant requested a transfer at work.

[6] The claimant alleges that, on XXXX XXXX, 2018, he was authorized to work on a project between his company and XXXX in XXXX, Meta. He moved there the next day. However, he claims that the ELN went to his girlfriend’s home on XXXX XXXX, 2018 and told her that they knew where he was. The claimant alleges that he went to the police and resigned from his job.

[7] Almost three weeks later, having moved back to XXXX, the claimant left Colombia for the United States of America, and made his claim at the port of entry a few days later.

DETERMINATION

[8] I find that the claimant is not a Convention Refugee as he does not have a well-founded fear of persecution for a Convention ground in Colombia. Further, I find that he is not a person in need of protection as his removal to Colombia would not subject him personally to a risk to life, to a risk of cruel and unusual treatment or punishment or to a danger of torture.

ISSUES

[9] There are three issues in this claim:

- a. Has the claimant established his identity?
- b. Is there a nexus to the Convention?
- c. Is there a viable internal flight alternative (IFA) for this claimant in Colombia?

ANALYSIS

Has the claimant established his identity?

[10] The claimant's identity is established by the supporting documentation filed; namely, a certified copy of his passport^[2] provided to the Canada Border Services Agency (CBSA) when he entered Canada and made his claim.

[11] The claimant has also provided a copy of his Birth Certificate.^[3] According to Colombian citizenship law, citizenship is obtained by descent so long as at least one parent is Colombian.^[4] On the face of the claimant's Birth Certificate it indicates that both of his parents are Colombian; therefore, he obtained Colombian citizenship by descent.

[12] I am satisfied that the claimant is a citizen of Colombia.

Is there a nexus to the Convention?

[13] Counsel submits that the claimant is being targeted by the ELN for an implied political opinion. He argues that the ELN, historically, has had a strong political agenda and, by refusing to provide the ELN with the information they desired, the claimant expressed an anti-ELN political opinion.

[14] A broad and general interpretation of "political opinion" is any opinion, on any matter, in which the

machinery of state, government, and policy may be engaged.^[5] In general, an opinion expressed in opposition to a criminal organization will not provide a nexus, on the basis of political opinion, unless the evidence shows the claimant's opposition is rooted in political conviction.^[6] A claimant who refuses to participate in crime, as a matter of conscience, is not a member of a political group.^[7] In this case, the claimant's refusal to provide the ELN with the information they requested was not rooted in political conviction because he considered providing them with the information as a last resort. For example, I asked the claimant whether he took the position in XXXX in order to get the information for the ELN. The claimant testified that this was not his objective but it was his last option.

[15] Further, opposition to corruption or criminality may constitute a perceived political opinion when it can be seen to challenge the state apparatus.^[8] Criminal gangs do not constitute a *de facto* government and refusing them cannot be seen as political opinion.^[9] Likewise, refusing "job offers" made by criminal gangs does not constitute a nexus on the ground of imputed political opinion.^[10]

[16] While I acknowledge that the ELN remains, at its core, a guerrilla group with political aspirations;^[11] it is considered at terrorist group that has a long history of engaging in narcotics production and trafficking, extortion, and kidnappings for ransom to fund operations^[12] and is not considered, for all intents and purposes, a machinery of government in Colombia. While the ELN reportedly maintains its longstanding political influence in Arauca (where alleged links to politicians at both regional and local levels reportedly give it significant control over the budget, including oil exploitation royalties)^[13] the same cannot be said about the rest of the country. For example, membership in the ELN is against the law in Colombia.^[14] In this case, the claimant refused to provide the ELN with information while working in the Capital District and living in the department of Cundinamarca. The ELN is not so entwined with the state in these areas such that the claimant would be seen as challenging the state apparatus by refusing to provide information to the ELN.

[17] Therefore, I am not persuaded that the claimant is being targeted for, or will be targeted for, an imputed political opinion. Rather, the claimant is a victim of crime and victims of crime, corruption or vendettas, generally cannot establish a link between their fear of persecution and one of the five grounds in the definition.

Is there a viable IFA for this claimant in Colombia?

[18] The claimant has an IFA in Colombia; namely, Sincelejo, Sucre. I make this finding because, on a balance of probabilities, claimant is not at a risk of harm in Sincelejo and the claimant has a profile of a

person who could reasonably relocate there.

Risk of the claimant being harmed in Sincelejo

[19] I find that, on a balance of probabilities, the claimant would not face a risk of harm in Sincelejo because: (1) his own actions in Colombia are not indicative of someone who will be found by ELN; (2) it seems the ELN has either lost interest in the claimant or are not motivated to find him; and (3) the ELN is not active in Sincelejo.

Claimant's Actions

[20] The claimant was issued an American visa on XXXX XXXX, 2017, long before he was first contacted by the ELN. The claimant could have left Colombia immediately after he was snatched by the ELN and taken to the road leading to XXXX. However, he did not leave Colombia until XXXX XXXX, 2018, two months after the incident. I asked the claimant why he did not leave Colombia immediately after he was carried off by the ELN. He explained that he did not expect the situation to get out of control. However, a reasonable person would consider being kidnapped by the ELN to be out of control. He also explained that he did not want to leave his parents. However, as will be discussed below, he ended up moving about 4 hours away. Based on the claimant's delay in leaving Colombia despite having the ability to do so, and other behaviours detailed below, I find that the claimant is not credible in his allegation that he will be found by the ELN in any part of Colombia.

[21] Instead of leaving Colombia as one would reasonably expect, the claimant decided to transfer to XXXX to work on a project between his employer and XXXX. He decided to do this despite the fact that XXXX was the company that the ELN had asked him to provide information about. Therefore, even though the claimant moved, he moved into a position considerably more dangerous and a position that places him in an even more valuable position for the ELN.

[22] XXXX reported on XXXX XXXX, 2017 that guerrillas continued to surround targeted areas with antipersonnel mines and to attack members of the armed forces assigned to secure its pipelines.^[15] The XXXX XXXX XXXX XXXX XXXX was attacked 45 times during the year.^[16] I asked the claimant why he would move to XXXX to work on a project with the company that the ELN wanted information about. The claimant testified that, if the ELN were to contact him again, at least they would know he was of use to them. He went on to testify that if the ELN were to capture him again, he would be able to say that he was trying to gather information for them. The claimant went on to admit that he knew this was a big risk to his life. It does not make rational sense that a person, who fears the ELN and believes that they could locate him everywhere in Colombia, would move into a position that gives him even more access to the information ELN desired from him. I find that the claimant is not credible in his allegation that he will be found by the ELN in any part of Colombia.

[23] Then, on XXXX XXXX, 2018, even though the ELN had not approached him in XXXX or even contacted him directly, the claimant went back to XXXX, where he stayed for almost two weeks before leaving for the United States of America. I asked the claimant why he would go back to where he lived at the time he was kidnapped. The claimant explained that he had to organize all of his documents. I asked the claimant what documents he had to organize. The claimant explained that he had to get the documents he knew he would need at the border, like his Civil Register, documents related to his parents and he had to legalize his diplomas. The claimant was organizing the documents to show that he was related to his anchor relative in Canada so that he would not be subject to the Safe Third Country Agreement. In addition, he authenticated his diplomas so that he could potentially work in Canada. I find that these are not the actions of a person who is fleeing for their life and can be located wherever they might go in Colombia. Reasonably, all he would have had to do is grab his passport and leave the country. He could have claimed protection in the United States of America or had his family send him the necessary documentation later if he was at risk of the ELN finding him. I find that because the claimant returned to XXXX and spent almost two weeks gathering documentation, the claimant is not credible in his allegation that he will be found by the ELN in any part of Colombia.

[24] The claimant testified that, while he was back, the ELN did not locate him. Counsel asked whether the claimant took precautions when he returned. The claimant testified that he changed the way he looked by wearing a hat and glasses. I do not find this to be a reasonable precaution if the ELN will locate a person. The claimant would have me believe that the ELN is a highly sophisticated organization that will locate him wherever he might move in Colombia; yet he was able to thwart their efforts with a rudimentary disguise. I find that the claimant is not credible in his allegation that the ELN can, and will, find him anywhere in Colombia.

The ELN's Interest in the Claimant

[25] I acknowledge that many ELN operations are directed against oil and energy infrastructure, and workers at such facilities have been kidnapping targets.^[17] This is consistent with the ELN's nationalistic discourse on the exploitation of natural resources.^[18] However, it must be considered whether the ELN would have the motivation to find this claimant wherever he might go in Colombia. In this case, the ELN has not maintained an interest in the claimant.

[26] Approximately two weeks after the claimant was taken to XXXX and asked to provide information about this company, a pamphlet was dropped off at his home telling him to answer his cell phone. Other than this incident, that occurred two weeks after the request for information, the ELN has not been back to the claimant's home. While I acknowledge that the claimant's parents moved about two and a half hours away after receiving this pamphlet, they remain in the same department and the claimant testified that they continue to own the home in XXXX and have stayed in touch with the neighbours. According to the claimant, nothing

out of the ordinary has happened at his home.

[27] Further, the ELN has not located his parents in XXXX, XXXX, which, as stated above is in the same department as XXXX. If the ELN remained interested in the claimant, I find that they would have located his parents, with whom he lived, to find his current location.

[28] About a month after going to his home, the ELN went to his girlfriend's home in XXXX, XXXX, which is about half an hour from XXXX. The ELN told the claimant's girlfriend that they had located him. However, the claimant testified that he does not believe this to be true; because, if they had they actually located him, the ELN would have come directly to him in XXXX. Therefore, even the claimant admits that the ELN did not find him in XXXX.

[29] Further, nobody has returned to the home of the claimant's girlfriend since XXXX of 2018. While I acknowledge that the claimant's girlfriend moved homes, this was before the claimant left Colombia and she moved within XXXX which is not a very large town.

[30] Additionally, the claimant testified that the ELN has not approached any of the people he stayed with. They have not approached the friend in Bogota, where he stayed from XXXX XXXX, 2018 to XXXX XXXX, 2018. They have not contacted his aunt in XXXX, where he stayed from XXXX XXXX, 2018 to XXXX XXXX, 2018. They also have not communicated with the friend in XXXX, where he stayed from XXXX XXXX, 2018 to XXXX XXXX, 2018.

[31] Lastly, the claimant's sister, who lives in Bogota, has never been contacted by the ELN regarding the whereabouts of the claimant.

[32] One would assume that, if the ELN remained interested in the claimant, they would locate his parents and his girlfriend after they had moved to find out information about him; or, they would at least continue to go to where he last lived. One would also assume that they would approach the claimant's sibling to determine where he had gone or they would approach the people the claimant stayed with prior to leaving Colombia. All and all, according to the claimant, nothing has happened over the course of the last year to indicate that the ELN remain interested in him.

[33] As discussed above, the claimant lived in XXXX for about a month. When I asked the claimant whether he thought he could live there again and be safe, he testified that he could not because this is exactly the place the ELN was going to take effect. However, he lived there for about a month and nobody from the ELN approached him. This suggests that the ELN has lost interested in the claimant.

[34] The most recent Response to Information Request dated April 23, 2018 regarding the ELN indicates that information about the ELN's ability to track people is scarce.^[19] This is directly contrary to the objective information regarding other groups in Colombia like FARC^[20] and the Urabeños^[21] where the National

Documentation Package (NDP) specifically mentions the ability of these groups to find victims. This is likely because the ELN is highly decentralized, as opposed to the FARC, and each group has its own hierarchy in the area in which it operates.^[22] While I acknowledge that it is possible that the ELN can track someone down, more likely than not, this effort would be for people with a higher profile, who the ELN has shown continued interest in. I find that the ELN has not shown enough interest in the claimant such that it is likely that he would be a person the ELN would expend resources on to find.

The ELN's Activities in Sincelejo

[35] The ELN operates mainly in the rural and mountainous areas in the northeast, especially Arauca Department, and is active in the northern and southwestern regions and along the borders with Venezuela and Ecuador.^[23] In my review of the most recent country conditions, in addition to Arauca, where they are most active, it seems that the ELN has also carried out attacks, to varying degrees, in Chocó, Nariño, Norte de Santander, Cauca, Cesar, Antioquia, Casanare, Boyacá, Atlántico, Bolívar, Valle del Cauca^[24] and the Capital District.^[25]

[36] I have reviewed the country conditions and it does not seem as if the ELN is active in Sincelejo. In fact, according to the February of 2018 map,^[26] as well as the April 2018 map,^[27] which shows the locations where the ELN is active, the ELN is not active in, and around, Sincelejo. While another section the NDP does indicate some activity in the neighbouring department of Bolívar, this activity was against police stations^[28] as the claimant is not a police officer, this does not indicate a risk to him in Sincelejo, which is in a different department, anyway.

[37] Given that (1) own actions in Colombia are not indicative of someone who will be found by ELN; (2) it seems the ELN has either lost interest in the claimant or is not motivated to find him; and (3) the ELN is not active in Sincelejo, I find that the claimant would not face a risk of harm in Sincelejo, on a balance of probabilities.

The Conditions in Sincelejo and the Claimants' Profiles

[38] Sincelejo is the capital and largest city in the Colombian department of Sucre. It is approximately 16.5 hours from where the claimant lived in XXXX, by car.

[39] I have reviewed the situation in Sincelejo, and while there is some mention of violence against transgendered people^[29] and women,^[30] the claimant is not transgendered nor is he female.

[40] I find that the claimant has not met his burden of proving that Sincelejo is not a reasonable place for

him to relocate to.

[41] The claimant is well educated. He has an engineering degree from Universidad XXXX XXXX XXXX XXXX XXXX. ^[31] He has a little bit of work experience, having worked in his field for approximately two years before leaving Colombia. ^[32] The claimant is young and just starting out in his career, thus making him more mobile. He is also male which means any heightened risk women have in relocating is not applicable to him. Lastly, he testified that he has broken up with his girlfriend so he is now single. He does not have any dependents that may make it more difficult to relocate.

[42] Further, having regard to the reasonableness of the IFA, there a very high threshold for what makes an IFA unreasonable in all the circumstances. The standard requires proof of adverse conditions which would jeopardize the life and safety of the claimant in travelling to and in living in the IFA location. ^[33] In all the circumstances, I am not persuaded that the life and safety of the claimant is in jeopardy in Sincelejo.

[43] The claimant is young, male, single, well-educated and has some work experience. These factors make it easier for him to relocate within Colombia. Therefore, I find that the claimant has not met his burden of proving that he cannot relocate within Colombia. Given the conditions in Sincelejo and the claimant's personal profile, it would not be unreasonable for him to seek refuge there.

CONCLUSION

[44] Having considered all the evidence, I determine that, for this claimant, there is a viable IFA in Sincelejo. Sincelejo is both a reasonable place for him to seek refuge and, on a balance of probabilities, he will not be at risk of harm there.

[45] Therefore, there is not a serious possibility that the claimant will be persecuted in Colombia, or that, on a balance or probabilities, he would be personally subjected to a danger of torture or face a risk to life, or a risk of cruel and unusual treatment or punishment if returned to Colombia. Accordingly, his claim for refugee protection is rejected.

(signed) “M. A. McColl”
M. A. McColl
February 21, 2019
Date

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- [1] *The Immigration and Refugee Protection Act, S.C. 2001, c.27*, as amended.
- [2] Exhibit 1, Passport.
- [3] Exhibit 7, Birth Certificate.
- [4] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.5: Colombia. The World Factbook. United States. Central Intelligence Agency. 10 April 2018.
- [5] *Canada (Attorney General) v. Ward*, [1993 CanLII 105 \(SCC\)](#), [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.
- [6] *Canada (Attorney General) v. Ward*, [1993 CanLII 105 \(SCC\)](#), [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.
- [7] *Lezama, Orlando Rangel v. M.C.I. (F.C., no. IMM-3396-09)*, Russell, August 11, 2011; [2011 FC 986](#).
- [8] *Klinko, Alexander v. M.C.I. (F.C.T.D., no. IMM-2511-97)*, Rothstein, April 30, 1998.
- [9] *Martinez Menendez, Mynor v. M.C.I. (F.C., no. IMM-3830-09)*, Boivin, February 25, 2010; [2010 FC 221](#).
- [10] *Salazar, Eber Isai Oajaca v. M.C.I. (F.C., no. IMM-2166-17)*, Kane, January 26, 2018; [2018 FC 83](#).
- [11] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015. HCR/EG/COL/15/01.
- [12] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.5: Colombia. The World Factbook. United States. Central Intelligence Agency. 10 April 2018.
- [13] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015. HCR/EG/COL/15/01.
- [14] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 2.1: Colombia. Country Reports on Human Rights Practices for 2017. United States. Department of State. 20 April 2018.
- [15] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 2.1: Colombia. Country Reports on Human Rights Practices for 2017. United States. Department of State. 20 April 2018.
- [16] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 2.1: Colombia. Country Reports on Human Rights Practices for 2017. United States. Department of State. 20 April 2018.
- [17] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015. HCR/EG/COL/15/01.
- [18] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015. HCR/EG/COL/15/01.

- [19] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 7.23: The National Liberation Army (Ejército de Liberación Nacional - ELN), including number of combatants and areas of operation; activities, including ability to track victims; state response and protection available to victims (2016-April 2018). Immigration and Refugee Board of Canada. 23 April 2018. COL106085.E.
- [20] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015. HCR/EG/COL/15/01.
- [21] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 7.15: The Urabeños (also known as Clan Úsuga or Autodefensas Gaitanistas de Colombia), including areas of operation, especially in Buenaventura, criminal activities, and state response; whether the Urabeños seek out individuals, particularl... Immigration and Refugee Board of Canada. 6 March 2015. COL105044.E.
- [22] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.9: Crisis analysis: Colombia. ACAPS. 4 April 2018.
- [23] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.5: Colombia. The World Factbook. United States. Central Intelligence Agency. 10 April 2018.
- [24] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.9: Crisis analysis: Colombia. ACAPS. 4 April 2018.
- [25] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 2.1: Colombia. Country Reports on Human Rights Practices for 2017. United States. Department of State. 20 April 2018.
- [26] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.2: Colombia's illegal armed groups' areas of influence. Colombia Reports. 18 February 2018.
- [27] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.2: Colombia's illegal armed groups' areas of influence. Colombia Reports. 18 February 2018.
- [28] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 1.9: Crisis analysis: Colombia. ACAPS. 4 April 2018.
- [29] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017. OEA/Ser.L/V/II. Doc. 22.
- [30] Exhibit 3, National Documentation Package, Colombia, 30 April 2018, tab 5.9: Colombia. Report of the Secretary-General on conflict-related sexual violence. United Nations. Security Council. 15 April 2017. S/2017/249.
- [31] Exhibit 7, Degree.
- [32] Exhibit 1, Schedule A.
- [33] *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 F.C. 164 (C.A.).