



RPD File No. / N° de dossier de la SPR : VB5-03449/VB5-03450/VB5-03451/VB2-03830/VB2-03831

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXX XXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	March 20, 2018	Date(s) de l'audience
Place of Hearing	Calgary, Alberta	Lieu de l'audience
Date of Decision	April 19, 2018	Date de la décision
Panel	Douglas Cryer	Tribunal
Counsel for the Claimant(s)	Bjorn Harsanyi Barrister and Solicitor	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 the decision of the Refugee Protection Division (RPD) in the claim of XXXX XXXX XXXX XXXX (Principal claimant), his spouse, XXXX XXXX XXXX XXXX, their son and his spouse, XXXX XXXX XXXX and XXXX XXXX XXXX XXXX and the daughter, XXXX XXXX XXXX XXXX, who are citizens of Colombia and who are claiming refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (the “Act”).¹

ALLEGATIONS

[2] The Principal claimant’s son and the son’s spouse travelled from XXXX to XXXX XXXX XXXX XXXX, the spouse’s hometown on XXXX XXXX, 2012. The next day, the couple was abducted by three members of the Revolutionary Armed Forces of Colombia (FARC), who wanted him to be the physical trainer for their ranks. The claimant’s son stated that since he was a well-known public personality since he XXXX XXXX XXXX from 2002 to 2008, and that the FARC wanted to use his profile to attract younger members to their ranks. The claimant’s son did not know the identities of the persons who attacked him, nor did he know which Front these FARC members were part of. They fled to XXXX right away and took a flight back to XXXX. Members of FARC searched the son’s mother-in-law’s home. He alleges to have received numerous threats by cell phone. The son attempted to go to the District Attorney’s Office but it was closed due to a national strike. Shortly afterwards, the son and his spouse flee for the United States (U.S.) on XXXX XXXX, 2012.

[3] The principal claimant alleged that on XXXX XXXX, 2014, he and his family were targeted by the FARC two years after the son fled. The claimant believes they were seeking retribution for the son having fled from them. The claimant alleges that he was threatened with death and that one of the FARC members held a gun to his head. The claimant alleges that he went to police, but they did not take the complaint. Some months later, the claimant alleges that while checking for mail at his home, some of his neighbours said suspicious people came around the house. The claimant alleges that he recognized a man in the area, who was the one who held a gun to his head earlier on.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[4] The claimant's son alleges that he faces a more particular risk than others who have been threatened by FARC since he has a high public profile stemming from his XXXX XXXX and that he has been made a military target. This means that the members of FARC who originally declared him a military target would be more particular in carrying out the death threats against him.

[5] The claimant's immediate family are Afro-Colombian, but they have not advanced a claim in regard to their race, other than the claimant's response that he could not go to the police if he felt danger, because the police are racist.

[6] I have read and I have considered counsel's written submissions.²

DETERMINATION

[7] This is the third hearing before the Immigration and Refugee Board of Canada (the "Board"). These claims have been sent back to the Board on two other occasions for redetermination by the Federal Court. I am not aware of the reasons for return for redetermination, since in both instances, the decision of the Federal Court was based on the consent of the parties. I am making an inference that because consent was given in the last instance, that there were concerns regarding the credibility assessment. In my own review of the evidence and in my own assessment of the claimants' credibility, I find that the presumed truthfulness of the testimony remains; the events the claimant allege happened, did occur. In the case of the claimant's son, that incident was approximately six years ago. In the case of the father, the principal claimant, the incident was approximately four years ago. Since the time of the claimants' last hearing, and during the passage of time the claimants have been in Canada, circumstances of changed. The FARC have signed a peace agreement with the government of Colombia. The claimants, therefore, are unable to establish on a balance of probabilities, that they face more than a mere possibility of persecution, or that they would face, on a balance of probabilities, a risk to their lives or risk of cruel and unusual treatment or punishment. Following, are my reasons.

ANALYSIS

² Exhibit PH-1.

Identity

[8] Identity is established by the claimants' testimonies and corroborated by the certified photocopies of passports that are on file.³

Credibility

[9] The Board presumes claimants are telling the truth. The claimants gave me no reason to doubt this presumption regarding their allegations. Nevertheless, the claimants are unable to establish they face a forward-looking risk, as I will explain.

Forward-looking Risk

[10] The son and his spouse were kidnapped about six years ago. The son testified that despite the peace agreement, since he has a public profile as a former XXXX XXXX XXXX and because he was designated a military target, he faces a heightened profile of one who would be at risk if he were returned to Colombia. The claimant's son's high profile is a given and is immutable, since he garnered fame in the past, and I have no information before me that his public profile is diminished. However, the son has not established that he remains a military target. There are reasons for this:

- i. The peace accord was signed November 20, 2016.⁴ FARC has been disbanded. The original purpose for the threats against the claimant no longer exist, since he was threatened for the purposes of using his public profile to help recruit younger members into the FARC fold, as the claimant testified. Since FARC no longer officially exists, FARC no longer has need of recruitment to their ranks.
- ii. The documents, as I will acknowledge further on, admit that the peace process has not gone smoothly. Although the peace agreement is now official, demobilization has not gone as planned. Many members of FARC have demobilized. However, some members of FARC have refused to disband. Some members of FARC have gone to join the National Liberation Army (ELN). Some members of FARC have

³ Exhibit 1.

⁴ Exhibit 3, National Documentation Package (NDP), Colombia, May 31, 2017, Exhibit 2.1.

joined criminal elements, typically known as the BACRIM. The reason in making this observation is that both the claimant and the son admit that they did not know the identities of the individuals who threatened them; both acknowledged that they did not know which Front of the FARC organization these individuals represented. Therefore, since the identities of the assailants and their specific affiliation to FARC are unknown, that there is a threat to the claimants since the peace accord, is mere speculation on the part of the claimants.

- iii. I acknowledge the principal claimant's reticence as an Afro-Colombian in going to the police if he faced a risk in the future, since in his view, the police are racist. However, this did not prevent the claimant or his son from seeking state protection in the past (unsuccessfully in the meagre attempts they made to report the crimes against them before they left Colombia). But most importantly, when state protection is presumed, and since the claimants have been outside of Colombia, a peace accord is signed with the FARC, largely due to the state protection mechanisms of Colombia, it would be quite difficult to rebut the presumption that adequate state protection exists for the claimants.

[11] Counsel's submits a federal court decision, *Gonzalez Torres v Canada (Citizenship and Immigration)*,⁵ "The adequacy of state protection frequently depends on the characteristics of the abuser. If the abuser is in a position of power or has close ties to the police or other authorities, it may be very difficult, if not impossible, for a claimant to obtain protection." Counsel then states, "The agents of persecution are connected to the powerful criminal organization FARC in Colombia." This statement is inaccurate since the claimants have been unable to establish that the members of FARC who originally threatened them are still associated with FARC since the peace process while the claimants have been absent from Colombia.

[12] Here is the point of the preceding observations. For the claimants to establish that they face a possibility of persecution, they have to establish that their fear of persecution is well-founded. The claimants have clearly established that they have a subjective fear of return to Colombia, based on their testimonies. However, the objective basis of their fear must be based on objective evidence

⁵ *Gonzalez Torres, Luis Felipe v. M.C.I.* (F.C., no. IMM-1351-09), Zinn, March 1, 2010; 2010 FC 234.

and this must be established on a balance of probabilities. To put it differently, does the objective evidence indicate that it is more likely than not the claimants have established grounds for persecution? If the objective basis for their fear of persecution is established on a balance of probabilities, then under section 96 of the *Act*, which address Convention refugees, the claimants have to state they face a reasonable possibility of persecution. Since the claimants do not know the identities of the original agents of harm and that they do not know which faction of FARC they represented when they made their threats, and since after the peace accord, the claimants do not know whether the agents of harm have demobilized, or if they have stayed with a faction of FARC that has not disbanded, or that they have gone over to the ELN or to a BACRIM, then the claimants cannot establish the objective basis for their fear on a balance of probabilities. Counsel's submissions that "the agents of harm are also in a position of power and have cultivated links with other criminal groups and political figures in Colombia" is misleading and lacks foundation, in light of my reasons previously stated.

[13] The country documents reinforce my findings. The U.S. Department of State report indicates that Colombia is a constitutional multiparty republic.⁶ The determinative issue in these reasons is whether or not the claimants face a forward-looking possibility of persecution if they are returned to Colombia. Ancillary to that issue is the presumption of the adequacy of state protection in Colombia. Since Colombia is a democracy, the presumption that there is adequate state protection is a high one. Regardless of the claimants' very meagre and limited attempts to seek state protection in the past, the evidence is clear that since the claimants have been out of the country, a peace accord has been signed with the FARC.⁷ This in itself is clear and convincing evidence of the adequacy of state protection generally speaking in Colombia. "Since the FARC announced a unilateral ceasefire in July 2015, abuses attributed to them as declined steeply."⁸ The point to all of this, is that in a forward-looking risk assessment, Colombia has adequate state protection.

[14] In conducting an individualized risk assessment for the claimants, I also consider that the documents indicate that FARC's demobilization has not gone as planned.

⁶ Exhibit 3, NDP, Item 2.1.

⁷ Exhibit 3, NDP, Item 2.1.

⁸ Exhibit 3, NDP, Item 2.2.

Despite peace negotiations with the FARC, illegal armed groups--including the National Liberation Army (ELN), as well as organized crime groups (some of which contained former paramilitary members)--continued to commit numerous human rights abuses, including the following: political killings; killings of members of the public security forces and local officials; widespread use of land mines and improvised explosive devices (IEDs); kidnappings and forced disappearances; sexual and gender-based violence; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; widespread recruitment and use of child soldiers; and killings, harassment, and intimidation of human rights activists, teachers, and trade unionists. Illegal armed groups continued to be responsible for most instances of forced displacement in the country.⁹

[15] Counsel makes reference to a report of the Secretary-General on the United Nations Mission in Colombia that the peace process continues to face unique difficulties.¹⁰ But this must be taken under the context that the Secretary-General also congratulates the Colombian government and leaders of FARC on the progress made to reach the peace agreement. To be sure, there is concern, especially if many of the achievements are not ratified or enacted before the next general election in Colombia.

[16] An International Crisis Group report further states that:

Victory in those elections for opponents of the peace agreement would be the harbinger of major challenges to the deal's sustainability. Concentration of FARC combatants is underway, albeit problematically and with delays, and the six-month timetable for the handover of weapons has been set in motion. However, funding gaps, administrative delays and the political balance of power ahead of 2018 threaten to curtail transitional arrangements and structural reforms aimed at remedying the root grievances of the conflict. The opposition could financially starve institutions, programs or policies in the peace agreement if it comes to power. The terms of transitional justice, measures on rural reform and land access, and community-based approaches to removing coca crops and establishing alternative income-generating activities could all be in danger.¹¹

[17] An InSight Crime document summarizes the peace process in the following way:

In recent years, thousands of guerrillas have voluntarily demobilized, weakening the FARC and building up the state's intelligence on the rebels. The victory that for many seemed within the FARC's grasp at the turn of the century receded into the distance.

⁹ Exhibit 3, NDP, Item 2.1.

¹⁰ Exhibit 3, NDP, Item 2.3.

¹¹ Exhibit 3, NDP, Item 4.1.

While the current peace deal has essentially put an end to the FARC's insurgency, its internal conflict is far from over. The guerrillas' exit has led to the criminalization of some dissident elements, spawning groups similar to the BACRIM: the criminal organizations that formed following the demobilization of the country's paramilitary forces.

These guerrilla splinter groups have been clashing violently both between themselves and with other armed actors for control over the lucrative criminal economies that the FARC are leaving behind, such as coca cultivations and illegal mining.

Some of these former FARC fighters are also transferring to the ELN, bringing weapons, resources and criminal economies with them. This could significantly strengthen the country's second biggest insurgency at a time when it is attempting to forge a peace deal of its own with the Colombian government.¹²

[18] Some similar concerns are highlighted in counsel's reference to the article, *FARC Unity Shatters in Colombia*.¹³ At this point, I will remark that it is not necessary to address each of the items counsel raises in her submissions, especially since references made by counsel can be highly selective and given out of context. One example is a quote from the *Concluding observations of the seventh periodic report of Colombia*:

While the Committee takes note of the measures adopted by the State party to combat organized crime, it is concerned by reports of abuses allegedly committed during the period under review by illegal armed groups that have formed in the wake of the demobilization of paramilitary organizations. It is also concerned by claims that some of these groups have acted in collusion with agents of the State¹⁴

[19] The abovementioned quote cannot be understood without actually quoting the whole paragraph rather than just taking a quote out of isolated context. So, to finish the quote and to add context, I include the final sentence of that quote:

...and by reports of abuses allegedly committed by these groups in Buenaventura (Valle del Cauca), although it does take note of the State party's assertion that the strategy which it has used there has reduced the level of violence.¹⁵

[20] The evidence that is being considered here is the weighing of evidence that there is a peace accord that is in effect and that it is not going smoothly and violence continues through disaffected FARC members or former members who have defected to other organizations. Applied to the case

¹² Exhibit 3, NDP, Item 4.5.

¹³ Exhibit 3, NDP, Item 4.15.

¹⁴ Exhibit 3, NDP, Item 2.9.

¹⁵ Exhibit 3, NDP, Item 2.9.

at hand is a reference to my earlier finding, that the claimants have no idea whether or not the agents of harm who threatened the claimants either six years ago or four years ago still remain members of FARC. Even if these members still belong to FARC, the evidence before me is that the existing FARC fronts that are not yet disbanded are concentrated in the eastern regions of Colombia, far outside of Bogota, where the claimants are from.¹⁶ This further reduces the potential risks faced by the claimants. There is evidence of ongoing struggles relating to other paramilitary groups, such as the ELN and struggles against criminal organizations, referred to as the BACRIM as referenced by counsel in her submissions. However, these might be as references to general country conditions, these observations are only indirectly related to the claimants, who have not established that they face a particular risk profile at the hands of members of these other organizations.

[21] Counsel makes reference that the peace process might be put at peril with the recent arrest of a prominent FARC leader and negotiator recently arrested on drug charges. This is a recent event having occurred approximately one week earlier from the date of these reasons. It is noted that there is vocal criticism of the arrest from members of FARC. That the peace process might be compromised is mere speculation at this point. In a newspaper article provided by counsel, there is also speculation that the arrest could bolster the peace process in the long run.¹⁷ The FARC leader is charged with conspiring and attempting to import 10,000 pounds of cocaine, worth \$320 million into the United States. This contributes to the presumption that adequate state protection exists in Colombia, since it is a demonstration that no one is above the rule of law, even a high profile FARC/political leader who has influence on the ongoing peace process.

[22] Therefore, despite the mixed evidence which is before me, since the claimants do not know the identities of the agents of harm who threatened them in the past, and given that formally, FARC is disbanded (although dissident groups remain), the claimants cannot establish on a balance of probabilities that they continue to face a risk of harm from members of FARC, which means they cannot establish there is a reasonable possibility of persecution. Given that the peace accord is in place, this is certainly evidence that adequate state protection exists in Colombia. The claimant's

¹⁶ Exhibit 3, NDP, Item 4.15.

¹⁷ Exhibit PH-1, p. 23.

meagre attempts to seek state protection before they fled Colombia is insufficient evidence to rebut the presumption that adequate state protection exists.

[23] Therefore, the claimants have failed to establish that they face a possibility of persecution under section 96 of the *Act*. If the claim fails under section 96 of the *Act*, it stands to reason that the claimants cannot establish a personalized or individualized risk under section 97 of the *Act*. Regardless, whether under section 96 or section 97, the claimants failed to rebut the presumption that adequate state protection is available to them in Colombia if they were returned.

CONCLUSION

[24] For the foregoing reasons I find that the claimants are not Convention refugees or persons in need of protection.

(signed)

“Douglas Cryer”

Douglas Cryer

April 19, 2018

Date