



RPD File No. / N° de dossier de la SPR : TB8-11732
TB8-11774 TB8-11775 TB8-11786
TB8-11787 TB8-18890

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXX XXXXXXXXX XXXX XXXX XXXXXXXXX XXXX XXXX XXXX XXXXXXXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXXXXXXX XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	July 19, 2019 August 9, 2019	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	August 30, 2019	Date de la décision et des motifs
Panel	S. ENG	Tribunal
Counsel for the Claimant(s)	Michael F. Loebach	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	XXXX XXXX XXXX XXXX	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 in the claim of principal claimant XXXX XXXX XXXX XXXX in file number TB8-11732, his common-law partner, XXXX XXXX XXXX XXXX in file number TB8-18890, and their children, XXXX XXXX XXXX in file number TB8-11774, XXXX XXXX XXXX XXXX in file number TB8-11775, XXXX XXXX XXXX in file number TB8-11786, and XXXX XXXX XXXX in file number TB8-11787.

[2] XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX are citizens of Colombia. XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, XXXX XXXX XXXX XXXX are citizens of the United States of America (U. S. A. or United States). The claimants are claiming refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*.

ALLEGATIONS

[3] The facts and events alleged in support of their claims are set out in the respective Basis of Claim (BOC) forms. In summary, the associate claimant, XXXX XXXX XXXX XXXX, alleges persecution in Colombia on the basis of domestic violence from her former partner. The claimants also fear the Autodefensas Gaitanistas of Colombia (“AGC”) (also known as Los Urabenos, Clan de Golfo, and Clan Usuga), due to membership of the former partner in the AGC. The principal and minor claimants make the same allegations as the associate claimant XXXX XXXX XXXX XXXX.

DETERMINATION

[4] The panel finds that the claimants are neither Convention refugees within the meaning of section 96 of the IRPA, nor are the claimants in need of protection within the meaning of subsection 97(1) of the IRPA.

USA BORN CLAIMANTS

[5] The panel notes the principal claimant was appointed to be the designated representative for the three minor claimants. The panel notes that the claimants, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, were all born in the United States. Their identities as citizens of the United States were established through their passports and documents which were seized¹ by CBSA and the panel is satisfied as to their identities. The panel notes that these claimants have not established that there is a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, they would personally be subjected to a danger of torture or face a risk to life or risk of cruel and unusual treatment or punishment upon return to their country of citizenship, the United States of America.

DETERMINATIVE ISSUES

[6] The determinative issue is the existence of a viable internal flight alternative (“IFA”) in the city of Tunja, Boyaca, Colombia.

ANALYSIS

[7] In making this assessment, the panel considered all of the evidence including the oral testimony, the documentary evidence, and counsel submissions.

CHAIRPERSON’S GUIDELINES

[8] In making the determination in this case, the panel considered all of the evidence in the context of the Chairperson’s *Gender Guidelines*² and accepts that the circumstances which rise to women’s fear of persecution are often unique to women.

IDENTITY

[9] The identities of the claimants XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, and XXXX XXXX XXXX, were established as citizens of Colombia through

their passports and documents which were seized³ by CBSA and therefore, the RPD is satisfied that the claimants have met their burden and established their identities.

CREDIBILITY

[10] Only the principal claimant and the associate claimant testified at the hearing. Their children did not testify. The principal claimant was appointed as the designated representative for the minor claimants. The panel finds that the claimants were generally credible except as noted in the particulars of the analysis below.

[11] When a claimant swears that certain facts are true, this creates a presumption that they are indeed true unless there is a valid reason to doubt their veracity. The determination as to whether a claimant's evidence is credible is made on a balance of probabilities. In assessing credibility, the panel was mindful of the length of time between their arrival and this hearing but also of their background including education. The panel is cognizant of the many difficulties faced by the claimants in establishing a claim including cultural factors, the milieu of the hearing room or environment, the stress inherent in responding to oral questions through an interpreter and nervousness.

NOTIFICATION OF MINISTER - EXCLUSION

[12] The issues of exclusion under Article 1F(b) of the Refugee Convention was raised and the Minister was notified. The Minister responded in a letter dated May 16, 2019 and stated in part the following:

The Minister submits, that criminality in USA, if committed in Canada would only net her 5 years. The Minister has reviewed the file and submits, the Member is well placed to consider the Claimants statements and credibility. The Minister will not be intervening at this time.⁴

[13] As the Minister did not appear at the hearing, the panel has therefore made a determination on Article 1F(b) based on all the information, testimony, and evidence before it.

Article 1F(b)

[14] The issue of exclusion was raised for the associate claimant and the panel has assessed whether the claimant is excluded pursuant to Article 1F(b). The following criminality issues were raised:

1. Burglary and Theft in United States 2003;
2. Theft in United States in 2004;
3. Theft in United States in 2016.

[15] In determining whether the crime is serious, the panel has taken into consideration the factors identified in *Jayasekara*⁵ relating to the commission of the offence. The panel has taken into consideration factors including the elements of the crime, facts surrounding the crime, mode or persecution both in the foreign jurisdiction and in Canada, penalty prescribed both in the foreign jurisdiction and in Canada, mitigating circumstances surrounding the commission of the crime, aggravating circumstances underlying the conviction, and other crimes committed directly related to the crime in question. The panel has also taken into consideration the decision of *Febles*,⁶ which also outlines how a crime's seriousness should be assessed.

[16] The associate claimant provided documents from the U.S. Department of Homeland Security and the United States Department of Justice⁷ indicating the claimant's residence and criminal record history in the United States. The associate claimant has entered and exited United States a few times over the years. The claimant was arrested and charged with felony grand theft of property over \$400 and felony burglary around February 2003 in the United States.⁸ According to the documentation, the associate claimant was convicted of theft and the felony burglary dismissed.⁹ The associate claimant testified that she had stolen clothes from a store in a mall, but could not recall the total cost of the clothes that were stolen. The claimant testified that there were no injuries to bystanders and no weapons were used. The associate claimant indicated that she did not serve any jail time but had to pay a fine.

[17] The panel notes that the claimant was also arrested for misdemeanour theft in the United States around July 2004 and fined.¹⁰ Deportation proceedings were also started around the same time.¹¹ The claimant was also arrested in 2016 for theft under \$1000.¹² The associate claimant indicated the most recent arrest was for stealing something at a Sephora store. The claimant

testified that she never served any jail time in the United States for her crimes other than paying a fine.

[18] The panel found the associate claimant's testimony was corroborated by the documentation from the U.S. Department of Homeland Security and the United States Department of Justice.¹³ The panel does not find that the associate claimant committed any violent crimes, nor did the claimant appear to have been prosecuted or sentenced to jail other than being fined or detained and later deported out of the United States. The panel also finds that the sentencing was on the lower end of the sentencing spectrum. The panel does not find these constituted serious crimes based on the factors outlined in crime under *Jayasekara*¹⁴ and *Febles*.¹⁵

[19] The panel has considered the principal claimant's crimes and evidence before it and finds that the claimant has not committed any serious non-political crime and is not excluded under Article 1F(b) of the Convention.

Target of Former Common-Law Partner

[20] The associate claimant, XXXX XXXX XXXX XXXX, testified that she and her family cannot return to Colombia due to being targeted by her former common-law partner, "XXXX XXXX XXXX." (ex-partner). The panel notes that the principal claimant, XXXX XXXX XXXX XXXX, and XXXX XXXX XXXX XXXX, have based their claims on the associate claimant's claim and narrative. The claimants allege that the associate claimant's ex-partner is after them all and has threatened to kill them, as the ex-partner does not want the associate claimant being together with a new partner and having a new family. The panel heard the claims jointly, pursuant to *Refugee Protection Division Rule 55*.¹⁶ The panel has also considered the claims jointly in its assessment and analysis below.

[21] The associate claimant testified that she first started a relationship with her ex-partner in August 1998. She was with him for around 5 years. The claimant testified that they were never married and were in a common-law relationship.

[22] The claimant testified that her ex-partner was physically, verbally, and sexually abusive towards her when they were together. The claimant provided a clinical assessment report from a

psychotherapist in Canada dated May 18, 2018.¹⁷ The summary of the report includes the following:

Ms. XXXX XXXX had been exposed to traumatizing events that placed her at risk of developing post-traumatic adjustment or post-traumatic stress disorder (PTSD)...

According to Mr. XXXX XXXX disclosure, my behavioural observations, and clinical experience, Mr. XXXX XXXX has been struggling with symptoms associated with Post-Traumatic Disorder (PTSD) and depression...

Ms. XXXX XXXX fits the criteria for the victim of domestic violence, and an individual who had been exposed to negligent and abandonment as a child. She demonstrated residual symptoms of PTSD.¹⁸

[23] A follow-up report dated July 18, 2019 indicate that the associate claimant has continued to receive counselling at a health centre and has also been practicing relaxation exercises and yoga.¹⁹ The panel accepts that the associate claimant was a victim of domestic violence by her ex-partner and that the claimant has residual symptoms of PTSD. The panel accepts that the claimant receives counselling and continues to practice relaxation exercises.

[24] The claimant testified about moving to the United States with her ex-partner in the year 2000. The claimant has three children with her ex-partner, two of whom were born in the United States. The panel notes that the associate claimant and her family members have travelled back and forth between the United States and Colombia and that her children were born in Colombia and the United States. Based on the associate claimant's testimony and the basis of claim forms and narratives, the panel has summarized the approximate timelines (month and/or year) and the associate claimant's travel and residence with her family members in various countries below:

1998 – Associate claimant begins relationship with ex-partner

1999 – First child, “XXXX XXXX XXXX XXXX with ex-partner born in Colombia

2000 – Associate claimant travels to United States with ex-partner, leaves XXXX XXXX XXXX XXXX.” in Colombia

October 2001 – Second child with ex-partner born in the United States (claimant XXXX XXXX XXXX)

July 2002 – Third child with ex-partner born in the United States (claimant XXXX XXXX XXXX XXXX)

2003 – Associate claimant returns to Colombia, retrieves “XXXX XXXX XXXX XXXX” and goes back to the United States together the same year

January 2005 – Associate claimant deported to Colombia from United States; children remain in United States with ex-partner for about 2 months; ex-partner then sends XXXX and XXXX back to Colombia to be with associate claimant; “XXXX XXXX XXXX.” remains in the United States

2007 – Associate claimant meets principal claimant (XXXX XXXX XXXX XXXX) in Colombia

2008 – Associate claimant moves in with principal claimant in Colombia with her children (XXXX XXXX XXXX)

2010 – Associate claimant’s fourth child, the first with the principal claimant, born in Colombia (claimant XXXX XXXX XXXX)

2014 – Associate claimant travels with principal claimant and children (XXXX XXXX XXXX, XXXX) back to the United States

2016 – Associate claimant’s fifth child, the second with the principal claimant, born in United States (claimant XXXX XXXX XXXX)

February 2017 – Associate claimant deported from the United States to Colombia; principal claimant and children remain in the United States

July 2017 – Associate claimant travels to Mexico

December 2017 – Associate claimant arrives in Canada from Mexico, later reunites with principal claimant and children who also come to Canada from the United States

[25] The panel notes that the associate claimant indicated that her oldest child with her ex-partner, “XXXX XXXX XXXX.” was eventually adopted by a family in the United States and has since obtained citizenship in the United States.

[26] The associate claimant testified that after she was deported from the United States and returned to Colombia around 2005, she did not have contact with her ex-partner again until around November 2009 when her ex-partner started calling and threatening her on the phone. The associate claimant testified that her ex-partner found out about her new common-law partner, the principal claimant, and demanded she leave him and also return his children to him. The claimant testified she was living in Roma neighbourhood of Bogota, Colombia with the principal claimant

and their children at the time. The claimant indicated in an amended narrative that her ex-partner had found her and kidnapped and raped her around January 3, 2010 before she was released.²⁰

The claimant made a denunciation about the kidnapping on February 18, 2010. When asked how her ex-partner was able to locate her, the associate claimant testified that her ex-partner has many informants and obtained information through them, including her cell phone number. The associate claimant indicated that her ex-partner had told her that he would be able to find her in anyplace she was living.

[27] The associate claimant testified that after this attack, she moved around with her family to the principal claimant's mother and sister's house in Bogota and eventually to the city of Cali in Colombia. The claimant testified that in November 2014, her ex-partner called her again and told her he knew she was living in Cali and threatened to kill her. The claimant was asked how her ex-partner would know she was living in Cali and the associate claimant testified that she does not know how he found out she was in Cali. The associate claimant testified that he has many people that can supply such information to him.

[28] The claimant testified that she and the principal claimant and her children decided to move to the United States and left Colombia in XXXX 2014. The associate claimant was later arrested in 2016 for theft in the United States and deported back to Colombia around XXXX 2017. The associate claimant indicated she was hiding from her ex-partner in Colombia until she managed to obtain fake documents to travel to Mexico. The claimant indicated she remained in Mexico from around July 2017 to XXXX 2017 until she made her way to Canada.

[29] The panel accepts that the principal claimant was attacked by her ex-partner around the beginning of January 2010, and that she made a denunciation about the incident to the police. The panel notes that the claimant provided a copy of the denunciation report to the police.²¹ The claimant also provided a copy of the protection order from the Fiscalia office dated March 21, 2018 indicating for the police to "attend and protect the victims, especially to guarantee their personal and family safety."²² The associate claimant noted in an amended narrative that dates of the incident in the denunciation report were wrong²³ and that the actual incident took place on January 3, 2010 (not in November 2010 as stated in the denunciation) and that the associate claimant started receiving threats since November 2009 (not February 2010 as indicated in the denunciation).²⁴ The claimant indicated in her narrative amendment that she did not catch these

errors at the police station at the time due to her fear and psychological state at the time.²⁵ The panel accepts that there is discrepancy between the dates in the denunciation and the claimant's testimony. However, the panel finds the claimant's testimony regarding the discrepancy as credible and accepts her explanations. The panel finds that the claimant encountered her ex-partner around the beginning of January 2010 after receiving phone calls from him around November 2009. Based on the claimant's testimony and evidence, the panel finds that the last time the associate claimant saw her ex-partner was in January 2010.

[30] The panel does not find the claimant's testimony credible as it relates to the phone call she received in 2014 from her ex-partner. The claimant testified that she did not contact police or the Fiscalia office again after she received phone calls in 2014. The claimant testified that after her denunciation in February 2010, she had tried to go back to the police for follow-up and the police did not assist her or allow her to make another report. The claimant testified that she never went to the police after November 2014 it was because she did not think that the police would help. The panel does not find it reasonable that if the claimants were found again by her ex-partner after several years, the claimant would not have tried to contact police or the Fiscalia office again for assistance or follow-up prior to making a decision to leave the country entirely. Furthermore, the claimants did not make a refugee claim in the United States after they arrived there in XXXX 2014. The claimant indicated that she did not seek asylum in the United States due to her past history with deportation. The panel accepts that the associate claimant may have been reluctant to file a refugee claim in the United States due to her deportation history. However, the panel finds that if all the claimants were targeted by the associate claimant's ex-partner as alleged and fleeing Colombia due to his threats in 2014, including death threats, the principal claimant and their Colombian born child could have sought asylum or refugee protection in the United States. The panel did not see evidence that would have prevented the other claimants in making a refugee claim in the United States. The panel finds the lack of seeking any status or refugee protection in the United States undermines the claimants' allegations that they received the phone calls and death threats prior to fleeing the country. As such, the panel does not find that the claimant received the threatening calls from her ex-partner in November 2014 before they left for the United States.

Profile of Ex-Partner

[31] The panel also has concerns regarding the credibility of the profile of the associate claimant's ex-partner as alleged in the narrative and testimony. The associate claimant alleges that her ex-partner joined the Mara 18 gang (also known as Barrio 18) in the United States and is also part of the Sinaloa Cartel and is a member of the Autodefensas Gaitanistas of Colombia ("AGC"). The associate claimant also alleges that her ex-partner, "XXXX XXXX XXXX XXXX" is in fact also a man known as "XXXX XXXX XXXX."

Ex-Partner as "XXXX XXXX XXXX"

[32] The associate claimant provided one newspaper article that she found online from a site titled "Clarín Policiales" talking about a criminal named "XXXX XXXX XXXX."²⁶ The article indicates that XXXX is Mexican, born in Mexico, and went to the United States as an illegal immigrant when he was 21 years old. The article indicates that XXXX belongs to Mara 18 gang (also known as Barrio 18) and also XXXX XXXX for the Sinaloa Cartel.²⁷ The article indicates XXXX arrived in Argentina in 2013. The article states that XXXX has five children with two different women in Acapulco and that all his family live in Mexico. The article mentions that he has a girlfriend of Colombian origin and they have been a couple a year and a half ago. The article mentions that his girlfriend lives in Congress and visits him every weekend in jail.²⁸ The article indicates that XXXX was first arrested in Argentina in August 2013, and again in June 2014 and most recently in March.²⁹ The panel notes that the article has a time stamp dated June 14, 2015.³⁰ The panel notes that based on the information in the article, XXXX was still in jail at the time of the article.³¹

[33] The article contains two screenshots of XXXX picture, one of his face and upper shoulders and another picture of the side of his face and upper shoulders, both without a shirt. The associate claimant provided two original photographs that she alleges are of her ex-partner "XXXX XXXX XXXX" and that match the pictures of XXXX in the article. Photocopies of the photographs are provided in the claimant's disclosure package.³² The panel notes that in one photograph, a shirtless man whose upper body is covered in tattoos, is standing by himself in front of a wall covered in graffiti art.³³ The second photograph includes this same man, surrounded by four other

the original copies that the panel examined, are not very clear. The panel is unable to establish that the names of the children are written on the man's chest.

[36] The panel notes that the article regarding XXXX XXXX XXXX contains numerous contradictions and discrepancies to the associate claimant's narrative and testimony regarding her ex-partner. The claimant provided a birth certificate for her ex-partner that indicates he was born in Colombia.³⁵ The claimant also testified that as far as she knew, her ex-partner's family members were still in Bogota, Colombia. The claimant was asked why the article indicates that XXXX, whom she is alleging to be her ex-partner, was born in Mexico and that his family members are in Mexico. The claimant indicated that her ex-partner must have been lying. When asked about why the article mentions XXXX relationships and children with other women but nothing about her and their children together, the claimant also testified that her ex-partner must have lied. The date and age in the article of when XXXX first left for the United States and when the claimant indicated she left to the United States with her ex-partner are also different. The claimant testified that her ex-partner must have lied about all these facts. The panel finds, on a balance of probabilities, that the website or news agency from which the article came from would have sought some corroborating evidence for the content of the article. There is no indication that the article depended entirely upon statements from XXXX XXXX XXXX. The panel finds the claimants explanations not credible or reasonable.

[37] The panel finds that the inclusion of the article on XXXX XXXX XXXX and the photographs were included for the purposes of establishing a more dangerous profile of the associate claimant's ex-partner and his criminal activities. Based on the testimony and evidence, the panel does not accept that XXXX XXXX XXXX is the associate claimant's ex-partner, "XXXX. XXXX."

Ex-Partner as Member of Mara 18 and Sinaloa Cartel

[38] The panel is willing to accept that the associate claimant's ex-partner may have been involved in gangs in the United States, including being affiliated with Mara 18 and the Sinaloa Cartel. The panel notes that Mara 18 does not have a significant presence in Colombia based on the objective evidence for the country.³⁶

[39] Regarding the Sinaloa Cartel's presence in Colombia, the panel notes that the Sinaloa Cartel is a Mexican cartel that has some presence along the borders of Colombia, particularly along the borders with Ecuador and Venezuela:

According to a 2016 article published in *Jane's Intelligence Review* and written by Annette Idler [8], borderlands are "attractive spaces for violent non-state groups including right-wing groups and criminals" (*Jane's Intelligence Review* 7 Oct. 2016). According to the same source, [v]iolent non-state groups collaborate with each other in Colombia's borderlands, especially along the borders with Ecuador and Venezuela. These groups include the two remaining leftist groups - [ELN] and a small remaining faction of the [EPL] - as well as right-wing groups that emerged after the 2006 demobilisation of the paramilitary umbrella group [AUC], and criminal groups including the Mexican Sinaloa Cartel. (*Jane's Intelligence Review* 7 Oct. 2016) Idler further indicates that "in regions such as Colombia's southern department of Putumayo new groups such as Mexican cartels have arrived to fill power vacuums"³⁷

[40] Even if the panel was to find that the associate claimant's ex-partner was part of Mara 18 gang and the Sinaloa Cartel, the panel notes that these criminal organizations are not known to have significant presence in Colombia and groups such as the Sinaloa Cartel are predominantly located along the borderlands.³⁸ The panel finds the influence and reach of being a member of such organizations to be limited in Colombia.

Ex-Partner as Member of the Autodefensas Gaitanistas of Colombia ("AGC")

[41] The associate claimant also testified that her ex-partner is a member of the AGC. The claimant testified that since arriving in Canada, her ex-partner visited her sister in Bogota Colombia six times between XXXX 2018 to XXXX 2019 asking for the claimant's whereabouts and threatening to kill the associate claimant. The associate claimant testified that her sister would call her each time her ex-partner came to her sister's apartment, but the claimant does not recall the exact dates, except his first visit on XXXX XXXX, 2018.

[42] During his last visit in XXXX 2019, the claimant indicated her ex-partner came with two other armed men and told her sister he was part of the AGC and that the claimant and her family were military targets. Nothing was given to the claimant's sister indicating the ex-partner was part of the AGC, or that claimants were military targets, other than the ex-partner telling her sister

this information. The panel notes that the claimant's sister provided a letter attesting to the visits by the claimant's ex-partner and his threats.³⁹

[43] The claimant testified that her sister lives in an apartment in Bogota. The claimant testified that her sister has not tried to move as she has five children and does not have another place to live. There is no indication that the claimant's sister or her family have been harmed by the claimant's ex-partner or anyone else despite the threats over the past year.

[44] The panel finds that the associate claimant's ex-partner may have tried to locate the claimant again through the claimant's sister who still lives in Bogota. However, the panel does not find that the ex-partner is part of the AGC. There is no indication that the claimant's ex-partner was involved, or planning to be involved, with the AGC in all the previous interactions with the associate claimant over the years that he was allegedly continuing to find or threaten her. The panel finds the timing of the disclosure of the claimant's ex-partner declaring himself to be part of the AGC to be suspect, given that he had visited the claimant's sister six times and only revealed his membership during the last visit, which is about a month prior to the claimant's refugee hearing in Canada. Based on the evidence and testimony, the panel does not find that the associate claimant's ex-partner is part of the AGC.

[45] Even if the panel finds that the claimant's ex-partner is still interested in pursuing the claimants and that he is a member of the AGC or Mara 18 and Sinaloa Cartel, the panel finds that there is the existence of a viable IFA.

Internal Flight Alternative

[46] The panel finds that there is a viable internal flight alternative ("IFA") in the city of Tunja, Boyaca, Colombia.

The Two-Pronged Test

[47] The test to be applied in determining whether there is a viable internal flight alternative is two-pronged.⁴⁰ Firstly, the panel must be satisfied, on a balance of probabilities, that there is no serious possibility that the claimants would be persecuted in the proposed internal flight alternative location. Secondly, the conditions in the proposed internal flight alternative location

must be such that it would not be objectively unreasonable under the circumstances, including those particular to the claimants, for them to seek refuge there. Both of these prongs must be satisfied for a finding that the claimants have an internal flight alternative.

The First Prong of the Test – No Risk of Persecution or Risk to Life or Cruel and Unusual Treatment or Punishment or Torture

[48] The associate testified that her ex-partner identified himself as being a member of the AGC. The panel asked the associate claimant if she and her family would be able to move to Tunja. The claimant testified that her ex-partner would be able to find her in any part of Colombia and that if he was able to locate her in Bogota and Cali, cities with much larger populations, he would be able to locate her in Tunja. The panel notes in its above analysis that it does not find the associate claimant's ex-partner threatened her in Cali in 2014. Regarding the attack against the claimant in 2010, the panel notes that the claimant was living in a neighbourhood in Bogota at the time. The associate claimant's family members live in Bogota and as far as the associate claimant knows, her ex-partners family members also lived in Bogota. The panel is willing to accept that the claimant's ex-partner may have had additional resources available to him in Bogota that he was able to find the claimant in that city. However, the panel does not find that the ex-partner's profile is as such that he would be able to locate her in a city such as Tunja, where the AGC, Mara 18, and Sinaloa Cartel are not known to have a presence.

[49] As a member of the AGC, the panel notes that NDP Item 7.2 reveals that the AGC do not have a presence in Tunja (rather, it notes that the ELN has been responsible for two incidents in Boyaca in 2016/17 and that there were no reported incidents occurring in Tunja).⁴¹ The panel finds that the NDP does not contain significant objective documentation that confirms that the AGC are active in Boyaca department generally, or Tunja in particular.

[50] In post-hearing disclosure, which the panel ultimately accepted and marked as Exhibit 19 and Exhibit 20, counsel provided articles and submissions regarding the suitability of Tunja as an IFA.⁴² Counsel has attempted to link violence in Boyaca, as potentially being caused by the AGC. Counsel references an article, dated May 3, 2017, indicating that paramilitarism against social leaders and human rights activist have expanded in Colombia, including in Boyaca.⁴³ Another article dated March 17, 2018 indicated that there was evidence of risk against human

rights defenders in 10 municipalities in Boyaca, including Tunja.⁴⁴ The panel notes that the article focuses on armed group ELN in the area.⁴⁵ A third article was also provided about paramilitary organizations in specific locations around Boyaca, including the Front Heroes of Boyaca, the Lanceros de Velez, Peasant Self-Defense Forces of Casanare, and Heroes de Malaga.⁴⁶

[51] The panel finds that these articles do not assist the claimants as Boyaca department was not an area that the FARC has vacated as historically it appears to have been predominantly an area of ELN influence.⁴⁷ The panel also notes that the claimants are not social leaders or human rights activists. Rather, the objective documentation suggests that the ELN had skirmishes with one police department in the Playa municipality within Boyaca.⁴⁸ As such, the panel finds that it has not been established, on a balance of probabilities, that the AGC have targeted Tunja in Boyaca department. The panel does not see evidence provided that establishes, on a balance of probabilities, that the AGC has in fact established themselves in Tunja, Boyaca department.

[52] Further, the objective documentation contained in the NDP at items 7.24,⁴⁹ 7.2,⁵⁰ 7.15⁵¹ 7.23⁵² and 7.24⁵³ suggests, on a balance of probabilities, that the AGC do not have a presence in Boyaca department in general or Tunja in particular. The panel therefore finds that in the absence of sufficient credible or corroborative evidence from the claimants that Tunja is unsafe for them, that the previously cited objective documentation outweighs the claimants' testimonies and counsel's articles on this point. Therefore, the panel finds, on a balance of probabilities, that the potential threat from the ex-partner being a member of the AGC, or other members of the AGC, do not extend to Tunja and there is therefore no serious possibility of persecution of the claimant's or a risk to their lives or a risk of cruel and unusual treatment or punishment in Tunja.

[53] Based on the above considerations, the panel finds, on a balance of probabilities, that the claimants do not face a serious possibility of persecution or face a danger of torture, a risk to their lives, or a risk of cruel and unusual treatment or punishment, should they relocate to the city of Tunja, Colombia.

Second Prong - Reasonableness

[54] Regarding the reasonableness of the proposed IFAs, the panel finds that it is not unreasonable in all of the particular circumstances of the claimants' situation, that in returning to Colombia, they could relocate to the city of Tunja. The panel is mindful that the test to establish whether the proposed IFA is unreasonable has a very high threshold. Indeed, "it requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant."⁵⁴ The question to be answered on the second prong of the test is whether expecting the claimant to relocate to the proposed IFA locations would be "unduly harsh."⁵⁵ Further, actual and concrete evidence of such conditions must be presented.⁵⁶

[55] The Court has been clear that "the hardship associated with relocation is not the kind that renders an IFA unreasonable."⁵⁷ The Federal Court of Appeal has been clear that "undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations"⁵⁸ does not meet the threshold required under the second prong of the test.

[56] The associate claimant was asked if they are not under threat by her ex-partner, if there are any other reasons why they could not move to Tunja. The associate claimant responded, "No, there would be no other reason." The panel did not see evidence from the claimants indicating problems moving to the IFA locations other than thinking they could be found by the ex-partner.

[57] The panel notes that the onus is on the claimants to establish whether it is unduly harsh to relocate to the proposed IFA locations. The panel finds that the claimants have failed to meet this onus and has, in fact, indicated that the IFA location is reasonable. The panel therefore finds it would not be unduly harsh for the claimants to move to the proposed IFA location.

[58] The panel finds that, on a balance of probabilities, the claimants have a viable internal flight alternative in the city of Tunja. Internal flight alternative is determinative to claims assessed under both section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*.

Other Claimants

[59] The panel has considered the claims of the principal claimant and minor claimant in light of them basing their claims on the associate claimant, and the overall testimony, evidence, and submissions presented. The panel finds the associate claimant does not face a serious possibility of risk on forward looking basis and that there is the existence of a viable IFA in Colombia. The panel likewise has come to the same conclusion for the other claimants for all the reasons set out above.

CONCLUSION

[60] With respect to the claimants, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, and XXXX XXXX XXXX, and as previously noted, the panel finds that they would not face a serious possibility of persecution on any Convention ground, or that, on a balance of probabilities, he would be personally subjected to a risk to life or to a risk of cruel or unusual treatment or punishment, or to a danger of torture upon return to their country of citizenship, the United States of America.

[61] Having considered the totality of the evidence, the panel finds that the claimants, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, are neither Convention Refugees nor persons in need of protection, pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, as the claimants do not face a serious possibility of persecution upon a return to Colombia, and because their respective removals to Colombia would not subject them personally, on a balance of probabilities, to a risk to their lives, or to a risk of cruel and unusual treatment or punishment, or to a danger of torture.

[62] Their claims are therefore rejected.

(signed)

“S. Eng”

S. ENG

August 30, 2019

Date

¹ Exhibit 1: Package of information from the referring CBSA/IRCC.

² *Guideline on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson pursuant to section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.*

³ Exhibit 1: Package of information from the referring CBSA/IRCC.

⁴ Exhibit 7: Letter from Minister re: Intervention.

⁵ *Jayasekara v. Canada (Citizenship and Immigration Canada)*, [2009] 4 FCR 164.

⁶ *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68.

⁷ Exhibit 12: Personal Document Brief No. 3.

⁸ Exhibit 12: Personal Document Brief No. 3, pages 60-65.

⁹ Exhibit 12: Personal Document Brief No. 3, page 61.

¹⁰ Exhibit 12: Personal Document Brief No. 3, pages 104 and 140.

¹¹ Exhibit 12: Personal Document Brief No. 3, pages 104 and 140.

¹² Exhibit 12: Personal Document Brief No. 3, page 102.

¹³ Exhibit 12: Personal Document Brief No. 3.

¹⁴ *Jayasekara v. Canada (Citizenship and Immigration Canada)*, [2009] 4 FCR 164.

¹⁵ *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68.

¹⁶ *Refugee Protection Division Rules*, SOR/2012-256.

¹⁷ Exhibit 11: Personal Document Brief No. 2, pages 19-23.

¹⁸ Exhibit 11: Personal Document Brief No. 2, pages 22-23.

¹⁹ Exhibit 16: Mental Health Therapy Report for TB8-18890.

²⁰ Exhibit 15: Amended Basis of Claim Form Narrative for TB8-18890, page 8.

²¹ Exhibit 11: Personal Document Brief No. 2, pages 4-9.

²² Exhibit 11: Personal Document Brief No. 2, pages 16-18.

²³ Exhibit 15: Amended Basis of Claim Form Narrative for TB8-18890 and Exhibit 11: Personal Document Brief No. 2, pages 4-9.

²⁴ Exhibit 15: Amended Basis of Claim Form Narrative for TB8-18890 and Exhibit 11: Personal Document Brief No. 2, pages 4-9.

²⁵ Exhibit 15: Amended Basis of Claim Form Narrative for TB8-18890.

²⁶ Exhibit 11: Personal Document Brief No. 2, pages 48-58.

²⁷ Exhibit 11: Personal Document Brief No. 2, pages 48-58.

²⁸ Exhibit 11: Personal Document Brief No. 2, pages 48-58.

²⁹ Exhibit 11: Personal Document Brief No. 2, pages 48-58.

³⁰ Exhibit 11: Personal Document Brief No. 2, pages 48-58.

- ³¹ Exhibit 11: Personal Document Brief No. 2, pages 48-58.
- ³² Exhibit 11: Personal Document Brief No. 2, pages 59-60.
- ³³ Exhibit 11: Personal Document Brief No. 2, page 59.
- ³⁴ Exhibit 11: Personal Document Brief No. 2, page 60.
- ³⁵ Exhibit 18: Personal Document Brief No. 8, pages 6-11.
- ³⁶ Exhibit 3: Index of national document package for Colombia – May 31, 2019 Version.
- ³⁷ Exhibit 3: Index of national document package for Colombia – May 31, 2019 Version, Item 7.2, page 8 of 37.
- ³⁸ Exhibit 3: Index of national document package for Colombia – May 31, 2019 Version.
- ³⁹ Exhibit 11: Personal Document Brief No. 2, pages 37-39.
- ⁴⁰ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.)
- ⁴¹ National Documentation Package (“NDP”), Colombia, 31 May 2019, tab 7.2: Paramilitary successor groups and criminal bands (bandas criminales, BACRIM), areas of operation and criminal activities, including the Clan del Golfo (also known as Urabeños or Autodefensas Gaitanistas de Colombia); state response ... Immigration and Refugee Board of Canada. 24 April 2017. COL105773.E.
- ⁴² Exhibit 20: Post-hearing Evidence Brief No.9.
- ⁴³ Exhibit 20: Post-Hearing Evidence Brief No. 9, pages 1-5.
- ⁴⁴ Exhibit 20: Post-Hearing Evidence Brief No. 9, pages 6-10.
- ⁴⁵ Exhibit 20: Post-Hearing Evidence Brief No. 9, pages 6-10.
- ⁴⁶ Exhibit 20: Post-Hearing Evidence Brief No. 9, pages 11-14.
- ⁴⁷ NDP, Colombia, 31 May 2019, Item 7.23
- ⁴⁸ NDP, Colombia, 31 May 2019, Item 7.23
- ⁴⁹ Exhibit 3, NDP, Colombia, 31 May 2019, tab 7.24: Colombia's illegal armed groups' areas of influence. Colombia Reports. 18 February 2018.
- ⁵⁰ Op Cit., Footnote 9
- ⁵¹ Exhibit 3, NDP, Colombia, 31 May 2019, 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.
- ⁵² Exhibit 3, NDP, Colombia, 31 May 2019, 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.
- ⁵³ Exhibit 3, NDP, Colombia, 31 May 2019, tab 7.24: The presence and activities of Los Rastrojos, including in Buenaventura; information on their relationship with the Gaitanist Self-Defense Forces of Colombia (Autodefensas Gaitanistas de Colombia, AGC) [also known as Gulf Clan (Clan del Golfo)... Immigration and Refugee Board of Canada. 17 April 2018. COL106086.E.
- ⁵⁴ *Ranganathan v. Canada (MCI)*, 2000 CanLII 16789, at para. 14.
- ⁵⁵ *Thirunavukkarasu v. Canada (MEI)*, 1993 CanLII 3011.
- ⁵⁶ *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99); [2001] 2 F.C. 164 (C.A.).
- ⁵⁷ *Okechukwu v. Canada (MCI)*, 2016 FC 1142, at para. 37.
- ⁵⁸ *Ranganathan v. Canada (MCI)*, 2000 CanLII 16789 (FCA), at para. 15. See also: *Obineze v. Canada (MCI)*, 2018 FC 1150.