



RPD File No. / N° de dossier de la SPR : TB6-09803
TB6-09852
TB6-09853

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	September 15, 2016 February 27, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	March 2, 2018	Date de la décision et des motifs
Panel	R. Kotovych	Tribunal
Counsel for the Claimant(s)	Panteha Yektaeian Guetter	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	XXXX XXXX	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

2018 CanLII 130008 (CA IRB)

REASONS FOR DECISION

[1] XXXX XXXX (the “principal claimant”), XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX (collectively the “claimants”) claim refugee protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.¹

SUMMARY

[2] The claimants are alleged to be a Colombian woman, her daughter and her son. Her son is from a previous relationship, her daughter is from her current common-law marriage to the alleged agent of persecution (“XXXX”). She met XXXX in 2002 and alleges years of physical, sexual and psychological abuse. She eventually was able to take her children out of Colombia under the pretext of going to Disney World, came to Canada, and seeks protection for herself and her children from the abuse and threats of XXXX XXXX

[3] An independent designated representative (DR) was appointed for the children because of their position traveling with only one parent, and there were initially questions as to whether travel consent documentation would be available. Ultimately, no evidence amounting to Section 1F(b) exclusion emerged in the hearing.

DETERMINATION

[4] I find that the claimants are neither Convention refugees nor persons in need of protection because of the availability of an internal flight alternative (IFA). My reasons are as follows.

ANALYSIS

Identity

[5] The principal claimant’s oral testimony and documentary evidence establish that, on a balance of probabilities, the claimants are citizens of Colombia. I was provided with: a certified

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, sections 96 and 97(1).

copy of their passports confiscated by Citizenship and Immigration Canada;² and copies of birth certificates affirming the family relationship. On a balance of probabilities, I find the claimants to have established their identities as citizens of Colombia.

Possibility of persecution upon return to Colombia

[6] I found the principal claimant and her son to be generally credible in their testimonies. They testified consistently and in a straight-forward matter as to their experiences. The claims of abuse were also well-documented in the evidence provided, and I sympathize with them. However, the determinative issue in this case is internal flight alternative. “[T]he legal test to assess an IFA is based on a two-prong analysis set out in *Rasaratnam v Canada (Minister of Citizenship and Immigration)*, [1992] 1 FC 706: the first requirement being the freedom from persecution and the second, being the reasonability of refuge. The onus is on the [claimants] ‘to prove actual and concrete evidence of conditions which would jeopardize ... [their] life’ (*Amit v Canada (Minister of Citizenship and Immigration)*, 2012 FC 381 (CanLII), para 3)”.³

[7] I find on a balance of probabilities that the claimants have an internal flight alternative in Medellin because there is no serious possibility of them being persecuted there, and because in all the circumstances, including their personal circumstances, it would not be unreasonable for them to relocate there. In deciding this claim I took into account the Chairperson’s Guidelines related to women refugee claimants and child refugee claimants.⁴

[8] I find there is no serious possibility that the claimants will be persecuted in Medellin because, on a balance of probabilities, XXXX will not find them there due to the country’s large population and geography, and the city’s large population. Colombia’s total land area is 1,138,910 square kilometres, and its population is over 47 million people.⁵ Medellin itself has a large population of 3.911 million people, and is over 400 kilometres away from the claimants’ city of

² Exhibit 1.

³ *Momodu v. Canada (Citizenship and Immigration)*, 2015 FC 1365 [*Momodu*], para 6.

⁴ Guideline #4: *Women Refugee Claimants Fearing Gender-Related Persecution*; Guideline #3: *Child Refugee Claimants: Procedural and Evidentiary Issues*

⁵ Exhibit 5, NDP 1.5

Cali.⁶ Her husband would be hard-pressed to know where to begin to look in the large and highly-populated country.

[9] There is also no serious possibility of persecution in Medellin because the claimants have not established on a balance of probabilities that the agent of persecution has the ability to locate them in Medellin. The principal claimant testified that XXXX has the financial resources to locate them because he is successful through owning two dental offices and a gym; that his childhood spent in a poor neighbourhood and his continuing contact with friends from that neighbourhood would allow him to use a “sicario” to harm her; and that he could hire a detective to find them. She testified that he used to meet with friends from his old area and would overhear comments regarding assaults, and she had a friend who used a detective to locate her mother using basic information. I find that the principal claimant has not provided sufficient evidence to establish that XXXX XXXX would be able to employ such methods to locate them and cause them harm. There is no documentary evidence as to detectives in Colombia, how they would locate individuals, how they would locate individuals in comparable circumstances to the claimants, or how successful they may be. The principal claimant had limited information as to how detectives might accomplish this, and her experience with a friend I find insufficient because I do not have sufficient evidence as to the circumstances around that case, in particular the likelihood of such success, or how similar the circumstances are to this case if at all. The principal claimant has also not provided sufficient evidence to establish that they would face a harm from sicarios. While the NDP does reference their existence⁷, it is largely in the context of high profile individuals related to journalism or politics, guerilla and paramilitary groups, or high-level organized drug crime, and there is no evidence that those circumstances are relevant in the case of the claimants or XXXX XXXX. The testimonial evidence as to XXXXs connections to his old neighbourhood and his unsavoury friends is insufficient to establish that any of these friends would have connections outside of Cali or the ability to find them in Medellin. And his wealth does not translate to an ability to locate them if the means he would employ – sicarios and detectives – have not been established. I also note that XXXX has no family in Medellin who could assist him in locating the claimants, and no other apparent connection to the city. There is also insufficient evidence to

⁶ Exhibit 5, NDP 1.1, 1.5

⁷ Exhibit 5, NDP 2.11, 7.15, 7.18, 7.20, 11.2

indicate that he might have connections in the political, judicial or policing spheres to assist him in locating the claimants. I therefore find no serious possibility of persecution in Medellin because the claimants have not established on a balance of probabilities that XXXX has the ability to locate them in Medellin, and I find on a balance of probabilities that he will not do so. The first prong of the IFA analysis is therefore met.

[10] I have considered the objective country documentation commentary on internal relocation within Colombia, coupled with the claimants' personal circumstances – in particular as a woman with children, the psychological assessments, and their economic circumstances - and find that it would be reasonable for the claimants to relocate to Medellin, thus meeting the second prong of the IFA test. The country documentation observes that the law provides for freedom of internal movement and foreign travel, and Medellin has the second largest airport in the country, which would allow the claimants to reach the IFA location with no physical danger or undue hardship.⁸ The principal claimant has formal education and took training as a dental assistant. The claimant has worked in a dental office, in a real estate office, and sold lasagna. Given her experience, I find that she would, more likely than not, be able to find employment in a major city like Medellin. The principal claimant testified that she did not believe she could give the children a proper quality of life if she had to sustain them financially, that her career is not well paid in Colombia, that she could not do another job because minimum wage is low in Colombia, and she was also worried about leaving them alone all day. I find insufficient evidence to indicate that she would be unable to find work and shelter and provide the necessities for herself and her children, nor that the challenges raised rise to the level of unreasonableness, or an undue hardship, given her education, training, and ability to find work in the past. She is also from Cali, a city of 2.646 million people, and speaks Spanish, so is familiar with an urban Colombian environment. The claimants have also shown adaptability by taking themselves out of the alleged danger and relocating to Canada⁹. The minor children would not be forced to relocate to the IFA alone, as it is more likely than not that their mother would remain with them. They would also not be harmed in their care or left unreasonably alone if the principal claimant were to work, as they would both be attending school, and the son is nearly XXXX years of age.

⁸ Exhibit 5, NDP 2.1, 7.16

⁹ See *Momodu*, para 21.

[11] While the psychiatrist reports outline challenges that have been faced by the claimants,¹⁰ I find that the IFA nevertheless is reasonable. While the claimants may fear returning to Colombia, the factors already examined indicate that they will not be harmed, which meets the psychological need for them to remain in a safe environment. While the objective documentation does outline limitations faced by Colombia in its response to domestic violence¹¹, there is nonetheless some availability of safe houses, counselling, and Family Commissaries in different neighbourhoods with varying degree of effectiveness that could be accessed by the claimants. In any event, the documentation is more directly relevant to state protection and the resources available to women fleeing domestic violence and seeking shelter or protection, rather than the claimants moving to and re-establishing themselves in another part of the country where they are no longer subject to domestic violence or fearing for their safety. The facts already considered point to the principal claimant on balance being able to establish herself and her children, find work and shelter, to live reasonably and without undue hardship, independently of whatever infrastructure exists that specifically caters to the situation of individuals seeking protection or shelter from domestic abuse. Such supports that exist in Medellin, as outlined in the documentation, if necessary, would nonetheless provide an additional avenue for the claimants to take advantage of, in particular counseling services. The principal claimant expressed her concerns with government insurance in Colombia, but had limited information beyond concerns about counseling services being not very good or effective with a long time to request appointments and go through the process. I find insufficient evidence to indicate that the general health system in Colombia would be insufficient or inaccessible to assist the claimants with their counseling needs, or amount to an undue hardship for the claimants to live in Medellin. Finally, I note that the claimants' preferences, or humanitarian and compassionate considerations, to conditions in Canada are not relevant for reasonableness.¹²

[12] Taking into consideration all of these factors and circumstances, both personal and objective, I find on a balance of probabilities that the claimants could reasonably relocate to Medellin. For all the above reasons, I therefore find both prongs of the test for IFA to be satisfied.

¹⁰ Exhibits 7, 11.

¹¹ Exhibit 5, NDP 5, in particular 5.12

¹² *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

CONCLUSION

[13] I find the claimants to have a viable internal flight alternative within Colombia. The claimants have, therefore, not satisfied the burden of establishing a serious possibility of persecution on a Convention ground under section 96, or that, on a balance of probabilities, they would be personally subjected to a risk to life, or a risk of cruel and unusual treatment or punishment, or a danger of torture upon return to Colombia, falling within the meaning of subsection 97(1) of the *IRPA*. I conclude that the claimants are not Convention refugees, and not persons in need of protection.

[14] The claims are therefore rejected.

(signed)

“R. Kotovych”

R. Kotovych

“March 2, 2018”

Date