

Federal Court



Cour fédérale

**Date: 20250401**

**Docket: IMM-14521-23**

**Citation: 2025 FC 599**

**Toronto, Ontario, April 1, 2025**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**APOLONIO DZIB TUZ  
NAYELI FIGUEROA CHAVEZ  
BRITTANY NAYELI DZIB FIGUEROA  
HILARY ESTEFANNY DZIB FIGUEROA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB].

[2] For the reasons that follow, I will grant this application.

I. BACKGROUND

A. *Facts*

[3] The Applicants are citizens of Mexico. The Principal Applicant [PA] is Apolonio Dzib Tuz; his partner, Nayeli Figueroa Chavez is the Associate Applicant [AA]. Apolonio and Nayeli have two daughters – Hilary and Brittany – who are also parties to this application.

[4] The Applicants allege a serious risk of torture, risk to life, or risk of cruel and unusual punishment from the Los Zetas cartel, who targeted them for extortion due to the PA's work as a contractor. The Applicants additionally claim a well-founded fear of persecution based on the PA's and the minor applicants' Mayan ethnicity. The events that form the basis of their claim are as follows.

[5] Mr. Dzib Tuz reports a long history of discrimination in Mexico on account of his Indigenous Mayan identity. He left his home village for Cancun to pursue work opportunities, but had significant trouble finding work because he is Mayan. In testimony before the Refugee Protection Division [RPD] of the IRB, he stated:

Because we are Mayans, because we are Yucatecos, we have a hard time finding work and they won't give you work just because for employment, just because you are Mayan. Many like me, we had to leave the towns where we came from, I had to leave my town without learning how to write or read and then I taught myself how to work and people do not like that and people don't like when you grow financially, when you develop and then they try to hurt you.

[6] While in school, the minor applicants also faced discrimination due to their Mayan heritage; they experienced frequent bullying, harassment and physically and emotionally abusive behaviour. They suffer from trauma and low self-esteem as a result.

[7] In July 2018, Nayeli's distant cousin and his wife were murdered outside of their home in Cancun, after being extorted by the cartels. The cousin, like the PA, was a contractor.

[8] On September 7, 2018, Apolonio received a call from Los Zetas, demanding he pay extortion money to them monthly. The cartel knew "everything about his work and family" and threatened the family if he failed to pay or attempted to escape.

[9] Soon after, on September 11, 2018, two men on a motorcycle pursued Mr. Dzib Tuz while he was driving with an employee. They pulled over, abandoned their car and hid. They managed to escape, but not before overhearing the assailants saying that they were to be killed.

[10] As a result, the Applicants decided to flee Mexico. Apolonio's father-in-law arranged for the minor applicants to stay with their grandmother while awaiting their passports, and the two adult applicants arrived in Canada on September 14, 2018.

[11] In December 2018, Nayeli's mother informed her that men were lurking outside of her home, asking where "the contractor" was.

[12] In May 2019, the minor applicants obtained their passports and joined their parents in Canada. The Applicants made a claim for refugee protection. In rejecting their claims, the RPD

found the Applicants to be credible, but concluded that they had a safe and viable internal flight alternative [IFA] in Durango, Mexico.

[13] The RAD confirmed the RPD's decision, however this decision was quashed on judicial review and the matter was remitted to the RAD for redetermination: *Tuz v Canada (Citizenship and Immigration)*, 2023 FC 1001

B. *Decision under Review*

[14] The RAD's reconsideration of the Applicants' appeal is the subject of this application for judicial review. The newly constituted RAD panel once again agreed with the RPD that the Applicants were neither Convention refugees nor persons in need of protection. The sole, and determinative, issue remained the existence of an IFA in Durango.

[15] As a preliminary matter, the RAD considered new evidence submitted on appeal. It accepted Psychotherapy Treatment reports for both minor applicants and the PA. However, it rejected an ID card for the PA showing his Mayan ancestry, because proof of his ethnicity was reasonably available at the time of the RPD hearing, and indeed, that identity was accepted by the tribunal.

[16] In dismissing the Applicants' appeal, the RAD first found that, while the documentary evidence indicates that the Los Zetas cartel would have the means to locate the Applicants in the proposed IFA location, they would not have the motivation to do so. However, the RAD accepted that the Applicants would be at risk if they returned to Cancun.

[17] The RAD further observed that the motivation of a cartel such as Los Zetas to pursue an individual will depend on that individual's profile. Those who are at risk of being pursued by the cartel are those who steal money from the group, have personal rivalries with it, are political opponents to it, have betrayed it or have been perceived to have betrayed it, or have cooperated with the authorities as informants. A large debt or personal vendetta are common motivators for a criminal organization to track someone outside of their geographic area, and simply failing to pay an extortion fee will not always constitute a "large debt."

[18] As a result, the RAD determined that the PA does not have the profile of someone who would be tracked by Los Zetas. In coming to that conclusion, the RAD found that Apolonio's interactions with the cartel were limited to one phone call five years ago and a brief vehicle chase the week after. While these incidents were a part of a failed extortion attempt, there was insufficient evidence that the extortion demand constituted a "large debt" which would motivate the group to search for the Applicant in other parts of Mexico.

[19] In support of these findings, the RAD also pointed to the fact that the cartel had not pursued the Applicants' family over the past five years.

[20] The RAD considered the PA's argument that Los Zetas would be able to track him because he works in construction, which is an industry targeted for extortion by the cartels. It found insufficient evidence that such extortion occurs in Durango as well as Cancun. Further, it found that Mr. Dzib Tuz could, if he believed himself to be at risk from working in the construction industry, choose to work in another field.

[21] Finally, the RAD rejected the Applicants' argument that it would be unreasonable for them to relocate to Durango, due to Apolonio's and the minor applicants' Mayan ethnicity. It acknowledged the psychotherapy treatment reports indicating that both minor applicants suffer from mental health struggles due to trauma from the discrimination they faced. However, it found that there was insufficient evidence to conclude that the harassment faced by Apolonio and the children would occur in Durango, or that any discrimination that did occur would rise to the level of persecution. The RAD additionally found that the Applicants would continue to be able to access mental health care in Durango.

## II. ISSUES

[22] The broad issue raised in this matter is whether the RAD's decision was reasonable. In submitting that the RAD's decision was unreasonable, the Applicants argue that the tribunal erred in four ways, in respect of both prongs of the IFA test:

1. The RAD's finding that the Los Zetas Cartel would not be motivated to track the Applicants is unintelligible and contrary to the facts.
2. The RAD erred by requiring evidence of continued attempts to locate the Applicants through family members;
3. The facts do not justify the RAD's finding that the Principal Applicant could find employment in another industry in Mexico; and
4. The RAD erred by failing to consider the evidence regarding the treatment of Mayans throughout Mexico.

### III. LEGAL FRAMEWORK

[23] IFA assessments are conducted on the basis of an oft-cited two-part test: *Rasaratnam v Canada (Minister of Employment and Immigration)* (C.A.), 1991 CanLII 13517 (FCA), [1992] 1 FC 706 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (C.A.), 1993 CanLII 3011 (FCA), [1994] 1 FC 589. In order for a proposed IFA to be defeat a claim for refugee protection, two criteria must be met:

- 1) There must be no serious possibility of the claimant being persecuted, or subject to a personalized risk of torture, risk to life, or risk of cruel and unusual punishment in the part of the country where the IFA exists; and
- 2) It must not be unreasonable for the claimant to seek refuge in the IFA, considering all of their particular circumstances.

[24] A serious possibility of persecution, or a risk of torture, risk to life, or risk or cruel and unusual punishment can only be found if it is demonstrated that the agents of persecution have the means and motivation to search for an applicant in the suggested IFA: *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46, citing *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43.

[25] In addition, in all the circumstances, including the Applicant's particular circumstances, it must be reasonable for the Applicant to seek refuge there: see *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) at para 15. The threshold to establish unreasonableness is high.

[5] It is a refugee claimant, and not a respondent or the RAD, who bears the onus of demonstrating that the IFA is unreasonable: *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21.

#### IV. STANDARD OF REVIEW

[26] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [Vavilov]. In conducting a reasonableness review, a court “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (Vavilov at para 15). It is a deferential standard, but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability (Vavilov at para 13).

#### V. ANALYSIS

##### A. *First prong*

##### (1) The Motivation of Los Zetas

[27] On the first prong of the IFA test, the Applicants submit that the RAD’s finding that the Zetas likely lacked the motivation to track them to Durango is unreasonable and contrary to the evidence. I disagree. With respect, this argument essentially amounts to a request for this Court to reweigh the evidence, which is not the role of this Court on judicial review.

[28] Recall that the RAD acknowledged the documentary evidence indicates that large cartels, such as Los Zetas, do have the means to track individuals throughout the country, if those individuals have the profile of someone in whom the Los Zetas would have a continuing interest. Those situations include where someone owes a large debt to the cartel, where there is a personal vendetta in respect of a cartel member, where the individual is a political opponent, or where the individual has betrayed or been perceived to have betrayed the cartel. Notably, the country conditions evidence indicates that failure to pay an isolated extortion demand, without more, would not motivate the cartel to track an individual across the country.

[29] The Applicants have failed to identify any unreasonableness in the RAD's finding that the PA likely lacks the kind of profile that would motivate the Zetas to search for him outside the local Cancun area. There is no evidence on the Record that Mr. Dzib Tuz was the subject of a personal vendetta, that he was politically opposed to the cartel, or that he had been perceived to have betrayed the cartel. The incidents in question all related to the Zetas' relatively isolated attempt to extort Apolonio. Further, there is no information to support a conclusion that the extortion fee demanded by the cartel would be considered a "large debt." Indeed, it is unclear how much money Los Zetas attempted to extort from the Applicants. Absent evidence to prove that the sum would be considered a large debt by the cartel, it was open to the RAD to find that the Applicants lacked the profile of those that Los Zetas would be motivated to pursue.

[30] While the Applicants submit that the RAD misapprehended the documentary evidence that the Los Zetas "are known to kill those who do not pay extortion fees," this is, again, simply a request to reweigh the evidence. The RAD, in its reasons, referenced the above passage, and found (reasonably, in my view) that this statement related to the Applicants' risk in Cancun, not

in the IFA. The same national documentation package stated that “criminal groups will not typically track individuals for unpaid extortion fees, or if the target decides to flee the country, unless the group perceives a substantial monetary gain, or when an individual possesses ‘too much’ knowledge about the group's operations.” Again, there is no evidence that the extortion fee demanded was substantial, or that Apolonio was targeted for reasons other than monetary. Therefore, the above finding was reasonably open to the RAD.

(2) Targeting of family members

[31] The Applicants additionally submit that the RAD erred by requiring evidence of continued attempts to locate the Applicants through their extended family. They submit that the documentary evidence confirms that Los Zetas have multiple methods to locate and track individuals, and that a failure to approach the Applicants’ remaining family in Mexico does not mean that the cartel lacks the motivation to track and locate them.

[32] It is true that the country conditions evidence indicates Los Zetas have several different means to locate a person of interest. This was uncontroversial: the RAD accepted that the Los Zetas cartel would have the means to locate the Applicants if they were so motivated. However, the fact remains that the Applicants have failed to produce any recent evidence of Los Zetas’ continuing interest in the PA in the past several years, whether that is evidence of contact with his extended family, or other evidence.

[33] Further, the RAD’s conclusion on this point is justified in relation to the applicable jurisprudence. This Court has held that the absence of evidence that the agents of harm tried to

locate the applicants (including by approaching or harassing family) is an element that can reasonably support a finding of a lack of ongoing interest in pursuing them, and therefore a finding of an IFA: *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at paras 16, 18; *Rodriguez Llanes v Canada (Citizenship and Immigration)*, 2013 FC 492 at para 10; *Chavez Perez v Canada (Citizenship and Immigration)*, 2021 FC 1021 at para 10.

[34] This having been said, I would caution decision-makers against relying solely on the targeting or approaching of family members as an indicator of ongoing motivation, unless there is specific evidence that doing so is the standard *modus operandi* of the agent of persecution. A lack of interest in a refugee claimant's family members may well be a relevant consideration in the assessment of the motivation of an agent of persecution, but I suggest that this factor will rarely be sufficient, on its own, to ground a finding of a lack of motivation, absent specific evidence to the contrary: *Rendon Segovia v Canada (Citizenship and Immigration)*, 2023 FC 868 at para 23; *Losada Conde v Canada (Citizenship and Immigration)*, 2020 FC 626 at paras 91-93; *Canifru Candia v Canada (Citizenship and Immigration)*, 2024 FC 917 at para 21.

[35] In this case, the RAD did not rely solely on the lack of efforts to find the Applicants through their family. For the reasons articulated above, I find that it was generally reasonable for the RAD to conclude that the Zetas cartel would not have the motivation to track the Applicants to the IFA.

B. *Second prong*

[36] Similar to the findings of my colleague Justice Strickland in the first judicial review into this matter, I come to a different conclusion on the second prong of the IFA test.

(1) The Principal Applicant's ability to find work in the IFA location

[37] Mr. Dzib Tuz submitted to the RAD that he would be unable to provide for his family in Durango because: i) criminal cartels have infiltrated the construction industry throughout Mexico; and ii) he does not have the ability to find work in other occupations.

[38] The RAD found that the evidence submitted by the Applicants in support of the first of the above propositions was limited to cartel activity in the construction industry in Cancun and the surrounding area. This is indeed the case. In the absence of specific information indicating that cartels including the Zetas were active in the construction industry in Durango, it was open to the RAD to find that the Applicants had failed to establish that Apolonio would be targeted *if* he could find construction work in Durango.

[39] However, the RAD went on to find that even if Mr. Dzib Tuz could find work in the construction industry, and even if the cartels have also infiltrated the industry in Durango, it was reasonable in the circumstances to expect him to find work in a different field.

[40] While this was something of an alternative finding, I nevertheless find that it was unreasonable for two reasons. First, the RAD gave unreasonably short shrift to Mr. Dzib Tuz's testimony as to the difficulty he had finding employment in Cancun; that he experienced serious

discrimination, that he was only eventually able to find work through contacts, and that he had no such contacts in Durango. The documentary evidence before the RAD also suggested that, throughout Mexico, “Indigenous persons have access to ‘fewer’ formal employment opportunities” and “may be excluded from employment and other benefits.” Despite this evidence, the RAD found that the Applicant could find employment in Durango because he found work in Cancun. I find this conclusion essentially ignored both Mr. Dzib Tuz’s own testimony, and the documentary evidence.

[41] Second, while Apolonio acknowledged that he may be able to find work in construction in Durango, he made no such concession on his ability to find work in another field. On the contrary, he specifically testified before the RPD that working in the construction field was his only viable way of earning an income for his family: “The only thing I know how to do whether it’s in Durango or in Cancun is construction.”

[42] This being the case, the RAD’s reliance on the decision of the Federal Court of Appeal in *Trujillo Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 [Trujillo Sanchez] was misplaced. In that decision, which only dealt with IFA issues by analogy, the Court reasoned that “claimants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options.” In this case, I am not convinced that the RAD had an evidentiary basis to support the conclusion that Mr. Dzib Tuz could simply make a reasonable choice to free himself of his risk of harm.

[43] As noted above, the PA testified that he does not have occupational options outside of those in the construction industry. Additionally, and more importantly, Apolonio testified that his

work-related options were limited, at least in part, because of discrimination arising from his Indigenous identity. It should go without saying, of course, that even if Mr. Dzib Tuz could change his occupation, he cannot change his identity. These two factors distinguish the facts in this case from those at issue in *Trujillo Sanchez*.

(2) The Reasonableness of the IFA location for the Minor Applicants

[44] The RAD also erred in its consideration of the reasonableness of internal flight for the minor applicants. More specifically, I find that the RAD erred in failing to appropriately consider the psychological evidence before it, and in integrating this evidence with the documentary evidence related to anti-Indigenous discrimination that exists throughout Mexico.

[45] Amongst other things, the psychological reports confirmed that both Hilary and Brittany experience Post-Traumatic Stress Disorder, and that Brittany, in particular, has considerable internalized shame related to her Mayan ancestry. The report states, in part, “She was full of shame and she didn’t want to talk about the things she felt were tormenting her. She accepted in the sessions she has a very strong dislike to her face, she feels she has strong Mayan features, people in the street could easily identify her of having Mayan Ascendency.”

[46] In light of the evidence, counsel for the Applicants argues that the first error committed by the RAD in respect of the children was its failure to consider whether the minor applicants experienced persecution in Mexico on account of the mistreatment they experienced in the school system in Cancun.

[47] I am not certain that this argument is borne out by the evidence, but I have concluded that it was unreasonable for the RAD to accept that the minor applicants experienced serious discrimination in Cancun, while simultaneously concluding that there was “insufficient evidence that the harassment would take place in the proposed IFA of Durango.” This is for two reasons.

[48] First, the RAD failed to consider the fact that children may be particularly vulnerable to discriminatory treatment – to the trauma that this may impose, and to the impact that it may have on their cognitive and emotional well-being. In *Kim v Canada (Citizenship and Immigration)*, 2010 FC 149, Justice Michel Shore commented on the particular vulnerability of children in considering the meaning of the term “persecution”, but I find it has equal application in considering what is reasonable in the IFA context. Justice Shore stated (at para 58):

In addition to recognizing the rights of children, the RPD should also be aware of the particular vulnerabilities of children when assessing whether particular acts amount to “persecution” of a child. The Preamble to the CRC states, “Bearing in mind that, as indicated in the Declaration of the Rights of the Child, ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth’”. Since the CRC recognizes the vulnerabilities of children, it is appropriate for the RPD to consider their physical and mental development when assessing whether the harm feared by a claimant amounts to persecution. Children, because of their distinct vulnerabilities, may be persecuted in ways that would not amount to persecution of an adult. It is incumbent on the RPD to be empathetic to a child’s physical and mental state and to be aware of the fact that harming a child may have greater consequences than harming an adult.

[49] In light of the above, I find that it was incumbent on the RAD to consider whether the discrimination that the minor applicants experienced would render the proposed IFA location unreasonable, even if similar circumstances would not render it unreasonable for adults in similar

circumstances. Recall that the Psychotherapy Reports for Brittany, in particular, indicate that the mistreatment she experienced in school as a result of her Mayan ethnicity has resulted in significant trauma specifically regarding her visible indigeneity, supported by a diagnosis of PTSD.

[50] I would also underscore that the Immigration and Refugee Board makes much the same point in its *Guideline 3: Proceedings Involving Minors at the Immigration and Refugee Board*.

The Guideline states in part:

9.3.2 Assessing the reasonableness of an IFA must take into consideration the particular circumstances of the minor, such as age, maturity, and gender, and whether these circumstances render the IFA location unreasonable. Members must also assess whether these circumstances make it unreasonable to travel to the proposed IFA area.

9.3.3 Members must remain mindful that what might be a mere inconvenience for an adult could constitute undue hardship for a minor. In particular, members should consider the following factors when assessing whether an IFA is reasonable for a minor:

- Whether conditions in the IFA allow for the minor's development and future livelihood;
- Any medical conditions or disabilities, including both physical and psychological needs, and the availability of support and/or treatment for such in the proposed IFA;
- Access to education, health care, and other social services;
- Cultural and familial factors including language spoken in the IFA, religious and moral upbringing;
- Availability and adequacy of individuals able to initially receive the minor in the IFA and assist in their settlement;
- Availability of adequate ongoing care and support for the minor, in consideration of their age at the time of relocation;

- The presence of other family members must be assessed in cases where a minor will be relocating without parents or legal guardians; and
- When applicable, whether relocating with the child's parent(s) or legal guardian(s) would cause undue hardship to the parent(s) or legal guardian(s).

[51] Coincidentally, this version of the Guideline was published on the same day as the RAD's decision in this matter. While I can therefore understand the RAD's failure to refer to the Guideline, it will nevertheless be essential for the next RAD panel to consider the above principles in reconsidering the Applicants' appeal.

[52] The element that the RAD failed to consider was the general documentary evidence on discrimination against Indigenous people in Mexico and, in particular, the evidence on the mistreatment of Indigenous women. The RAD was relatively dismissive of this evidence, first noting that Nayeli is not Mayan. While it acknowledged that the minor applicants are Mayan, the RAD went on to state that "general country conditions do not render a specific IFA unreasonable."

[53] For reasons that I do not find particularly intelligible, the RAD then cited documentary evidence on the issue of generalized risk in the context of section 97 of the *Immigration and Refugee Protection Act* to support its disregard of the documentary evidence on discrimination against Indigenous peoples in Mexico. It may very well be true that general documentation on country conditions will often be insufficient to ground a finding of unreasonableness in the IFA context. Nevertheless, this evidence is often significant and should be considered in conjunction with a refugee claimant's own life experience. In this case, there was considerable documentary

evidence on pervasive discrimination against Indigenous peoples throughout Mexico. While, as the RAD noted, this evidence may not, on its own, have led to a finding of unreasonableness, it was incumbent on the RAD to consider it in light of the particular circumstances of the minor applicants, namely their early experience of bullying and mistreatment and their psychological vulnerability, as was documented in the psychological evidence. The RAD did not conduct this required analysis.

## VI. CONCLUSION

[54] For the above reasons, this application for judicial review is granted. The parties did not propose a question for certification and I agree that none arises.

**JUDGMENT in IMM-14521-23**

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

1. The application for judicial review is granted.
2. The matter is remitted to a different decision-maker for reconsideration in accordance with these reasons.
3. No question is certified for appeal.

"Angus G. Grant"

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Judge

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

**DOCKET:** IMM-14521-23

**STYLE OF CAUSE:** APOLONIO DZIB TUZ, BRITTANY NAYELI DZIB  
FIGUEROA, HILARY ESTEFANNY DZIB  
FIGUEROA AND NAYELI FIGUEROA CHAVEZ v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

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

**DATE OF HEARING:** FEBRUARY 6, 2025

**JUDGMENT AND REASONS:** GRANT J.

**DATED:** APRIL 1, 2025

**APPEARANCES:**

|                    |                    |
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