

Federal Court



Cour fédérale

Date: 20250422

Docket: IMM-2314-24

Citation: 2025 FC 725

Ottawa, Ontario, April 22, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

**ORLANDO JESUS MENESES CABELLO
CARLA PATRICIA LOPEZ PALAVECINO
BASTIAN ORLANDO MENESES LOPEZ
MATILDE ELIZABETH MENESES LOPEZ
MATIAS ADOLFO MENESES LOPEZ
EVA PASCALE MENESES LOPEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are citizens of Chile. They claimed asylum in Canada based on their fear of a man named El Lonco, a Mapuche leader with connections to the current government and the

Coordinadora Arauco Malleco [CAM]. They alleged that the Principal Applicant was targeted because of his past military service and his support of a particular presidential candidate.

[2] The Refugee Protection Division [RPD] found that the Applicants were credible and accepted their accounts of incidents and threats involving El Lonco and the CAM. However, the RPD concluded that the Applicants had not provided clear and convincing evidence that Chile could not provide them with effective, operational protection. Their application for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, was therefore rejected.

[3] The Refugee Appeal Division [RAD] upheld the RPD's decision.

[4] I am dismissing the Applicants' application for judicial review because the Applicants have failed to establish that the RAD made any reviewable errors. In thorough and detailed reasons, the RAD explained why the Applicants had failed to rebut the presumption of state protection.

II. Analysis

[5] The sole issue for determination is whether the RAD erred in concluding that the Applicants had not rebutted the presumption of state protection. There is no dispute that the applicable standard of review is reasonableness. A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023

SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59–61.

[6] States are presumed capable of protecting their citizens: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 725 [*Ward*]. The onus is on an applicant claiming a lack of state protection to demonstrate that protection is unavailable and inadequate with relevant, reliable, and convincing evidence: *Ward* at 724; *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30 [*Flores Carrillo*]; *Hamam v Canada (Citizenship and Immigration)*, 2023 FC 1656 at para 32. Here, the RAD considered the objective country condition evidence, as well as the evidence of the Principal Applicant, his brother, and his father, in concluding that the Applicants had not met their burden of proof.

A. *Objective country condition evidence does not support the Applicants’ allegation that the Chilean government collaborates with the CAM*

[7] The Applicants based their claim of inadequate state protection on alleged ties between the CAM and the Chilean government. More specifically, they alleged that the police refused to accept complaints about threats by El Lonco because of these connections. The Applicants argue that the RAD erred in failing to take a holistic view of the evidence, instead treating three distinct incidents of police inaction as isolated incidents. They assert that these three events cumulatively show the state’s lack of willingness to protect them.

[8] The fundamental flaw with the Applicants' argument is that it fails to engage with the RAD's reasoning. Specifically, after reviewing the country condition evidence, the RAD determined that it did not support the Applicants' allegation that the Chilean government collaborates with the CAM:

[30] The Appellants argue that the RPD ignored that President Boric's leftist government has "... always openly demonstrated support to the Mapuche and has given immunity to CAM and Mapuche leaders."

[31] I find that the Appellants have failed to provide sufficient evidence that the Boric government has always demonstrated their support to the Mapuche and given immunity to CAM and the Mapuche leaders.

[32] The evidence submitted by the Appellants at the RPD hearing indicates that CAM is a "...radical Mapuche group that periodically carries out attacks in the southern Chilean macro-zone." The CAM, along with other groups, has been declared "illegal associations of a terrorist nature." Rather than the Appellants' characterization of support between the Boric government and the CAM, the evidence indicates that the CAM and the Boric government are in disagreement. For example, CAM has been described as a "radicalized group that opposes the militarization of Araucania implemented by the government of Boric [the president of Chile]."

Refugee Appeal Division Reasons and Decision dated January 17, 2024 [RAD Decision]

[Emphasis added, Citations omitted]

[9] This central finding undercuts the foundation of the Applicants' argument. The Applicants failed to establish the link that turns the police's multiple refusals to act into a pattern of behaviour.

[10] Notably, the Applicants take no issue with the RAD's assessment of the objective country condition evidence. Indeed, the RAD undertook a comprehensive and fair review of National Documentation Package evidence published for Chile. It acknowledged an article that discusses

President Boric’s pardoning of 12 people convicted of crimes arising from the 2019 social outbreak but concluded that this was “insufficient to support the Appellants’ argument that President Boric is always supportive and will give immunity to the agents of harm”: RAD Decision at para 33. Ultimately, there was ample objective evidence to dispel the Applicants’ central allegation that the government supports the CAM and will provide immunity to its members.

B. *The RAD reasonably found that the three attempts to file complaints did not rebut the presumption of state protection*

[11] The RAD considered the evidence relating to the three separate incidents of police refusing to take complaints, and reasonably found that the police inaction in each instance did not rebut the presumption of state protection.

[12] The Principal Applicant testified that he first attempted to file a police complaint after a local meeting of the political party Partido de la Gente in 2021. During the meeting, El Lonco accused the Principal Applicant of being an enemy of the nation, as well as of attacking the Mapuche.

[13] The RAD found that this first attempt to file a complaint did not rebut the presumption of state protection because it constituted a local failure to act by the police involved. There was no evidence of a broader state policy to refuse protection: RAD Decision at paras 39–40. This conclusion is consistent with the jurisprudence: *Flores Carrillo* at para 32; *Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 43; *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 31 [*Ruszo*]; *Gregor v Canada (Citizenship and Immigration)*,

2011 FC 1068 at para 24; *Rocque v Canada (Citizenship and Immigration)*, 2010 FC 802 at para 17; *Zhuravlev v Canada (Citizenship and Immigration)*, [2000] 4 FC 3 at para 31.

[14] The Applicants assert that the RAD overlooked the Principal Applicant's evidence regarding this first refusal. I do not agree. At the RPD hearing, the Principal Applicant testified that one of the reasons the police did not take a report is because the incident was related to "a Mapuche leader with a strong connection with the current government": Transcript of the Refugee Protection Division hearing, June 12, 2023, Certified Tribunal Record at 732. The RAD specifically referred to this evidence in its reasons: RAD Decision at para 10. As explained in paragraphs 8–10 above, the RAD found that the objective country condition evidence on Chile did not support the Applicants' assertion that the current government is connected to the CAM and to Mapuche leaders. In that light, I find that the RAD thus interpreted the Principal Applicant's testimony as an "allegation" reflecting his subjective belief as to why local police refused to take his complaint.

[15] The second refusal relates to the Principal Applicant's attempt to file a complaint with the police station in his brother-in-law's neighbourhood, following an incident in a coffee shop in December 2021. His evidence was that the police would not accept his complaint because he was not a resident of that community. The RAD found that this refusal did not "represent a failure by the state to provide protection, but rather seems to represent an appropriate and efficient response to someone attempting to file a complaint in a different community in which that person resides": RAD Decision at para 43. I find that this reasoning meets the requirements of transparency, intelligibility, and justification.

[16] Furthermore, the RAD pointed out the Applicants did not provide evidence as to why requiring that a complaint be lodged at one's local police station was unreasonable: RAD Decision at para 42.

[17] The third incident relates to an assault on the Principal Applicant's father, in September 2023. Following the assault, the father and his neighbour approached a police officer on the street. The officer told them that an investigation would likely be fruitless given that they did not know who their attackers were. The RAD found that the police officer's response did not demonstrate a lack of state protection. Rather, the officer acted reasonably in the circumstances because the father was unable to identify his assailants. As the RAD pointed out, it is simply a "practical reality" that the police require a wrongdoer's identity to investigate a crime: RAD Decision at para 61.

[18] The RAD's approach to this third incident has ample support in the jurisprudence: *Davidova v Canada (Citizenship and Immigration)*, 2013 FC 908 at para 44; *Riczu v Canada (Citizenship and Immigration)*, 2013 FC 888 at para 19; *Kallai v Canada (Citizenship and Immigration)*, 2010 FC 729 at para 20; *Aguilar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1519 at para 25; *Mejia v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1180 at para 12.

[19] The Applicants argue that the RAD misapprehended the facts relating to the assault and erroneously found that it was a "random attack". They assert that the father's assailants identified themselves as CAM affiliates, that the assault was witnessed by a neighbour, and that it was a targeted attack. This, in their view, distinguishes this case from *Smirnov v Canada (Secretary of*

State) (TD), [1995] 1 FC 780 [*Smirnov*], upon which the RAD relied. This said, while that decision refers to “[r]andom assaults [...] where the assailants are unknown [...] and there are no independent witnesses”, the differing facts do not undermine the relevance of the legal principle that police action is inhibited where the identity of the individual assailants are unknown: *Smirnov* at 786.

[20] Here, there is no dispute that the identities of the actual attackers were unknown. The RAD’s finding concerning the third allegation of police inaction was premised on this lack of information. In my view, the RAD’s determination was entirely reasonable.

III. Conclusion

[21] Based on the foregoing, I find that the RAD’s decision is justified given the relevant constraining facts and law: *Vavilov* at para 85. The application for judicial review is therefore dismissed.

[22] The parties did not propose any questions for certification, and I agree that none arise.

JUDGMENT in IMM-2314-24

THIS COURT’S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2314-24

STYLE OF CAUSE: ORLANDO JESUS MENESES CABELLO, CARLA
PATRICIA LOPEZ PALAVECINO, BASTIAN
ORLANDO MENESES LOPEZ, MATILDE
ELIZABETH MENESES LOPEZ, MATIAS ADOLFO
MENESES LOPEZ, EVA PASCALE MENESES
LOPEZ v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: MARCH 4, 2025

JUDGMENT AND REASONS: TURLEY J.

DATED: APRIL 22, 2025

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