

Federal Court



Cour fédérale

Date: 20250502

Docket: IMM-10223-24

Citation: 2025 FC 802

Toronto, Ontario, May 2, 2025

PRESENT: The Honourable Justice Battista

BETWEEN:

ISMAEL LEZAMA MAGANA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Refugee Appeal Division (RAD) found that the Applicant had viable internal flight alternatives (IFAs) in Cabo San Lucas and Mexico City. The RAD found that the Jalisco New Generation Cartel (CJNG), an individual named “S”, and the Mexican police did not have the motivation to persecute the Applicant in the proposed IFAs.

[2] The Applicant argues that the RAD mischaracterized and ignored evidence. However, in my view the RAD's treatment of the evidence cannot be characterized as unreasonable, and the application for judicial review is dismissed.

II. Background

[3] In March 2018, the Applicant and his business partner Jonathan received a threat from the CJNG demanding 40,000 pesos. Over one year later, in May 2019, they experienced a kidnapping attempt at a job site, resulting in the Applicant's injury and Jonathan's disappearance. Prior to the attack they met "S", who encouraged the Applicant to flee.

[4] The Applicant met with the police but did not file a report through fear that it would make it easier for the CJNG to find him. Instead, he fled to Tabasco, where he restarted a business in January 2020.

[5] One year later, in January and February 2021, the Applicant received extortion calls. He was informed that his location in Tabasco was known but his extorters were waiting for him to have enough money to obey their demands. They also told him to warn Jonathan's wife to stop investigating her husband's disappearance.

[6] The Applicant promised to pay the extortion, but did not do so. In November 2021, he fled to Canada and made a claim for refugee protection.

[7] The Refugee Protection Division (RPD) rejected his claim on the basis that he has IFAs in Cancun, Los Cabos, and Mexico City. The RAD rejected the appeal from the RPD's decision but found IFAs for him only in Cabo San Lucas and Mexico City. The determinative finding was that the identified agents of persecution did not have the motivation to find the Applicant in the IFAs.

[8] The RAD found no evidence that the CJNG attempted to contact the Applicant or his family members since February 2021, including the time that he was in Tabasco and after he relocated to Canada. The RAD also found that given its disinterest in the Applicant, the CJNG would not be motivated to locate him in the places of IFA given the large population and the CJNG's low level of criminal activities in those areas. The RAD referred to documentary evidence indicating that the CJNG conducts a cost-benefit analysis before deploying resources to track an individual, and the Applicant would not fall into the profile of someone the CJNG would be interested in pursuing.

[9] The RAD also found no evidence that the police were interested in the Applicant and insufficient evidence that "S" was a member of the cartel motivated to harm the Applicant.

[10] In the absence of a risk of persecution in the IFAs, the RAD found that it would not be unreasonable for the Applicant to relocate to Cabo San Lucas or Mexico City, given his education, employment experience, and ability to speak Spanish. The RAD addressed the argument that it would be unreasonable for the Applicant to change his line of work to avoid the agents of persecution, but found that given the lack of the CJNG's motivation to pursue him, the Applicant would not have to hide.

[11] The RAD also found that the Applicant could seek out other means of employment, that the Applicant could take reasonable precautions on social media to avoid detection, and that travel to the IFA destinations would not jeopardize his safety.

III. Issue

[12] The Applicant challenges the reasonableness of the RAD's IFA evidentiary findings. This issue is assessed pursuant to the reasonableness standard described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*), affirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

IV. Analysis

[13] The issues raised by the Applicant regarding the RAD's treatment of the evidence do not rise to the threshold of unreasonableness.

A. *The RAD did not mischaracterize the evidence regarding the CJNG's motivation*

[14] The RAD's decision regarding the CJNG's lack of motivation to track the Applicant is justified considering the country condition evidence and the Applicant's profile.

[15] First, the Applicant states that the RAD mischaracterized the agents of persecution's means and motivation based on the Applicant's profile with respect to the country condition evidence.

[16] The Applicant's arguments and reference to country condition evidence primarily concern the CJNG's means rather than motivation to locate the Applicant. However, the issue of the CJNG's means was not the essence of the RAD's decision. The RAD's focus was upon the CJNG's motivation, and establishing motivation to persecute is a reasonable consideration in the IFA analysis (*Matubber v Canada (Citizenship and Immigration)*, 2024 FC 1175 (*Matubber*) at para 28, citing *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46). The Applicant has not demonstrated that the RAD failed to consider evidence regarding the CJNG's ability to locate the Applicant.

[17] Second, the Applicant's submission regarding the RAD's alleged understatement of the risk to the Applicant as a businessowner and civilian is not well-founded. The Applicant cites a document stating that "[w]orkers and business owners also figure among some of the most targeted actors across the country". However, this statement is in the context of the CJNG targeting civilians as a "territorial control strategy"; it is not in reference to retaliation against a business owner like the Applicant. It therefore does not constitute evidence that contradicts the RAD's conclusion that the Applicant would not face retaliation as a businessperson (see *Buitrago Salazar v Canada (Citizenship and Immigration)*, 2022 FC 1048 at para 25). The RAD was entitled to determine which evidence it found more probative for its conclusion regarding the Applicant facing retaliation as a businessperson; this is the weighing exercise to which a reviewing court should defer (*Vavilov* at para 125).

[18] Third, the Applicant states that the RAD overlooked his profile related to his assistance to Jonathan's wife. However, this was not advanced as a central issue for motivation before the RAD; the focus was on the evidence of extortion (*Kapoor v Canada (Citizenship and Immigration)*, 2025

FC 365 at para 15). The Applicant's Basis of Claim narrative and testimony are largely silent on his role in the search efforts.

[19] The country condition evidence relied upon by the Applicant does not contradict the RAD's decision. It speaks only in general terms about the risks volunteer searchers have faced from organized crime, rather than circumstances specific to the Applicant.

[20] Overall, the Applicant's arguments invite the Court to find a sufficiency of evidence where the RAD found none. This is not permissible for a Court on judicial review (*Vavilov* at para 125).

B. *The RAD did not mischaracterize evidence of previous motivation*

[21] The RAD did not fundamentally mischaracterize evidence regarding the CJNG's motivation to find him.

[22] First, the RAD did not overlook evidence that, based on the phone calls in January and February 2021, the CJNG was "already tracking" the Applicant and had already conducted the "cost-benefit analysis" referred to in the documentary evidence.

[23] The RAD specifically addressed the February 2021 phone call and found that there was no evidence the CJNG attempted to contact or locate the Applicant until and after he left the country in November 2021. It also found no evidence that his family in Mexico was approached. The RAD concluded that the CJNG lacked motivation, in part, because of the evidence of the passage of time without further threats. This conclusion is reasonable, despite the caution that should be exercised

before drawing such conclusions regarding motivation (*Espana Alvarez v Canada (Citizenship and Immigration)*, 2021 FC 935 at para 23).

[24] It was also reasonable in these circumstances for the RAD to consider that the CJNG had not ever attempted to contact the Applicant's family, though such lack of contact may not necessarily be determinative in itself (*Pardo v Canada (Citizenship and Immigration)*, 2024 FC 427 (*Pardo*) at para 16 [citations omitted]; *Adebowale v Canada (Citizenship and Immigration)*, 2024 FC 1828 at para 20 [citations omitted]).

[25] Second, the RAD reasonably concluded that the CJNG would not be motivated to seek out the Applicant based on his outstanding extortion fees. The RAD noted that he was not a member of a profile who the CJNG would be motivated to locate, particularly considering the evidence regarding the CJNG seeking to target profiles that the Applicant did not fit. Again, it is not appropriate for the Court to reweigh evidence before the RAD when applying the reasonableness standard to the RAD's decision (*Vavilov* at para 125).

[26] Finally, the Applicant argues that it was unreasonable for the RAD to propose IFA locations on the premise that the Applicant's life circumstances would remain unchanged. The Applicant asserts that based on the RAD's logic he would need to refrain from becoming commercially successful or prominent in the proposed IFAs.

[27] This argument requires speculation about the evidence and ignores the RAD's detailed analysis as to why the Applicant would not fit any of the profiles that would attract the CJNG's interest, including that of a businessperson. He has not pointed to any evidence that he would have

“to go into hiding” to avoid the CJNG (*Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 at para 29). In my view, the Applicant is faulting the RAD for not presuming that a profile sufficient to attract and motivate the CJNG would materialize.

[28] It was the Applicant’s onus to lead sufficient evidence that he could not relocate to the IFAs, including establishing that the CJNG would have the motivation to find him (*Matubber* at para 28 [citation omitted]). The Applicant is requesting the Court to speculate that he may become commercially successful in the IFAs and to an extent that will attract the CJNG’s interest. This is not an appropriate request for a Court in the exercise of judicial review.

V. Conclusion

[29] The reweighing and reassessment of evidence is not the role of a Court on reasonableness review (*Vavilov* at para 125). The RAD’s findings regarding availability for IFAs are justified, transparent, and intelligible, rendering its conclusions and its decision reasonable.

JUDGMENT in IMM-10223-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification, and no order regarding costs.

"Michael Battista"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10223-24

STYLE OF CAUSE: ISMAEL LEZAMA MAGANA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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