Federal Court Cour fédérale

Date: 20250520

Docket: IMM-10335-23

Citation: 2025 FC 918

Ottawa, Ontario, May 20, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

BRENDA MENDOZA SANTIBANEZ
ARTURO PANI JIMENEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants sought refugee protection in Canada based on their fear of members of the Cártel Jalisco Nueva Generación ("CJNG"). The Refugee Protection Division ("RPD") dismissed their claim on the basis that they had a viable internal flight alternative ("IFA"). The Applicants challenged this decision on appeal. The Refugee Appeal Division ("RAD")

confirmed the RPD's decision, finding the Applicants had an IFA, and therefore their claims could not be accepted.

[2] On judicial review, the Applicants challenge the RAD's assessment of the second prong of the IFA test – namely, whether it was reasonable for them to move to the IFA location. The Minister asks the Court to not entertain this argument because it was not a basis for their appeal before the RAD. While I agree with the Minister that the Applicants did not explicitly challenge the RPD's second prong determination before the RAD, I find it unnecessary to dismiss the judicial review on this basis. The Applicants' arguments about the unreasonableness of the second-prong analysis are without merit. They have not established any significant shortcoming in the RAD's analysis, which relied on the RPD's reasoning, of the second prong of the IFA test.

[3] Accordingly, I dismiss the application for judicial review.

II. Background and Decision Under Review

[4] The Applicants are citizens of Mexico. They allege that, if they return to Mexico, they would be seriously harmed by members of the CJNG, who they claim extorted money from them before they left Mexico in 2018. They filed a claim for refugee protection in December 2020. The RPD found that the determinative issue was the availability of a viable IFA. The RPD found that the evidence did not establish that the CJNG would have either the motivation or the means to track the Applicants in the IFA location.

[5] The Applicants filed an appeal with the RAD. On appeal, the Applicants focused their submissions on the first prong of the IFA test – namely whether they would be safe from section 96 or section 97 harm in the proposed location (*Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], s 96, 97). Specifically, the Applicants took issue with the evidence relied upon by the Member in the National Documentation Package. The Applicants argue that the submissions they made about the evidence considered by the RPD related to both prongs of the RPD's IFA analysis. Having carefully reviewed the submissions made to the RAD, I cannot agree. The submissions are focused on the evidence. No submissions were made with respect to the second prong of the IFA test.

[6] The RAD issued their decision on July 21, 2023, upholding the RPD's decision to reject the Applicants' refugee claims on the grounds there was a viable IFA. The RAD addressed both prongs in its decision, even though no arguments were made challenging the RPD's decision on the second prong. The RAD adopted the RPD's analysis on the second prong. The RPD had found that the Applicants had not put forward any evidence claiming it would be unreasonable. The RPD also noted that the Applicants both speak the language used in the IFA, were educated and had been previously employed in Mexico. Ultimately, the RAD found that the Applicants had not established that it would be unreasonable to move to the proposed IFA.

III. Issue and Standard of Review

[7] The Applicants are challenging the merits of the RAD's analysis of the second prong of the IFA. The parties agree, as do I, that I ought to review the substance of the decision on a

reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23).

[8] In *Vavilov*, the Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the starting point of the analysis begins with the decision maker's reasons (at para 13). A decision maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103). The Court described a reasonable decision as "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" (*Vavilov* at para 85). Administrative decision makers, in exercising public power, must ensure that their decisions are "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

IV. Analysis

[9] The Applicants make two arguments about the second prong of the IFA test. First, they argue that the RAD failed to consider psychological evidence that was key to the issue of whether it was objectively unreasonable for them to seek refuge in the IFA location. Second, the Applicants argue that the RAD, in relying on the RPD's reasons on this issue, committed a logical fallacy in their reasoning.

[10] With respect to the psychological evidence, the Applicants are referring to a two-page letter from a social worker for the female Applicant. There is no diagnosis of the female Applicant and the conclusion of the letter is to state that after four sessions of counselling, she

can now “better manage her anxiety.” The Applicants did not reference this evidence in their submissions to the RAD, nor to the RPD. When asked directly at the RPD about the difficulties in relocating to the proposed IFA, the Applicants did not reference any mental health concerns.

[11] In light of this context, I cannot find it was unreasonable for the RAD to not mention the social worker’s letter.

[12] The Applicants argue that the RPD, and the RAD by extension, relied on a “logical fallacy” in their reasoning on the second prong of the IFA. Specifically, the Applicants take issue with the RPD’s statements that the Applicants had previously worked in Mexico and spoke Spanish. They argue that referencing this fact is a logical fallacy because it assumes that, because they speak Spanish and have previously worked in Mexico, they will not have problems in returning there.

[13] I cannot follow this argument. The onus is on the Applicants to present submissions and evidence about why the proposed IFA is objectively unreasonable for them. In the face of no submissions on this point, the RPD and the RAD noted that the Applicants speak the language and had been employed in the country. I do not find that the RAD made an unfounded assumption in referencing these facts.

[14] Nor do I find, as argued by the Applicants, that the Applicants receiving social assistance in Canada, in and of itself, is relevant to the question of whether the IFA in Mexico is objectively

unreasonable. Accordingly, in this context, I do not find that it was unreasonable for the RAD not to reference this fact in their analysis of the second prong of the IFA test.

[15] I do not find that the Applicants have raised any sufficiently serious shortcoming with the RAD's reasons to warrant the Court's intervention. The application for judicial review is dismissed.

JUDGMENT in IMM-10335-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of serious importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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