

Federal Court



Cour fédérale

Date: 20250604

Docket: IMM-16104-23

Citation: 2025 FC 1005

Ottawa, Ontario, June 4, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**RENE RICARDO VILLEGAS ZEPEDA
NORMA IVETTE VALLEJO GALLEGO
RENE RICARDO VILLEGAS VALLEJO**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family: a couple and their minor child. The Applicants, citizens of Mexico, applied for refugee protection in Canada because of their fear of being threatened and attacked by members of a drug cartel. The Refugee Protection Division (“RPD”) refused their claims, finding that they could safely relocate to another city in Mexico. The Applicants

appealed and filed new evidence before the Refugee Appeal Division (“RAD”). The RAD refused to admit the new evidence and dismissed the appeal, confirming the RPD’s determination that the Applicants had a viable Internal Flight Alternative (“IFA”) in Mexico.

[2] The Applicants challenge the RAD’s decision on judicial review. The Applicants raise several arguments. The determinative issue is the RAD’s treatment of the new evidence, and in particular, the RAD’s refusal to admit evidence from Mr. Zepeda’s mother describing a recent attack she experienced by the drug cartel at issue. It is unnecessary for me to address the Applicants’ other arguments because the RAD’s treatment of the mother’s evidence requires the decision be quashed and redetermined.

II. Background to the Refugee Claim

[3] Mr. Zepeda alleges that he was first approached by the drug cartel in January 2020. He was threatened with death unless he paid a monthly extortion fee. Mr. Zepeda agreed. By December 2021, Mr. Zepeda was struggling to make the payments. He received threatening notes outside of his family home, threatening to murder him and his family.

[4] In January 2022, two men came to the family home and warned Ms. Zepeda that they would kill her son if they were not paid. The Applicants filed a police complaint.

[5] Later that same month, three armed men attacked Mr. Zepeda and his brother-in-law on their way home. The men threatened harm to all of Mr. Zepeda’s family, including his parents. The Applicants decided they had to leave Mexico following this incident.

[6] Before they left, Mr. Zepeda's brother's truck was shot at, seriously injuring his brother and killing his nephew.

[7] The Applicants arrived in Canada at the end of February 2022 and made a refugee claim. The RPD heard their claim on July 28, 2023. On August 16, 2023, the RPD dismissed the claim on the basis that there was a viable IFA.

[8] The Applicants appealed the RPD's decision. With their appeal, the Applicants filed the following new evidence that the RAD marked as exhibits:

- a. Exhibit A: Letter from Mr. Zepeda's mother, dated August 12, 2023, describing an attack that happened to her that evening;
- b. Exhibit B: Letter from the Applicants' neighbour, dated August 30, 2023, describing visits of armed men since family left;
- c. Exhibit C: Letter from residential complex manager, dated September 1, 2023, describing that armed men in different vehicles inquired about the Applicants' whereabouts several times a week;
- d. Exhibit D: an article describing the shooting of Mr. Zepeda's brother-in-law and nephew, dated February 14, 2022; and
- e. Exhibit E: Letter from Mr. Zepeda describing the nature of the new evidence, why it was not provided sooner, and how it was obtained.

[9] The RAD dismissed the appeal on November 20, 2023. The RAD did not admit the new evidence. The RAD accepted that the Applicants were generally credible in their claims. The

sole issue for the RAD, like the RPD, was IFA. On IFA, the RAD found that the Applicants had not established with sufficient evidence on a balance of probabilities that the drug cartel would be motivated to locate them in the IFA.

III. Analysis

[10] The determinative issue on judicial review is the RAD's decision to not admit new evidence on the appeal and in particular, the document it marked as Exhibit A – Mr. Zepeda's mother's letter. Mr. Zepeda's mother describes being attacked by members of the drug cartel, who threatened that they will find Mr. Zepeda no matter where he hides and that they are responsible for the murder of Mr. Zepeda's nephew.

[11] The criteria for the admission of new evidence at the RAD is set out in subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]:

110(4). On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

110(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[12] The RAD correctly noted this statutory requirement and explained that in addition to these constraints, it also had to consider whether the evidence is relevant, material, and credible (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh FCA*] at paras 38-49).

[13] The Applicants argued that they could not have been reasonably expected to have presented the mother's letter to the RPD because of the short time between when the attack occurred (Saturday, August 12, 2023 at 6pm) and when the RPD rendered its decision (Wednesday, August 16, 2023).

[14] The RAD found that the Applicants had not met the requirements under subsection 110(4) of IRPA because they had not sufficiently explained why they could not have presented the mother's letter to the RPD prior to it issuing its decision.

[15] The Respondent on judicial review argued that the RAD had no discretion and had to reject the new evidence that pre-dated the RPD decision. It is certainly true that the RAD has no discretion but to apply the criteria set out in subsection 110(4) of IRPA in deciding whether to admit new evidence (*Singh FCA* at para 63). However, under those criteria, two of the circumstances where new evidence is allowed require the RAD to consider the claimants' circumstances and determine whether the evidence was either "reasonably available" or "could not reasonably have been expected in the circumstances to have been presented" prior to the RPD's decision. The Federal Court of Appeal in *Singh* explained that "the RAD always has the freedom to apply the conditions of subsection 110(4) with more or less flexibility depending on the circumstances of the case" (*Singh FCA* at para 64).

[16] In my view, without more explanation, the RAD's determination that new evidence should be barred because it was produced about an event that took place four days – and only two intervening business days – prior to the RPD issuing its decision is unreasonable. There is no

indication that the RAD meaningfully contemplated how a claimant would be able to provide this evidence to the RPD within this short timeframe.

[17] The attack happened on a Saturday evening. That same evening Mr. Zepeda was told about the attack and Mr. Zepeda's mother wrote a letter describing the attack in Spanish. The RAD's position is that it was reasonable to expect, in two business days, that a claimant would be able to provide the RPD with this evidence, which required at minimum for the evidence to be: i) translated, ii) reviewed by the family's lawyer; and iii) sent to the RPD.

[18] Claimants do not necessarily have direct, immediate access to their lawyers. It is even more difficult when one considers that an interpreter is often required. While the Applicants certainly could have provided more detail in their submissions supporting the request to admit new evidence, I can understand why they found it unnecessary to do so given the short timeframe at issue.

[19] In rejecting the Applicants' explanation, the RAD's reasons disclose no consideration of the practical realities of submitting evidence. In these particular circumstances, the timeframe to file the new evidence being so short, it was unreasonable for the RAD to find, without more explanation, that it was reasonable to expect the claimants to have produced this evidence prior to the RPD's rejection of their claim.

[20] The consequence of the RAD's finding is that a critical piece of evidence could not be considered in assessing the Applicant's risk of return. It is not clear to me, in reading the RAD's

reasons, that its refusal to admit the new evidence took into account the stakes of this decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 133).

[21] I want to also address the RAD's credibility findings about the new evidence. At the outset of the RAD's discussion about the credibility of the new evidence, it states "even if I were to find that Exhibits A-C meet one or more of the criteria under subsection 110(4) of IRPA, I find under *Singh/Raza*, they are not credible."

[22] However, in the paragraphs that follow the RAD does not specifically address Mr. Zepeda's mother's letter (Exhibit A). Moreover, what the RAD does say – that this evidence was produced after the RPD decision in response to it – is inaccurate in respect of Mr. Zepeda's mother's letter, which was created before the RPD rejected the claim. And then at the conclusion of this credibility discussion, the RAD states "I therefore do not enter Exhibit B and C into evidence." There is no mention of Exhibit A – Mr. Zepeda's mother's letter. Reading these paragraphs all together, the inclusion of Exhibit A in the first sentence of the credibility section appears to be in error.

[23] The Respondent also argued that the RAD's decision to not admit Mr. Zepeda's mother's letter was not determinative because it would not have affected the RAD's ultimate conclusion on IFA.

[24] I do not agree.

[25] The Respondent relied on the RAD's reasoning in paragraph 49 of the decision, arguing that the RAD found that even if it were to accept the new evidence, it still would have found that the agent of persecution did not have the motivation to find the claimants in the IFA location.

[26] First, I do not agree with this reading of paragraph 49 of the RAD decision. Second, even if I accept the Respondent's reading, I find this statement by the RAD to be unintelligible given its prior justification for finding the drug cartel lacked motivation to seek the Applicants in the IFA location.

[27] The RAD writes:

Here, I reiterate again that I did not admit the evidence which the Appellants submitted the RAD as new evidence, and hence, do not find that the Appellants have established with sufficient evidence that the interest of the ... [drug cartel] in them is demonstrable by the recent attack on the Principal Appellant's mother or that it has been paying visits to their home in Veracruz on a regular basis since they left Mexico to find out when they would be returning. In relation to this, I also find that even if this were the case, namely that ...[affiliates of the drug cartel] are visiting the Appellants' home in Veracruz to see if they returned, there is insufficient evidence to establish that the ... [drug cartel] would therefore be motivated on a balance of probabilities to spend time and resources to find and harm the Appellants in the ... [IFA].

[28] First, as I noted at the hearing, where the RAD states "even if this were the case" – the RAD identifies the "this" in that phrase by saying "namely, that the... [drug cartel] are visiting the Appellants' home in Veracruz to see if they have returned". This is the description of the evidence in Exhibits B and C and not Exhibit A – the mother's letter. Therefore, it is unclear that the RAD's statement about irrelevance of the new evidence for its ultimate IFA assessment is even referring to Mr. Zepeda's mother's letter.

[29] In any case, even if I am wrong on the interpretation of paragraph 49, I find the RAD failed to explain why, if it had accepted the evidence of Mr. Zepeda's mother, this would not have affected its determination on the motivation of the drug cartel. The RAD only states this as a conclusion and does not provide an explanation. An explanation was particularly necessary given the RAD's previous findings on the drug cartel's lack of motivation.

[30] The RAD's rationale for finding that the drug cartel lacked the motivation to seek out the Applicants in the IFA was based on the lack of contact with family members and that there was no evidence of a "personal vendetta". The evidence about the attack of Mr. Zepeda's mother is relevant to those factual findings that formed a key part of the RAD's assessment of the drug cartel's motivation to seek the Applicants in the IFA location.

[31] I find the RAD's decision to not admit Mr. Zepeda's mother's letter was unreasonable. This evidence was relevant to the RAD's findings on the determinative issue – IFA. In these circumstances, the RAD's decision must be set aside and sent back for redetermination. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-16104-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The RAD decision dated November 20, 2023 is set aside and sent back to be redetermined; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16104-23

STYLE OF CAUSE: RENE RICARDO VILLEGAS ZEPEDA, NORMA
IVETTE VALLEJO GALLEGO, AND RENE
RICARDO VILLEGAS VALLEJO v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: NOVEMBER 19, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JUNE 4, 2025

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