Federal Court  Cour fédérale

Date: 20250605

Docket: IMM-6442-24

Citation: 2025 FC 1017

Ottawa, Ontario, June 5, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

LUCERO MAYAN ORDONEZ FIERRO
ABRAHAM RAMIREZ OLIVAS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated March 12, 2024, of the Refugee Appeal Division ("RAD") that upheld the decision of the Refugee Protection Division ("RPD") decision that dismissed the Applicants' application for refugee protection because of the availability of an internal flight alternative ("IFA") ("Decision").

[2] The Applicants argued that the RAD acted without jurisdiction, made an error at law, made erroneous findings of fact, and infringed their *Charter* rights.

[3] The Respondent argued that the Decision was reasonable.

[4] For the reasons that follow, this application is dismissed.

II. Background

[5] The Applicants, Lucero Mayan Ordonez Fierro ("Associate Applicant") and her spouse Abraham Ramirez Olivas ("Principal Applicant"), are citizens of Mexico.

[6] The Applicants arrived in Canada on April 17, 2018. They made their claims for refugee protection on August 9, 2020.

[7] The Principal Applicant was a businessperson in Mexico, primarily working in real estate transactions. The Applicants alleged that in July 2017, the Principal Applicant unknowingly became involved in a real estate transaction with a member of the Juarez cartel ("Juarez"). They alleged that the Principal Applicant was kidnapped by members of the El Cabo cartel ("El Cabo"), because they suspected that he worked for Juarez.

[8] The Principal Applicant managed to escape. Shortly after his escape, the Applicants went into hiding at the Principal Applicant's parents' home, approximately ten minutes away from their residence.

[9] The Applicants alleged that the Principal Applicant closed a restaurant business he owned due to "suspicious men" visiting and lingering in the area. They asserted that they were warned by a local food vendor that suspicious individuals were looking for the Principal Applicant.

[10] The Applicants submitted evidence that the Juarez member, with whom the Principal Applicant had the real estate transaction, and the food vendor who warned the Applicants of suspicious individuals in the area, were both murdered.

[11] The Applicants claimed that after leaving Mexico, the Principal Applicant's mother was approached by two men inquiring about the location of the Principal Applicant.

A. *RPD decision*

[12] On June 6, 2023, the RPD found that the Applicants were not Convention refugees or persons in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], because they had a viable IFA in Merida, Yucatan State.

[13] The RPD accepted the allegations of risk of persecution or harm due to their fears of Juarez, El Cabo, and the Cartel Jalisco New Generation ("CJNG") (collectively, the "Cartels"), as credible. However, it should be noted that credibility issues were raised in respect of the Applicants' delay in leaving Mexico and the delay in applying for refugee protection in Canada.

[14] Not withstanding the acceptance of the allegations of risk, the RPD found that the Applicants had not provided sufficient information to establish that the Cartels had any motivation to locate and harm them in the proposed IFA in Merida.

B. *RAD Decision*

[15] The RAD concluded that the Applicants have a viable IFA in Merida, noting:

> [15] The RAD therefore finds that the appellants do not have a well-founded fear of persecution on a Convention ground and, on a balance of probabilities, would not be personally subjected to a danger of torture, or to a risk to their life, or to a risk of cruel and

> unusual treatment or punishment that falls within the definition of subsection 97(1)(b) of the IRPA if they return to Mexico.
>
> [15] [*sic*] Pursuant to subsection 111(1)(a) of the IRPA, the RAD therefore confirms the Decision of the RPD, and finds that the appellants are neither Convention refugees nor persons in need of protection. Their appeal is therefore dismissed.

III. Issues and Standard of Review

[16] The issues for determination in this application are:

A. Did the RAD breach procedural fairness by failing to admit the Applicants' new evidence?

B. Was the Decision reasonable?

C. Does the Decision breach principles of procedural fairness?

[17] The parties submitted, and I agree, that the applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86).

[18] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, 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" (*Vavilov* at para 85).

[19] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[20] The standard of review for procedural fairness issues is correctness, or akin to correctness (*Vavilov* at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). The reviewing court must consider what level of procedural fairness is necessary in the circumstances and whether the "procedure followed by the administrative decision maker respect[s] the standards of fairness and natural justice" (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13). In other words, a court must determine if the process followed by the decision maker achieved the level of fairness required in the circumstances (*Kyere v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 120 at para 23, citing with approval *Mission Institution v Khela*, 2014 SCC 24 at para 79).

IV. Analysis

[21] The Respondent argued that the RAD conducted a thorough, independent review and reasonably concluded that the agents of harm would not be motivated to pursue the Applicants in the proposed IFA. The proposed IFA was reasonable and took into consideration the Applicants' personal circumstances. In addition, the Respondent argued that the RAD correctly did not admit or consider the Applicants' request for new evidence.

A. *New evidence at the RAD*

[22] In support of their appeal to the RAD, the Applicants submitted three new pieces of evidence:

1. *Yucatan Times* article entitled "Guacamaya Leaks reveals drug cartels presence in Yucatan", dated October 14, 2022;
2. *Boarderland Beat* article entitled "Mérida, Yucatán: CJNG Members Tried to Extort Merchants With A Threatening Video", dated July 3, 2023;

3. *El Pais English* article entitled “Mexican cartels are taking control of the fishing and logging industry”, dated May 23, 2022.

[23] The RAD did not admit the new evidence because the Applicants did not provide argument as to why the RAD should admit and consider the new evidence.

[24] I have reviewed the Applicants’ submissions to the RAD, dated September 25, 2023. Their submissions to the RAD indicate that the articles “demonstrate not only the vast network that the cartels in question have established throughout Mexico, but also that State Protection does not seem to be a viable recourse in the wake of organised crime.” The submissions then go on to describe the content of the articles. However, a review of the submissions to the RAD supports the conclusion that the Applicants failed to establish how this evidence satisfied the criteria for the admission of new evidence on appeal.

[25] In *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, the Federal Court of Appeal noted the admissibility of fresh evidence before the RAD is “subject to strict criteria” as set out in subsection 110(4) of the *IRPA*, the criteria are unambiguous and are not discretionary (at para 63). Subsection 110(4) of the *IRPA* states that “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” will be admitted on appeal.

[26] Two of the articles that the Applicants sought to have admitted pre-date the RPD hearing (April 25 and May 12, 2023) and the RPD decision on June 6, 2023. The Applicants’ submissions do not address why this information was not submitted to the RPD for consideration.

[27] The Applicants' submissions are silent as to why the RAD ought to have accepted this new evidence, or how it met the exceptions for the admission of new evidence as set out at subsection 110(4) of the *IRPA*.

[28] The RAD's decision to exclude this evidence is reasonable. The RAD has no discretion to admit new evidence on appeal that does not satisfy subsection 110(4) of the *IRPA*. The general rule is that the RAD is to proceed based on the record that was before the RPD; the scope for the introduction of new evidence is narrow.

B. *Reasonableness*

[29] The well established two-prong test for assessing an IFA was set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), [1992] 1 FC 706, 1991 CanLII 13517 (FCA).

[30] An IFA is a place in an applicant's country where they would not be at risk, and therefore it would not be unreasonable for the applicant to relocate to, rather than seeking protection in another country. Where there is a viable IFA, a claimant is not entitled to protection from another country (*Bhuiyan v Canada (Citizenship and Immigration)*, 2024 FC 351 [*Bhuiyan*] at paras 5–6).

[31] The first prong of the test requires applicants to prove there is a serious possibility of persecution in the IFA (*Bhuiyan* at paras 5–7). At this stage of the analysis the agent of persecution's means and motive to locate the applicant in the IFA are considered (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21).

[32] The second prong of the test requires the applicants to prove that they could not reasonably seek refuge in the IFA location, when considering their particular circumstances (*Bhuiyan* at paras 6–7).

[33] To succeed in establishing that a proposed IFA is not reasonable, an applicant must persuade the RAD that at least one prong of the test is not made out (*AB v Canada (Citizenship and Immigration)*, 2021 FC 90 [AB] at para 39, citing *Aigbe v Canada (Citizenship and Immigration)*, 2020 FC 895 at para 9).

[34] To establish that an IFA is not reasonable, applicants are required to meet a very high threshold. In other words, they need "actual and concrete evidence proving that they are conditions that would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area" (AB at para 40, citing *Ranganathan v Canada (Minister of Citizenship and Immigration)* (2000), [2001] 2 FC 164, 2000 CanLII 16789 (FCA) at para 15).

[35] The RAD found that the determinative issue in the appeal was the assessment whether there was a viable IFA. The RAD found that the RPD did not make a critical error in its assessment.

(1) Prospective or forward-facing risk of persecution

[36] On the first prong of the IFA assessment, the Decision states:

> [10] … the RAD is not persuaded that the degree of risk that the appellants face from the cartels in Merida now raises to that required level of probable risk. Therefore, as the RAD can discern no critical errors in the RPD's first prong analysis, the RAD concurs with the RPD and finds in its independent assessment that the appellants do not face on balance of probabilities, a risk to their life, a danger of torture, or a risk of cruel and unusual treatment or punishment by a cartel in Merida.

[37] The Applicants argued that the RPD misconstrued their evidence concerning the forward-facing risks from the Cartels. The Applicants argued that the conclusions of the RPD adopted by the RAD ignore the country-condition evidence. Finally, the Applicants argued that the RAD burdened the Applicants with the task of speculating as to the forward-facing risks of harm.

[38] The Respondent argued that the first branch of the IFA test as set out in the jurisprudence requires the Applicants to establish on a balance of probabilities that they face a serious possibility of persecution if they were to relocate to the proposed IFA.

[39] A review of the record clarifies that the Applicants left Mexico in April 2018. There is evidence of only one encounter between the Principal Applicant's mother and two unknown men in May 2019, who were allegedly looking for him. There is no evidence that members of any of the Cartels are continuing to look for the Applicants, have taken steps to try and locate the Applicants, or to harass members of the Applicants' families still in Mexico. The Applicants were living with the Principal Applicant's parents only ten minutes from their personal residence in Cuauhtémoc for approximately ten months, and there is no evidence that members of any of the Cartels tracked them to this location.

[40] The Applicants provided no evidence to demonstrate that there are any motivating factors for members of any of the Cartels to pursue them to the proposed IFA.

[41] The Applicants speculated that the Cartels are motivated to track them down in Merida because they refused to work with El Cabo. Similarly, they speculated that Juarez may view them as collaborators with El Cabo and be motivated to track them down due to the turf war between the two cartels. It is not clear why the Applicants believe that the CJNG are motivated

to pursue them in the proposed IFA. However, there is little to no evidence to support any of these assertions.

[42] Considering the applicable factual and legal constraints, the RAD reasonably concluded that the Applicants do not face a prospective risk in relocating to the proposed IFA. The Applicants' speculation that the Cartels will track them down is not grounded in the objective evidence, nor does it address the finding that no members of any of the Cartels have sought out the Applicants since 2019.

[43] As noted by this Court, for an IFA to be unreasonable under the first prong of the test, "an applicant must demonstrate that their agent of persecution has both the means and motivation to locate them in the IFA" (*Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 [*Cervantes*] at para 34, citing *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13).

[44] This Court has held that it is reasonable for an officer to consider that a claimant's family members have not been contacted by the agent of persecution (*Kanu v Canada (Citizenship and Immigration)*, 2022 FC 674 at paras 23–28; *Rendon Segovia v Canada (Citizenship and Immigration)*, 2023 FC 868 at paras 23–24). In the present application, while there is evidence of an encounter with the Principal Applicant's mother in 2019, there was no other evidence to support an ongoing risk. Further, it is not clear that this encounter was with a member of one of the Cartels. In addition, while past persecution may support one's claim to a forward-facing risk, it will not necessarily do so (*Fernandopulle v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91 at para 25; *Zuniga v Canada (Citizenship and Immigration)*, 2018 FC 634 at paras 34, 37).

[45] Contrary to the Applicants' submissions, a finding of insufficient evidence does not entail a negative credibility finding *per se*, as it pertains to an applicant's ability to prove facts on a balance of probabilities. This is not a matter of credibility. The onus remains on applicants to provide sufficient evidence to support their claim (*Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at para 57).

[46] Similarly, I am not persuaded by the Applicants' argument that the RAD placed an unfair burden on them to provide evidence of the Cartels' motivations to pursue them. The jurisprudence from this Court is clear that applicants must establish that the agents of persecution have the motivation to pursue (*Cervantes* at para 34).

[47] In my opinion, the RAD reasonably concluded that there is insufficient evidence to demonstrate that any of the Cartels have an ongoing interest in the Applicants, such that they would be motivated to locate them in the proposed IFA.

(2) The proposed IFA location was reasonable

[48] The Decision states that:

> [12] The appellants have not presented any arguments that challenge this IFA second prong analysis by the RPD. As the RAD can discern no errors in this IFA second prong analysis in its independent assessment, the RAD therefore finds that it is objectively reasonable to expect the appellants to relocate to Merida for the same reasons.

[49] The second prong of the test to determine if a proposed IFA is unreasonable is very high. This prong requires objective evidence that there are conditions that would jeopardize the life and safety of the Applicants should they relocate to the proposed location (*Bhuiyan* at paras 6–7). As noted above, applicants are required to meet a very high threshold (*AB* at para 40).

[50] The Applicants did not submit evidence apart from citing fears that unnamed members of the Cartels were looking for them. As noted above, this is speculative and insufficient.

[51] The RPD considered the health of the Applicants, their education, employment skills, and experience, resources available in Merida, and evidence concerning crime rates in the Yucatan State, which the RAD adopted in its Decision.

[52] The RAD Decision on the second prong of the IFA test, that it was reasonable for the Applicants to relocate to Merida, is reasonable.

C. *Procedural fairness*

[53] Finally, I note that the Applicants argued that the Decision demonstrated "an unusual degree of deference to the RPD decision" as it had quoted numerous paragraphs from the RPD decision in its Decision. They argued that this demonstrates that the RAD did not conduct its own independent analysis and that this violates the right to be heard and is a breach of procedural fairness.

[54] The Applicants did not develop this argument.

[55] I have carefully reviewed the Decision. The RAD quoted extensively from the RPD decision because it agreed with the RPD findings and analysis. I am not persuaded that there was a breach of procedural fairness. The reasons for Decision are clear and demonstrate that while the RAD adopted numerous findings of the RPD, it did so after conducting its own review and an independent analysis of the appeal.

[56] Finally, I will note that while the Applicants asserted a breach of *Charter* rights, this argument was not developed in their written or oral submissions.

V. Conclusion

[57] The RAD reasonably found that the Applicants did not satisfy the test for the admission of new evidence on appeal, pursuant to subsection 110(4) of the *IRPA*. Therefore, the RAD reasonably did not consider the new evidence.

[58] While the Applicants do not agree with the RAD's assessment concerning the viability of the IFA, a holistic review of the Decision and record illustrates that the RAD conducted a complete assessment of the evidence and the conclusions reached are reasonable. In other words, the Decision is justified, transparent, and intelligible, and there are no reviewable errors to justify the Court's intervention.

[59] I do not find that the RAD breached the Applicants' procedural fairness.

[60] The parties did not pose a question for certification, and I agree that none arise.

JUDGMENT in IMM-6442-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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