

Federal Court



Cour fédérale

Date: 20250620

Docket: IMM-13310-23

Citation: 2025 FC 1120

Ottawa, Ontario, June 20, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

**IRIS MEYEL CHAVARRIA ARCE
SEYDI KAROLINA CHAVARRIA ARCE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are citizens of Nicaragua, who claimed asylum in Canada because they feared persecution on the basis that of their opposition to the government of that country. Their claims were dismissed by the Refugee Protection Division (RPD), and the Refugee Appeal Division (RAD) dismissed their appeal. The Applicants seek judicial review of the RAD decision.

[2] As explained below, the RAD decision was based on its findings that the Applicants had no objective basis for their fear of persecution, given the nature of their involvement in political activities in Nicaragua and the passage of time. The Applicants argue that the RAD decision is unreasonable because it applied the wrong test and failed to appreciate the evidence about the risk they would face upon a return to Nicaragua.

[3] For the reasons set out below, this application will be dismissed. The RAD did not apply the wrong test, and there is no basis to question its treatment of the evidence.

I. Background

[4] The Primary Applicant (“PA”), Iris Meyel Chavarria Arce and her sister (the Associate Applicant, or “AA”), Seydi Karolina Chavarria Arce, are citizens of Nicaragua who sought protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[5] The AA claims that she was attacked by three masked individuals on April 22, 2015, on her way home from a job interview at the Technological Institute of Santiago Baldovino. She claimed the attack was because she was seeking employment with the government. The attackers hit her in the abdomen and left leg several times, resulting in vaginal bleeding and a fractured leg. The AA claims that this attack was on account of her support for and involvement with the Citizens for Freedom Party in Nicaragua. She fled Nicaragua for Spain in 2017, where she began working as a caregiver.

[6] The PA claimed that she participated in a peaceful protest in May 2018 alongside her family when paramilitaries attacked the crowd. The PA, her daughter and parents fled, while her husband and brother were beaten. Following the incident, the PA and her family relocated to a rural area of Nicaragua. Leaving her family behind, the PA travelled to Spain in November 2018, where she obtained employment as a caregiver which was facilitated by the AA, who was already in Spain.

[7] The PA and AA say that they were told by their employers in Spain that after three years they could obtain status to remain in that country, but that did not happen. In October 2021, the PA and AA left Spain for Canada where they made a claim for refugee protection.

[8] The RPD denied the Applicants' claim on the basis that their delayed departure from both Spain and Nicaragua impugned their overall credibility. The Applicants' appealed to the RAD, which forms the basis of the present Application.

II. Underlying Decision

[9] Prior to the hearing, the RAD gave the Applicants notice of a new issue it would consider on their appeal. The RAD stated the issue as follows: what is the objective, forward-facing basis for the Appellants' risk in Nicaragua today?

[10] The RAD dismissed the Applicants' appeal on the basis that they had not established an objective basis of forward-looking risk, on a balance of probabilities.

[11] The RAD accepted that the PA participated in a protest and held membership with an opposition political party. It also accepted that the AA was attacked after applying for government employment. However, the RAD concluded that there was insufficient evidence to conclude that the Applicants have maintained opposition membership status or advocated against the Nicaraguan government since the incidents they experienced in 2015 and 2018 respectively. The RAD concluded that the isolated events of 2015 and 2018 were too remote now to establish an objective basis of their claims.)

[12] In its decision, the RAD acknowledged the Applicants' submissions and documents presented in response to the new issue but ultimately found the Applicants' submissions to the Notice to be too speculative and unsupported by the evidence on the record.

[13] The RAD dismissed the Applicants' appeal.

III. Issues and Standard of Review

[14] The Applicants submit that the RAD decision is unreasonable because it applied the wrong test by requiring the Applicants to provide actual knowledge of the government's current interest in them and evidence of ongoing political activism against the Ortega regime in Nicaragua. They also argue that the RAD misunderstood the nature of their risks in Nicaragua and failed to demonstrate an awareness of the conditions in that country as set out in the Immigration and Refugee Board National Documentation Package (NDP).

[15] There is considerable overlap in the submissions made on the two issues, and it will be convenient to discuss them under the rubric of whether the RAD's decision is reasonable.

[16] The issues in this case are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], and confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [Mason].

[17] In summary, under the *Vavilov* framework, a reviewing court is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints (*Vavilov* at para 85; *Mason* at para 8). The onus is on the Applicants to demonstrate that “any shortcomings or flaws ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100). Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker (*Vavilov* at para 125).

IV. Analysis

[18] The Applicants argue that the RAD failed to comprehend the objective basis for the risks they face if they return to Nicaragua. The RAD accepted that the PA had participated in a political protest that was attacked by a paramilitary group and that she held membership in an opposition political party. The RAD also accepted that the AA was attacked after she applied for a government job. The Applicants say that the RAD applied the wrong test by requiring them to show that they had been politically active since their departure from Nicaragua.

[19] Political beliefs are a fundamental element of an individual's identity, and the Applicants claim that they would be forced to hide their opposition to the government if they return to Nicaragua. That is not consistent with the concepts underlying Canada's refugee law, as set out in *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC) at pp. 738-739, and confirmed in cases such as *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at para 19.

[20] The RAD's error is compounded, according to the Applicants, by its failure to consider the evidence about the Nicaraguan government's repression of political opponents and its mistreatment of returnees who had claimed asylum abroad. They say that there is ample proof in the NDP that opponents of the Ortega regime in Nicaragua face harassment, violence and possible torture while being unlawfully detained. Because of their involvement in political activities before they fled Nicaragua, the Applicants argue that the RAD should have considered this evidence in assessing the objective basis for their risks. In their view, its failure to do so makes the decision unreasonable.

[21] I am not persuaded by these arguments.

[22] The Applicants submit that in light of the objective evidence showing the brutal torture and persecution of citizens who protest against the government of Nicaragua, their lack of personal evidence showing the state's current interest in them or evidence of contemporaneous political involvement or advocacy ought not to be fatal to their claims for protection. They say that they continue to oppose the government and if returned to Nicaragua, their political opposition to the government will not be diminished.

[23] By requiring the Applicants to demonstrate that they had maintained their opposition membership status or advocated against the Nicaraguan government since they fled the country, the Applicants argue that the RAD “injected an evidentiary requirement that does not exist in law” (citing *Basbaydar v Canada (Citizenship and Immigration)*, 2014 FC 158 at para 29). In their view, this is an error of law that is sufficiently serious to make the decision unreasonable.

[24] Next, the Applicants point to the ample evidence in the objective country condition documentation showing the degree to which the Nicaraguan government persecutes its political opponents or covertly supports others to do so on its behalf. They say that the RAD demonstrated a lack of knowledge of Nicaragua and the many ways that the current regime manipulates the Criminal Code to criminalize and persecute individuals who are engaged in opposition efforts or political parties that oppose the government.

[25] The Applicants point out that the RAD accepted that the PA and AA opposed the Nicaraguan government in 2015 and 2018 respectively. The RAD accepted that the PA held a membership in an opposition political party and that the AA was attacked after applying for government employment. Having accepted this evidence, the RAD then failed to assess how such a profile is likely to place the Applicants at risk if they were to return to Nicaragua.

[26] There are two key problems with the Applicants’ arguments. First, they misstate the RAD’s findings; second, they rely on objective country condition evidence that does not support their claims, given the evidence discussed by the RAD.

[27] The Applicants argue that they should not have to hide their political opposition to the government in Nicaragua. They rely on cases that found that it was an error to find that individuals facing persecution based on their sexual orientation could avoid problems in their country of origin by hiding their identity: *Sadeghi-Pari v Canada (Minister of Citizenship and Immigration)* 2004 FC 282 and *Atta Fosu v Canada (Citizenship and Immigration)*, 2008 FC 1135. The difficulty for the Applicants, however, is that the RAD did not claim that they would have to hide their political views upon return to Nicaragua. The RAD's core point was simply that there was a lack of objective evidence to suggest that the Applicants were actively involved in politics, or that they or their families have been threatened or targeted since their respective incidents in 2015 and 2018.

[28] The evidence did not show that the Applicants were political leaders or heavily engaged in opposition to the government. The RAD noted that the PA's husband and brother had been assaulted and detained during the demonstration in 2018, but neither of them had faced any harassment or other repercussions since then, even though both remained in Nicaragua.

[29] Related to this, the Applicants rely on objective country condition evidence showing that the Nicaraguan government engages in repression against its political opponents. They say that the RAD ignored this evidence which is directly applicable to an assessment of the risks they face on a return to Nicaragua. I find the Applicants are putting forward a partial view of this evidence.

[30] It is true that there is ample evidence that the government of Nicaragua, or paramilitaries and others acting on its behalf, engage in active and often violent repression of opposition forces. However, the evidence shows that such measures are taken against leaders of opposition forces and media who publish negative articles about the government. The RAD was not required to discuss this evidence in any detail because it simply does not apply to the Applicants' situation.

[31] Recall that the PA held a membership in an opposition party and participated in a demonstration that was attacked by paramilitaries. After that attack, she and her family moved to another location in Nicaragua, but the government or security forces did not actively pursue them. There is no indication that any of her family members who remained in Nicaragua have faced any consequences for their participation in the demonstration since that time. The RAD reasonably found this to be a relevant consideration.

[32] Similarly, the AA said she was attacked because she applied for a government position. There is no other evidence of her involvement in political opposition in Nicaragua. After the attack, the AA remained in the same location for two years without incident until she departed for Spain. The RAD found this to be pertinent to assessing her forward-facing risk.

[33] I can find no basis to question the RAD's assessment of the evidence. It is important to remember that under the *Vavilov* framework, it is only in "exceptional circumstances" that a reviewing court will disturb findings of fact made at first instance (*Vavilov* at para 125). No such circumstances have been established here.

V. Conclusion

[34] The RAD did not apply the wrong test in assessing the Applicants' claims, nor did it ignore the objective country condition evidence about the situation in Nicaragua. Instead, I find that the RAD carefully assessed the Applicants' claims in light of the evidence of their specific involvement in political opposition in Nicaragua. The RAD also examined the lack of persecution of the PA's remaining family members following her departure from Nicaragua, finding that this did not support their claim of objective forward-facing risk. There is no basis to disturb the RAD's assessment of the Applicants' claims which was based in the evidence and reflects the submissions they put forward on appeal.

[35] For the reasons set out above, this application for judicial review will be dismissed.

[36] There is no question of general importance for certification.

JUDGMENT in IMM-13310-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13310-23

STYLE OF CAUSE: IRIS MEYEL CHAVARRIA ARCE, SEYDI
KAROLINA CHAVARRIA ARCE v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

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