

Federal Court



Cour fédérale

**Date: 20190321**

**Docket: IMM-599-18**

**Citation: 2019 FC 347**

**Ottawa, Ontario, March 21, 2019**

**PRESENT: The Honourable Mr. Justice Boswell**

**BETWEEN:**

**ANGELA CASTILLO GARCIA  
EVAN KIERI RIOS CASTILLO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants, Angela Castillo Garcia and her minor son, Evan Kieri Rios Castillo (Angela and Evan, ages 47 and nine, respectively), are Mexican citizens who fled Mexico in July 2016. Following their arrival in Canada, they sought refugee protection, but the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected their claims in May 2017.

[2] In a decision dated January 16, 2018, the Refugee Appeal Division [RAD] of the IRB dismissed their appeal of the RPD's decision and, pursuant to paragraph 111(1) (a) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA], confirmed the RPD's decision that they were neither *Convention* refugees nor persons in need of protection. The Applicants have now applied under subsection 72(1) of the *IRPA* for judicial review of the RAD's decision. They ask the Court to set aside the RAD's decision and return the matter for redetermination by another member of the RAD.

I. Background

[3] Angela's estranged husband was a taxi driver in Veracruz, Mexico. Los Zetas, a powerful criminal organization, approached her husband in September 2015 and demanded that he use his taxi cab for nefarious reasons. They threatened to kidnap and harm his wife and son if he did not comply.

[4] He complied with the Los Zetas' demands until July 2016 when he then ceased to work as a taxi driver. He moved to Cancún to hide, while the Applicants came to Canada to claim refugee protection. Angela's husband now lives with his sister and performs some electrical work in Cancún.

[5] The RPD denied the Applicants' refugee claims in a decision dated May 12, 2017, finding that they had not rebutted the presumption of state protection and, alternatively, that they had a viable internal flight alternative [IFA] in Cancún. The Applicants appealed the RPD's

decision to the RAD. In the decision under review, the RAD found they had a viable IFA in Cancún.

## II. The RAD's Decision

[6] In their submissions to the RAD, the Applicants requested an oral hearing and submitted new evidence in support of the appeal. The RAD determined that none of the new evidence complied with subsection 110(4) of the *IRPA*. The evidence, with the exception of Angela's affidavit, pre-dated not only the RPD decision but also the hearing date. The RAD viewed Angela's affidavit as merely a re-iteration of the claim which had been heard. As there was no new evidence accepted, the RAD, noting subsection 110(6) of the *IRPA*, stated that it was prohibited from allowing an oral hearing.

[7] Like the RPD, the determinative issues for the RAD were the availability of a viable IFA and state protection.

[8] The RAD found that Cancún was a viable IFA for the Applicants since the Los Zetas were not present in Quintana Roo (the state where Cancún is located). It also found that Los Zetas, though once powerful, were now much less so, and Veracruz is their base of operations. The Gulf Cartel, whose home base is in Quintana Roo, was in an ongoing fight with Los Zetas for territorial control in the northeastern states of Mexico. In view of these facts, the RAD found there was less than a mere possibility that Los Zetas would venture into Gulf territory to hunt down and harm the Applicants.

[9] Added to the virtual non-existence of Los Zetas in Cancún and the surrounding areas, the RAD noted that the principal target of Los Zetas, Angela's former husband, had lived safely in Cancún for about one year. In the RAD's view, the documentary evidence was clear that, contrary to the Applicants' allegations, Los Zetas does not operate in Cancún and therefore there would be no threat to the Applicants should they relocate to Cancún. In accordance with the first prong of the IFA test, the RAD concluded that Cancún would be a safe IFA for the Applicants in regard to the risk they may face in Veracruz.

[10] In addressing the second prong of the IFA test, the RAD noted the Applicants' allegation that it would be unreasonable for a single woman traveling alone with a child to relocate to Cancún. In the RAD's view, this was not reasonable since Angela had been living and working as a single mother in Veracruz, she has family in Cancún, she was healthy and could work, and her son could attend school in Cancún. For the RAD, Cancún offered a fulsome infrastructure of a modern city, was easily accessible to the Applicants, and offered many different job positions.

[11] The RAD found that the Applicants had a viable IFA in Cancún "for all the reasons indicated by the [RPD] panel" and because Los Zetas are not known to be operating in Quintana Roo which is dominated by the Gulf Cartel, Los Zetas' major rival.

[12] The RAD concluded its reasons by stating that, since Los Zetas were not in Cancún, there was no issue with state protection against Los Zetas, and that because a viable IFA was a determinative issue, there was no need to assess state protection.

### III. Analysis

[13] The over-arching issue raised by this judicial review application is: was the RAD's decision reasonable?

#### A. *Standard of Review*

[14] The applicable standard for review of the RAD's decision is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35, [2016] 4 FCR 157).

[15] Determinations on the availability of an IFA are also reviewed on the reasonableness standard (*Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at para 14, 285 ACWS (3d) 143). As the Court noted in *Lebedeva v Canada (Citizenship & Immigration)*, 2011 FC 1165 at para 32, [2011] FCJ No 1439, such determinations "warrant deference because they involve not only the evaluation of the applicant's circumstances, ...but also an expert understanding of the country conditions involved" (also see: *Rodriguez Diaz v Canada (Citizenship and Immigration)*, 2008 FC 1243 at para 24, [2009] 3 FCR 395, and *Sivasambo v Canada (Minister of Citizenship and Immigration)*, [1995] 1 FC 741 at para 26, [1994] FCJ No 2018).

[16] The reasonableness standard tasks the Court with reviewing an administrative decision for the existence of justification, transparency and intelligibility within the decision-making process and determining whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those criteria are met if the reasons allow the reviewing

court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708).

B. *The Applicants' Submissions*

[17] According to the Applicants, the RAD ignored Angela's credible testimony. The Applicants contend there was documentary evidence which was never discussed, reviewed, or examined and, consequently, the RAD erred by not adequately exploring evidence central to the decision.

[18] In the Applicants' view, the RAD selectively relied on documentary evidence to conclude that there was an adequate IFA and ignored evidence to the contrary. The RAD's IFA finding was, the Applicants say, made in disregard of the full evidence, including country condition documents showing that Los Zetas is active throughout Mexico and their efforts at expansion or to reclaim lost territory include Cancún. According to the Applicants, the RAD's finding was made in disregard of the nuances of Los Zetas' presence throughout Mexico, which includes counter-insurgencies into territories held by rival groups and continuing violence throughout the state.

[19] Based on an article entitled "Violence in Mexico Tourism Corridor Reflects Evolving Criminal Trends" [*Tourism Corridor*] dated January 26, 2017, the Applicants claim that Los Zetas is in Cancún. The Applicants point to item 7.14 of the National Documentation Package,

“Mexico’s Drug War: Balkanization Leads to Regional Challenges” dated April 18, 2013, which shows the willingness of Los Zetas to confront other gangs.

[20] The RAD determined there is a viable IFA in Cancún because Angela’s spouse continues to live and work there. The Applicants say this determination is unreasonable and misapprehends Angela’s testimony which explicitly outlined how he does not go out “as a normal person would” and his work is limited to only those he trusts. According to the Applicants, the relevant testimony indicates that Angela’s husband is not maintaining his safety due to the absence of Los Zetas, but because he is in hiding.

[21] The Applicants say the finding that Cancún is a viable IFA was unreasonable in view of *Cruz Martinez v Canada (Citizenship and Immigration)*, 2008 FC 399 at para 10, [2008] FCJ No 487. According to the Applicants, in order to establish that a viable IFA exists, a decision-maker must demonstrate that the situation in the IFA is “qualitatively different” than the situation in other parts of the country where there exists a reasonable chance of persecution. The Applicants further say, in view of *Ahmed v Canada (Minister of Employment and Immigration)* [1993] FCJ No 718 para 5, 156 NR 221, it was an error for the RAD to expect them to hide in Cancún in order to keep themselves safe.

C. *The Respondent’s Submissions*

[22] The Respondent says if an individual can seek refuge by moving within their own country, they must do so before seeking international protection. In the Respondent’s view, the

Applicants had a viable IFA in Cancún, an IFA which was supported by the evidence, and it was reasonable for the RAD to find as much.

[23] The Respondent claims the RAD's finding that Cancún is a viable IFA was reasonable because the primary target of Los Zetas, Angela's spouse, had moved to Cancún and had not been pursued or threatened there. According to the Respondent, the evidence does not show that the Applicants would be forced to live in hiding in Cancún to avoid detection and harm from Los Zetas, and while evidence from Angela's spouse confirms he continues to be fearful and takes precautions not to go out much, the record does not indicate he is in hiding or at risk.

[24] In the Respondent's view, the country condition documents showed that Los Zetas had a minimal presence in Cancún where another competing drug trafficking organization was dominant. The evidence the Applicants presented about the splintering of groups and forming of alliances was not, the Respondent says, centred about Cancún but, instead, the area where they lived in Veracruz. The Respondent further says turf wars and shifting alliances between organizations does not show that Los Zetas would take the risk of venturing into the territory of a rival organization just to pursue a former taxi driver.

D. *Was the RAD's Decision Reasonable?*

[25] An IFA has been defined as "a fact situation in which a person may be in danger of persecution in one part of a country but not in another" (*Thirunavukkarasu v Canada (Minister of Employment & Immigration)*, [1994] 1 FC 589 at para 2, 109 DLR (4th) 682

[*Thirunavukkarasu*]). Given that an IFA in another part of the same country is determinative of



refugee status, the onus is on an applicant to prove that they are at serious risk of being persecuted throughout the country (*Thirunavukkarasu*, paras 2 and 6).

[26] To find an IFA, the RAD must be satisfied, on a balance of probabilities, that: (1) there is no serious possibility of an appellant being persecuted in the IFA; and (2) in all the circumstances - including circumstances particular to an appellant - conditions in the IFA are such that it would not be unreasonable to seek refuge there (*Rasaratnam v Canada (Minister of Employment & Immigration)*, [1992] 1 FC 706 at para 13, 140 NR 138).

[27] The Applicants take issue with the RAD's weighing of the evidence in its IFA analysis. In their view, the RAD selectively relied on documentary evidence and its IFA finding was made in disregard of all of the evidence. I agree.

[28] It is, of course, well-established that a decision-maker such as the RAD is presumed to have weighed and considered all the evidence presented unless the contrary is shown (*Boulos v Public Service Alliance of Canada*, 2012 FCA 193 at para 11, [2012] FCJ No 832, citing *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1). A failure to refer to some relevant evidence will typically not justify a finding that the decision was made without regard to the evidence, prompting the Court to grant relief as contemplated by paragraph 18.1(4) (d) of the *Federal Courts Act*, RSC 1985, c F-7.

[29] This is not always the case though, since "...the more important the evidence that is not mentioned specifically and analyzed in the...reasons, the more willing a court may be to infer

from the silence that the agency made an erroneous finding of fact ‘without regard to the evidence’” (*Hinzman v Canada (Citizenship and Immigration)*, 2010 FCA 177 at para 38, [2012] 1 FCR 257, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17, 157 FTR 35).

[30] In this case, the RAD relied heavily on a document entitled “Mexico, Organized Crime and Drug Trafficking Organizations (DTOs)”, listed as item 7.7 in the National Documentation Package for Mexico and dated April 25, 2017. The RAD commented on this item as follows:

[24] In regards to the IFA, I have canvassed the National Documentation Package (NDP) and take special note of item 7.7, a document entitled, “Mexico, Organized Crime and Drug Trafficking Organizations (DTOs)”. This document speaks directly to all of the DTOs in Mexico, who each DTO is aligned with or is fighting against and where each has its base of power. For example, the Zetas, once very powerful but in recent years, much less so, has its base of operations in Veracruz State.

[25] Cancun is in the state of Quintana Roo, on the Yucatan Peninsula. Of greater importance is the fact that Cancun and Quintana Roo are the home base to the Gulf Cartel. According to this same document, the Gulf Cartel is in an ongoing fight with the weakened Zetas for territorial control in the northeastern Mexico states. The ensuing bitter conflict between the Zetas and the Gulf Cartel has been identified as the most violent in the history of organized crime in Mexico.

[26] This bitter rivalry between the Zetas and the Gulf DTO tells me that there is less than a mere possibility that the Zetas would venture into Gulf territory for no other reason than to hunt down and harm these Appellants. It would certainly be unlikely that the Gulf DTO would cooperate with the Zetas in any way to expose the Appellants to any danger from the Zetas. The same document also speaks to the fact that the experts mostly agree that the Zetas organization is no longer as powerful as it was during the height of its dominance in 2011 and 2012.

[27] Added to the virtual non-existence of Los Zetas in Cancun and area, the principal target of the Zetas was the former husband who has lived safely in Cancun for about one year. He no longer

drives a taxi cab and in fact, works as some sort of electrician. The documentary evidence mentioned above is quite clear that, contrary to the allegations of the PA and her former husband, the Zetas are not in Cancun and, on a balance of probabilities, would not be any threat to the Appellants should they relocate to Cancun.

[31] However, there was more to item 7.7 than was described by the RAD. Though item 7.7 describes the history of Los Zetas, recognizing that it has lost some of its power from its height of its dominance in 2011 and 2012 (page 18), it goes on to state that it is still a “National Cartel” class of gang that:

...control or maintain presence on numerous drug routes, including points of entry and exit along the northern and southern borders. Also, they operate major international routes to and from the country. Regardless of their wide territorial presence, they actively seek to expand control over new routes that lead to the north...  
(Page 27)

[32] Item 7.7 also contains two maps. One shows that the Gulf Cartel controls the area where Cancún is located, and that Los Zetas controls the area where Veracruz is located; this map contains an annotation stating that the map “is subject to change given the fluid nature of Mexican DTOs.” The other map depicts Mexican cartels by origin and region of influence, showing that the Los Zetas have influence in the area where Cancún is located.

[33] The documentary evidence shows that Cancún is in contested territory which (according to item 7.7 at page 27) at any time could become Los Zetas territory. Los Zetas has members entering into Cancún in attempts to gain control (*Tourism Corridor*, as referenced by the Applicants). Los Zetas have killed people who have refused to work for them (Item 7.7, at page 18).

[34] Angela testified before the RPD that her husband has not been put in danger because he was in hiding and his working conditions were limited to services to those known and trusted by him:

**Member:** Your husband...you indicated earlier that your husband is currently in Cancun?

**Angela:** Yes, he is in Cancun.

**Member:** Um-hum, has any harm come to him in Cancun?

**Angela:** He said that right now he is fine, but that he is concerned you know to go out you know as a normal person would do, you know by going out.

...

**Angela:** He is not working as he used to be, but he also has some strong skills in terms of working connection lamps. He would only provide these services if somebody who he knows request his services otherwise he would not...he does not work. [Emphasis added.]

[35] There was no documentary evidence before the RAD about what would happen to children and spouses of those targeted by Mexican DCOs, because the RAD had rejected an article discussing this topic since it pre-dated the RPD decision. The RAD concurred with the RPD that Angela's testimony was credible. This being so, her fear of being kidnapped due to her husband's refusal to work as a driver for the Los Zetas should have been accepted at face value. In view of the documentary evidence before the RAD, documentary evidence which was not fully analysed by the RAD, that fear is not unreasonable in Cancún.

[36] Moreover, the RAD did not fully consider how the RPD came to its finding that there was state protection available to the Applicants in Cancún. The RPD's review of the documentary evidence was selective, focusing only on evidence that supported the effectiveness

of state protection. The RPD cited a 2016 United States Department of State report which reported that: “Civilian authorities generally maintained effective control over the security forces.” However, the sentences immediately following state:

The most significant human rights-related problems included involvement by police and military in serious abuses, such as unlawful killings, torture, and disappearances. Impunity and corruption in the law enforcement and justice system remained serious problems. Organized criminal groups killed, kidnapped, extorted, and intimidated citizens, migrants, journalists, and human rights defenders.

[37] In my view, it was not justifiable or transparent for the RAD not to fully consider the RPD’s finding of state protection for the Applicants in Cancún. In view of the documentary evidence in the certified tribunal record, it was not reasonable for the RAD to adopt the RPD’s decision that the Applicants had a viable IFA to Cancún for the reasons indicated by the RPD because the Los Zetas are known to be operating in Quintana Roo state where Cancún is located.

#### IV. Conclusion

[38] The Applicants’ application for judicial review is allowed. The RAD unreasonably assessed the evidence as to whether it was objectively reasonable for the Applicants to seek refuge in Cancún.

[39] Neither party raised a serious question of general importance; so, no such question is certified.

**JUDGMENT in IMM-599-18**

**THIS COURT'S JUDGMENT is that:** the application for judicial review is granted; the decision of the Refugee Appeal Division of the Immigration and Refugee Board dated January 16, 2018, is set aside; the matter is returned for redetermination by a different member of the Refugee Appeal Division in accordance with the reasons for this judgment; and no question of general importance is certified.

"Keith M. Boswell"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-599-18

**STYLE OF CAUSE:** ANGELA CASTILLO GARCIA, EVAN KIERI RIOS  
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