

Federal Court



Cour fédérale

**Date: 20190521**

**Docket: IMM-5194-18**

**Citation: 2019 FC 720**

**Ottawa, Ontario, May 21, 2019**

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

**BETWEEN:**

**LILIAN MARILU PORTILLO VALLE  
MARIA GREGORIA VALLE VALLE  
JULIO CESAR PORTILLO PINTO  
SAMIR ABU DAYEH ZUMMAR  
SAMIR JOSE ABU DAYEH PORTILLO  
YOSEFF SALIM ABU DAYEH PORTILLO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant family asks the Court to set aside a decision of the Immigration and Refugee Board of Canada, Refugee Protection Division [RPD] which found they were not Convention refugees or persons in need of Canada's protection. It was found that the applicants

would not be at risk from MS-13, in the town of Concepción, Honduras, and it was not unreasonable for them to relocate there.

[2] The sole issue in this application is whether the applicants are correct in their submission that the decision of the RPD was unreasonable. For the reasons that follow, I am not persuaded that the decision of the RPD was unreasonable. I find the decision under review dealt with the evidence before it in a fair and fulsome manner and gave detailed reasons for the conclusions reached.

[3] The applicants, Lilian and her husband Samir, their children Samir Jose and Yoseff Salim, and Lilian's parents Maria and Julio, are all from Tela, Honduras. Lilian is a lawyer and Samir is a property manager.

[4] In May 2013, Lilian and Samir received phone calls asking for a "war tax" from the criminal organization MS-13. They made three payments before moving to San Pedro Sula, which is about an hour away from Tela. After about one year, and having received no further threats, they moved back to Tela to live in Lilian's parents' home.

[5] In October, 2015, the applicants again began to receive phone calls from MS-13. This time, they were looking for Lilian's sister who they wanted to pay a war tax. Lilian's sister had previously been extorted by this group and had fled to Canada. Lilian did not give them any information and eventually MS-13 told Lilian that she would need to pay her sister's war tax. Lilian made a denunciation to the police and then the applicants moved again to San Pedro Sula.

[6] Lilian and Samir returned to Tela every six weeks to operate his real estate business.

While in Tela in April, 2016, two men approached them and told them that in addition to Lilian's sister's war tax, they now owed an additional war tax.

[7] According to Lilian and Samir, in July 2016, Samir left a grocery store in San Pedro Sula and was followed by a vehicle. When he got home, four armed men wearing balaclavas got out of the car. Samir went into his house and the men left.

[8] They then moved to Concepción, around five hours away from Tela. They remained there until March 2017, when they saw news that the MS-13 leader who had threatened them had been arrested. They then moved back to Tela. Shortly after moving back, they found bullet casings and bullet holes in and around their house. They moved again to San Pedro Sula.

[9] In July, 2017, the applicants decided to leave Honduras. They already had visas for entry into the United States. Lilian and Samir drove back to Tela to get their passports. During this trip they say they were followed, shot at, and eventually crashed into a ditch. The people following them left after a crowd gathered.

[10] The applicants then flew from Honduras, to the United States. They made a refugee claim at the Canadian border.

[11] The RPD determined that the family members were not Convention refugees because there was no nexus to a Convention ground. That is not in dispute.

[12] The RPD further found that they were not persons otherwise in need of protection because an IFA was available to them in Concepción. In its analysis the RPD appears to have adopted the two-step process used in Convention refugee determinations under section 96 of the Act. It assessed whether there are other parts of the country (i) where the claimants would not face a serious possibility of risk to life or of cruel and unusual treatment or punishment; and (ii) where it is not unreasonable, in all the circumstances, for the claimants to seek refuge.

[13] A crucial factor for the RPD when assessing the first step above is that the RPD found that although MS-13 has the ability to trace and target individuals anywhere in Honduras, it found that the facts showed that it was not interested or motivated to use those capacities for these applicants.

[14] The RPD reached this conclusion based on the evidence before it. It was noted that the applicants were not followed by MS-13 during their first stay in San Pedro Sula in 2013, even though it was less an hour away from Tela. Moreover, the RPD observed that Lilian and Samir continued to travel to Tela without incident. When they did return to Tela, it appears that MS-13 had forgotten about their original extortion, as it failed to follow up on it.

[15] The applicants gave submissions on how the present situation was different from that in 2013. They explained that in the 2015, MS-13 did not just want money but information, which was different. They also denounced MS-13 to the authorities, which would increase their risk.

[16] The RPD agreed that although MS-13 originally asked for information, they then just wanted money, which was similar to 2013.

[17] The RPD also noted that while denouncing MS-13 in 2015 could hypothetically have heightened their risk, the facts did not show that MS-13 began following them. The important finding for this was that the determination that MS-13 never actually located the family in San Pedro Sula. The RPD did not believe Samir with regards to being followed home from the grocery store in July, 2016. The Panel provided three reasons for this finding.

[18] First, Samir appeared to have forgotten about the incident between the first and second hearing days. It was noted that Samir talked extensively about it during the first sitting, but during the second he could not remember it, even with prompting from counsel. It was only after counsel reminded him that he had been asked a number of questions during the last sitting about the incident and reminded him that he had been followed by four men from the grocery store that he remembered it. Although Samir submitted the issue was that counsel was using a different term to introduce the issue, “store” instead of “supermarket”, this small difference was not found by the RPD to be convincing.

[19] Second, is that Samir’s evidence was different between the sittings. In the second sitting, he described that the men with weapons approached him. The RPD noted that he did not say that they approached him when testifying at the first sitting, even though he was asked several times about what the men did. When confronted with this discrepancy, Samir said this was because at the first hearing, he did not understand the interpreter, and he had trouble hearing. The RPD did

not find this explanation convincing as Samir otherwise appeared able to understand the questions and the interpreter.

[20] Third, the applicants moved back to San Pedro Sula for a third time in 2017, which the RPD did not think they would do if they were concerned about MS-13 following them there. The Panel also noted that at this time they had American visas and could have left at any time.

[21] The RPD also considered that the family had never been located by MS-13 in Concepción. Although Samir received text messages from MS-13 while living there, he had never changed his mobile phone number. As a result, the texts did not show that MS-13 had any idea the family has been to Concepción.

[22] Turning to the second step of the IFA test, the RPD determined that it is not unreasonable for the applicants to seek refuge in Concepción. The Panel noted that the family has lived there before, without incident. They owned investment property, which could be sold if necessary. Lilian works as a lawyer, which she could continue to do. Samir owns commercial real estate in Tela, and he could either continue to operate it remotely, or sell it and purchase new property in Concepción.

[23] The applicants submit that the decision was unreasonable. They say that credibility findings, made without regard to the evidence or that were not reasonable, coloured the IFA analysis and determination.

[24] Specifically, they submit that the credibility analysis regarding Samir's evidence was unreasonable. Given that the appropriateness of the IFA was linked to the occurrence of the grocery store incident, this unreasonable finding makes the whole decision unreasonable, as in *Ghuri v Canada (Minister of Citizenship and Immigration)*, 2016 FC 548, paras 24-25. This is because the finding that this incident did not occur led the RPD to determine that MS-13 was not interested or motivated in finding the applicants.

[25] They also say that plausibility findings should only be made in clear cases. However, I note that there was no plausibility finding made here; rather, there were credibility findings made.

[26] They also point out that the decision-maker should also not comb the evidence for trivial errors: *Kariyo v Canada (Minister of Citizenship and Immigration)*, 2016 FC 692 at paras 26-27, and the evidence offered should be presumed true: *Diaz Pinzon v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1138.

[27] With respect, I find neither principle was offended by this decision-maker. Whether or not the men approached him is not a "trivial error" or an "inconsistency" as is suggested. The transcript shows that the RPD asked several questions about the incident at the first sitting and appeared very interested in how Samir knew the men were coming after him, since they did not approach him or the house. In the second sitting, Samir says they were coming towards him and he knew they were after him. Whether or not the men approached Samir's house was important

to the determination of whether these men were after Samir; so it is reasonable that the RPD found Samir's different story to be telling and more than trivial.

[28] The applicants also submit that it was not reasonable to reject Samir's explanations and that they should be presumed to be true. The record shows that at the beginning of the first sitting of the hearing, Samir made it clear that he needed the interpreter to speak loudly and in a higher tone. At one point during the first sitting, the interpreter stated that she did not think Samir understood a question. It had nothing to do with whether the men approached him. Samir appeared to understand all of the other questions with the exception of that one. It was not unreasonable for the RPD to reject the explanation offered given that lack of material evidence that Samir had issues with interpretation.

[29] The applicants also submit that the reason Samir did not appear to remember the incident was because it happened after he was at a supermarket, and in the second hearing, the word "store" was used. These words, "supermarket" and "store", they say are meaningfully different and it was unreasonable for the RPD to not accept this explanation.

[30] I disagree. The Panel was reasonable to put weight on the fact Samir did not appear to remember the incident. The transcript shows that the Samir was asked about the most important parts of the incident: the men in a car, wearing balaclavas. Twice Samir did not appear to remember. This incident was apparently the reason the family left San Pedro Sula, so it was very unlikely that Samir would not to recall it.



[31] The Panel's rejection of Samir's explanation is also reasonable. "Store" and "supermarket" appear to be very similar words, and in any case, what type of store Samir was at is a minor detail compared to the men wearing balaclavas. Moreover, there was no evidence put forward about different uses of these words in Samir's native language which might explain how these apparently similar words in English could be different.

[32] The applicants lastly state that the RPD unreasonably overlooked that there was a reason to wait for three months in San Pedro Sula: the family wanted to finalize things, and they were waiting for a police follow-up.

[33] In my view, there was nothing unreasonable in the RPD inferring that the fact that the applicants returned to San Pedro Sula afterwards lessens the likelihood the incident happened. Common sense might suggest that if MS-13 was aware you have previously fled to San Pedro Sula and followed you there, you would be less likely to flee to that location again.

[34] The applicants submit that the second prong of the IFA test was wrongly applied. By requiring them to liquidate their previous assets and do other types of work, the IFA is not reasonable. They argue that requiring a claimant to exercise caution, use discretion and be selective about who is aware of their relocation creates an impermissible "half-way house":

*Ehondar v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1143 at para 20

[*Ehondar*].

[35] In *Ehondar*, Justice Brown was making the observation that requiring a claimant to exercise caution, use discretion and be selective about who is aware of one's relocation, erodes the conclusion that a claimant has not established facing a serious possibility of persecution in the proposed IFA, or that it is unreasonable, in all of the circumstances, to seek refuge there.

[36] There is nothing similar here. It was not suggested that the applicants live a circumspect life. It was observed that Lilian could work at a law office, or start her own firm, and suggested that Samir could purchase close by property to manage. This is materially different that the facts in *Ehondar*.

[37] Neither party proposed a question for certification, and there is none on these particular facts.

**JUDGMENT IN IMM-5194-18**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-5194-18

**STYLE OF CAUSE:** LILIAN MARILU PORTILLO VALLE ET AL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 13, 2019

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MAY 21, 2019

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