

Federal Court



Cour fédérale

Date: 20200825

Docket: IMM-6069-19

Citation: 2020 FC 810

Toronto, Ontario, August 25, 2020

PRESENT: Mr. Justice A.D. Little

BETWEEN:

**LUCIO RIVERA BENAVIDES,
ENRIQUE ALDAHIR RIVERA GARCIA
(by his litigation guardian LUCIO RIVERA
BENAVIDES),
ARACELI DEL CIELO RIVERA GARCIA
(by her litigation guardian LUCIO RIVERA
BENAVIDES),
MARIA LUISA GARCIA PATINO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants are a family of Mexican nationals. They claim to be Convention refugees or persons in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27

(“*IRPA*”). They left their home country due to fear that their lives are in danger from members of El Cartel del Golfo (the “Gulf Cartel”).

[2] The Refugee Protection Division (“RPD”) and the Refugee Appeal Division (“RAD”) of the Immigration and Refugee Board of Canada both dismissed their claims, concluding that they have an internal flight alternative (“IFA”) within Mexico, and therefore that they do not qualify for protection under *IPRA*. On this application for judicial review, the applicants now ask the Court to set aside the decision of the RAD dated 5 September 2019.

[3] For the following reasons, the application is allowed and the RAD’s decision is set aside.

I. Facts and Events Leading to this Application

[4] The applicants Lucio Rivera Benavides (“Mr Rivera”) and his common-law spouse Maria Luisa Garcia Patino (“Ms Garcia”) are the parents of the applicants Enrique Adahir Rivera Garcia and Aracelia Del Cielo Rivera Garcia.

[5] Until their arrival in Canada, the family lived in Matamoros, in the State of Tamaulipas, Mexico. Matamoros is located in the northeast of Mexico, on the Rio Grande River close to the Gulf of Mexico. It sits on the border with Texas, USA.

[6] Mr Rivera and Ms Garcia both worked in a factory that manufactured custom indoor and outdoor furniture textile products. She worked during the day, while he worked at night.

[7] In May and June 2017, members of the Gulf Cartel twice kidnapped Mr Rivera. They assaulted him and demanded money. They threatened sexual violence against both Ms Garcia and the minor female applicant and threatened to kill the whole family. In mid-August 2017, after more threats, the family fled to Canada. Since they left Matamoros, members of the Gulf Cartel have pursued them in three other cities in Mexico.

[8] The central question for the RPD and the RAD was whether the family would be able to take safe refuge if they were to return to Mexico. The RPD found that they had IFAs in the cities of Oaxaca, or San Luis Potosi, or Mexico City.

[9] On appeal, the RAD admitted new evidence, leading to its conclusion that neither Oaxaca nor San Luis Potosi would be an IFA. The RAD concluded, however, that Mexico City would be an IFA and therefore dismissed the appeal.

[10] Due to the parties' factual submissions on this application, a more detailed chronology of the facts is required to understand these Reasons for Judgment. Before the RAD, the evidence included the applicants' Basis of Claim documents including a lead narrative by Mr Rivera. The record included handwritten statements from several people including Mr Rivera's mother, Ms Garcia's mother, the family's neighbour in Matamoros and the family's pastor, as well as documents including clinical notes from a physician who examined Mr Rivera, and a police report.

[11] Neither the RPD nor the RAD raised any concerns, or made any adverse findings, about the credibility or reliability of the witness statements or other evidence adduced by the applicants to support their claims.

A. *Events in Mexico*

[12] The evidence discloses the following events in Matamoros, Mexico from late May to August 2017.

[13] On **May 30**, while Mr Rivera was waiting for the bus to go to work, two armed men wearing face coverings got out of a white truck and kidnapped him. One pointed a gun at him and the other assaulted him and pushed him into the truck. Two other men wearing face coverings were inside. One assaulted him. He lost consciousness and woke up on a floor with his face covered, his hands and feet tied up.

[14] A neighbour witnessed the abduction and provided a statement corroborating the account. While Mr Rivera was gone, the neighbour advised Ms Garcia not to tell police as the kidnappers were likely part of the Gulf Cartel and if she denounced them, she and her children would be in danger.

[15] While the kidnappers held Mr Rivera, they demanded money. Mr Rivera told them he was just a factory worker and did not earn much. They gave him no food or water. The kidnappers beat him many times. He was scared for his life. He lost consciousness again.

[16] On **June 2**, Mr Rivera woke up in a vacant lot. He was loosely bound and managed to get free. A taxi driver took him home at approximately 11:15PM.

[17] **The next day** Mr Rivera visited a doctor, who prescribed painkillers and anti-inflammatory pills. The prescriptions and the physician's notes of his physical examination are part of the record. The notes indicate "direct contusions in different parts of the body" and "[h]ematomas in the abdominal region, left leg, right forearm".

[18] On **June 27**, a white pickup truck passed by as Mr Rivera was leaving for work. He returned to his home. The truck followed. Three men with their faces covered entered the family home and beat Mr Rivera. Ms Garcia and the children tried to intervene but the men pushed them to the ground and took Mr Rivera away in the truck. He fainted from the assault.

[19] Mr Rivera woke up in a small, dark room. A man with a covered face demanded that he pay a million pesos. The man threatened a violent sexual assault on Ms Garcia and their daughter and to kill them "like dogs" if he did not comply with their demands for money. He lost consciousness again.

[20] Early the next morning, Ms Garcia and their son found Mr Rivera on the sidewalk outside their home.

[21] More threats followed in July. On **July 10**, two hooded men arrived at the family home seeking the money and asked when Mr Rivera would have it. They threatened him, his wife and children again.

[22] On **July 21**, two men arrived at the home with their faces covered. They told Mr Rivera “very aggressively” that he had 15 days to deliver the money and again made threats to Ms Garcia and the children.

[23] In **late July**, Mr Rivera told his pastor about the situation, who insisted that they file a police report. They did, on July 31. The pastor’s handwritten statement and the police report are both in evidence.

[24] On **August 1**, someone telephoned Mr Rivera to say that “he [the caller] knew that I [Mr Rivera] had reported them ... that they were from the gulf cartel and he threatened me”. Mr Rivera was very scared.

[25] Shortly after, the family stayed with a neighbour for approximately two weeks, during which time they researched where to go to escape the Gulf Cartel. The neighbour’s handwritten statement is in the record.

[26] On **August 15, 2017**, the family travelled to Canada and claimed protection under the *IRPA*.

B. *Events after the Applicants arrived in Canada*

[27] The evidence, including the new evidence admitted by the RAD, discloses the following events after the applicants arrived in Canada:

- The neighbour in Matamoros reported to Mr Rivera's mother that he had seen, multiple times, a pickup truck parked outside the family's home;
- Mr Rivera's mother, who lives in San Luis Potosi, provided a handwritten statement. She advised that she received a call asking for Mr Rivera and Ms Garcia in the latter half of **August 2017**; and
- Mr Rivera's mother received two calls in **September 2017**. Her statement advises that in the second call, a man told her to tell Mr Rivera that "no one can make fun of the Gulf Cartel and that sooner or later they would find him".

[28] Ms Garcia's mother also lives in San Luis Potosi. Her handwritten statement, made in early December 2018, recounts the following:

- In **May 2018**, Ms Garcia's mother received a call asking for Ms Garcia and her family. She asked the reason for the inquiry and told the caller that they did not live with her. The caller told her "no matter where they went will find them" and that "the cartel has power they can do more than that".
- Ms Garcia's mother has a sister who lives in the city of Oaxaca. In **July 2018**, the sister (i.e., Ms Garcia's aunt) told Ms Garcia's mother that she was scared because a man came to her house and asked for Ms Garcia and Mr Rivera. The man claimed they had won an automobile. The aunt told the man no one lived there by that name. The man

got upset and told her “no one makes fun of the Cartel del Golfo, they have many ways to find them it’s just a matter of time”. The man also told the aunt that they [i.e. Ms Garcia and Mr Rivera] “will have to pay the debt and the only way to [pay] is with their family. That is the only payment acceptable”.

- Ms Garcia’s mother’s statement notes that the aunt “does not want my daughter [Ms Garcia] or her family over at her place, and I understand because they don’t have any relationship with my children, there is no family connection. The only thing they know about my children is what I told them”.
- In **August 2018**, Ms Garcia’s mother received a call from a man asking for Ms Garcia and her husband. She told them they were living in Matamoros. The man hung up.
- Also in **August 2018**, Ms. Garcia’s mother’s grandson (who lives with Ms Garcia’s mother in San Luis Potosi), told her that according to his classmates, some men approached the classmates in a store asking about Mr Rivera and his family. The men offered money for any information.
- Ms Garcia’s mother’s statement further advises that her children in Reynosa also told her that “there are cars passing constantly by their house” and sometimes “they will park in front of the house for long”. They “are afraid because the same people asked her grandchildren about my Daughter. The children only told them that [Ms Garcia] is in Matamoros. All of us are scared...”

[29] At its hearing, the RPD proposed the cities of San Luis Potosi, Oaxaca and Mexico City as possible IFAs for the family in Mexico. The RPD was of course not aware of the new evidence

that would come out before the RAD, which caused it to exclude San Luis Potosi and Oaxaca as possible IFAs.

II. Issue Raised by the Applicants

[30] The applicants raise a single issue on this application: Was the RAD's finding of an IFA in Mexico City unreasonable, applying the standard of review in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 441 D.L.R. (4th) 1 ("Vavilov")?

III. Standard of Review

[31] Both parties made submissions based on the standard of review of unreasonableness set out in *Vavilov*. It is the presumed standard and I agree that it applies. See also *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, [2016] 4 F.C.R. 157, at para 35.

[32] *Vavilov* requires that on a judicial review application, the court must determine whether the decision at issue is reasonable, in both its rationale or reasoning and its outcome. The starting point is the RAD's reasons. A reviewing court takes a sensitive and respectful, but robust, approach to determining whether the administrative decision-maker's decision, including its reasons, are transparent, intelligible and justified, looking at the decision as a whole: see *Vavilov*, esp. at paras 13, 15, 67 and 99.

[33] A reasonable decision is one that is (a) based on an internally coherent and a rational chain of analysis and (b) justified in relation to the facts and law that constrain the decision-maker:

Vavilov, at para 85. An otherwise reasonable outcome will not stand if it was reached on an improper basis, for example by an unreasonable chain of analysis in the reasons, or if the decision is not justified in relation to the facts and applicable law: *Vavilov*, at paras 83-86 and 96-97; see also *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6.

[34] Not all errors or concerns about a decision are enough to cause a reviewing court to intervene on a judicial review. The Supreme Court in *Vavilov*, at paragraph 100, held that the reviewing court must be satisfied that there are “sufficiently serious shortcomings” in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep”. The problem must be sufficiently central, fundamental or significant to render the decision unreasonable: *Vavilov*, at paras 99-100.

[35] The Supreme Court in *Vavilov*, at paragraph 101, identified two types of fundamental flaws:

- a failure of rationality internal to the reasoning process in the decision; and
- when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it.

[36] Speaking about the factual and legal constraints that may bear on the decision, the Supreme Court in *Vavilov* contemplated that the reviewing court may consider the evidence before the decision-maker and facts of which the decision-maker may take notice. The reviewing court must

not reweigh or reassess the evidence, but a reasonable decision is one that is justified in light of the facts: *Vavilov*, at paras 125-126.

[37] The Supreme Court also contemplated that the reviewing court may consider the submissions of the parties, because the decision-maker's reasons must meaningfully account for the central issues and concerns raised by the parties: *Vavilov*, at para 127. This connects to the principle of procedural fairness and the right of the parties to be heard, and listened to. The decision-maker is not required to respond to every line of argument or possible analysis or to make explicit findings on every point leading to a conclusion. However, as a majority of the Court stated, "a decision-maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision-maker was actually alert and sensitive to the matter before it:" *Vavilov*, at para 128.

[38] Consistent with *Vavilov*'s emphasis on justification by way of the decision-maker's reasons, I now turn to the reasons of the RAD in this case.

IV. The RAD's Reasons

[39] As noted already, the RPD determined, in brief reasons of 18 paragraphs, that the applicants had IFAs in Oaxaca, San Luis Potosi and Mexico City. The RPD determined on its view of the evidence, as it then stood, that the applicants did not face a serious possibility of persecution, or risk of harm, in the proposed IFA locations.

[40] In its decision dated 5 September 2019, the RAD first summarized the overall facts. It then dealt with the applicants' request to admit new evidence, which it found credible, relevant and new and therefore admissible. The RAD turned to the scope of its review on an appeal from the RPD, noting that the RAD member had listened to the recording of the RPD hearing. The member then addressed the RPD's application of the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-based Persecution* (the "Gender Guidelines"). The RAD concluded that the RPD had not erred in its application of the Gender Guidelines. That issue was not raised in this Court.

[41] The principal issue before the RAD was whether the family had an IFA within Mexico. The RAD, at paragraph 17 of its reasons, described the two-prong test for an IFA set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (CA) ("*Rasaratnam*") at paras 8-10. That test requires that the RAD be satisfied, on a balance of probabilities, that (1) there is no serious possibility of the claimant being persecuted in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant(s), conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there. The claimant(s) bear the onus to show that the proposed IFA is unreasonable.

[42] On the first prong, the RAD quickly concluded that based on the new evidence, the applicants did not have a viable IFA in San Luis Potosi or in Oaxaca because members of the Gulf Cartel were aware that they have family members in these cities and had previously looked for the applicants in those locations: RAD reasons, at para 21. The RAD found that the new evidence responded to the RPD's concerns about the motivation and ability of the cartel to find the

applicants in those cities, but it showed the cartel's interest in the applicants "up to August 2018" only. There was "no evidence" that the Gulf Cartel members have been looking for the applicants "in the last year" (at para 21).

[43] The RAD member then considered whether the cartel had the means or motivation to find the applicants in Mexico City. At paragraph 22, the member held that the evidence showed that cartel members relied on the applicants' family as a means to find them. Because the applicants had no family in Mexico City, they failed to show that the cartel would be able to find them in that city and had not identified any other means of locating the family there.

[44] In paragraph 23 of the reasons, the RAD member then considered, as part of an "independent review", certain objective documentary evidence about the Gulf Cartel. The member concluded that the cartel had a strong presence in Matamoros, Reynosa and Nuevo Laredo but not in Mexico City. While an April 2015 map in a US Congressional Research Service Report showed that the cartel had a presence in Mexico City, that map had to be read together with the report's profile of the cartel dated 3 July 2018, which stated that "as of 2018, the Gulf Cartel is no longer considered a whole entity, but rather, it operates largely as fragmented and competing cells that do not communicate with each other." Therefore, the RAD reasoned, even if the cartel has factions in Mexico City, there is "no evidence that these factions communicate with the cells in Matamoros generally, or with the members that were specifically targeting" the applicants: RAD reasons, at para 23. The RAD then noted, at paragraph 24, a more recent map as of 2017 from BBC News, showing no presence of the cartel in Mexico City.

[45] Based on the evidence, the RAD concluded that the applicants had failed to demonstrate a serious possibility of persecution by the Gulf Cartel in Mexico City, or, on a balance of probabilities, a risk to their lives or a risk of cruel and unusual treatment or punishment by the cartel there.

[46] On the second prong of the *Rasaratnam* analysis, the RAD member found that the applicants had failed to provide “actual and concrete” evidence that conditions in Mexico City were unduly harsh or unreasonable for them. The member stated: “I find that the RPD correctly considered the [applicants’] circumstances. I find that the RPD’s reasons in this regard are well supported by the evidence, and therefore, they stand:” RAD reasons, at para 27.

[47] The RAD therefore dismissed the applicants’ appeal.

V. Analysis

A. *Positions of the Parties*

[48] The applicants’ submissions focus on paragraphs 21 to 23 of the RAD’s reasons. They argue that the RAD’s decision was unreasonable because it ignored relevant evidence. RAD used flawed reasoning, they contend, because the cartel members can learn their location in Mexico City by contacting and pressuring family members in other cities to disclose their whereabouts. The cartel members have already identified family members and approached them in Oaxaca, San Luis Potosi and Reynosa – three separate cities in “distant parts of Mexico” – to demand the applicants’ location. They are watching the family members and could follow them to Mexico City

if they visit. The only way for the applicants to remain safe is to hide themselves from, and cease contact with, all their family members, something that is inconsistent with a true IFA.

[49] The applicants also challenge the RAD's reasoning that because the Gulf Cartel is fragmented and competing cells do not communicate with each other, Mexico City is safe for the family. To the contrary, the applicants say: the evidence shows that the cartel members have "national reach", outside of their sphere of influence, and both the means and motivation to seek out the applicants throughout Mexico. The applicants submit that the RAD ignored evidence in the National Document Package for Mexico that is inconsistent with its conclusion, and that the cartel members have both a personal vendetta and money as motivation to pursue them.

[50] In support of their position during oral argument, the applicants made detailed submissions on the chronology of evidence showing the cartel members' interactions with the applicants and their family members in various cities in Mexico, both before they travelled to Canada and after they left.

[51] The respondent's position is that the RAD's conclusion is reasonable. The applicants have not met the burden of proof to show, on a balance of probabilities, that they would be at risk from members of the cartel in Mexico City. The evidence fails to demonstrate that the members have the means or motivation to find the applicants there; the cartel had no presence in Mexico City and only relied on other family members as a means of finding them and never went beyond the family to do so. Even if it had a presence in Mexico City, the respondent contends that there is no evidence

that the Mexico City factions of the cartel communicated with cells in Matamoros or with the members that were specifically targeting the applicants.

B. *Is the RAD's Decision Unreasonable? The First Prong in Rasaratnam*

[52] I agree with the applicants that the RAD's decision is unreasonable and must be set aside.

There are three reasons.

[53] *First*, the central reasoning in the RAD's assessment of Mexico City as a proposed IFA is unsustainable. I agree with the applicants that the RAD did not grapple with the evidence or their submission on a central and possibly dispositive issue: whether the new evidence demonstrated the "national reach" of the cartel members including in the proposed IFA, Mexico City. The RAD summarized the new evidence, but it did not recognize, or simply ignored, the impact of the cartel's pursuit of the applicants in San Luis Potosi and Oaxaca on its assessment of Mexico City as a possible IFA for the applicants.

[54] The RAD's reasoning on this issue was in paragraph 23, in which the RAD held that, as of 2018, the cartel "is no longer considered a whole entity, but rather, it operates largely as fragmented and competing cells that do not communicate with each other". Based on the RAD's citation, this statement appears to be an amalgam of two separate observations in the US Congressional Research Services report, one on page 16 (with a footnote to a February 1, 2018 article) and another on page 17 (footnoted to an interview in June 2014). Immediately after this statement, the RAD's reasons conclude: "Therefore, even if the Gulf Cartel has factions in Mexico

City, there is no evidence that these factions communicate with the cells in Matamoros generally, or with the members that were specifically targeting the [applicants].”

[55] In my view, the RAD here failed to recognize and analyze the evidence related to the alleged fragmentation and non-communication within the Gulf Cartel. The map mentioned by the RAD in the same paragraph shows that the Gulf Cartel does not have a presence in San Luis Potosi and has a presence with another cartel in both Oaxaca and Mexico City. Yet cartel members or someone on their behalf made inquiries for the applicants in both San Luis Potosi and Oaxaca, both of which are a considerable distance away from Matamoros. Oaxaca is well south of Mexico City. San Luis Potosi is northwest of Mexico City but still hundreds of kilometres from Matamoros.

[56] In addition, in both San Luis Potosi and Oaxaca, men made inquiries about the applicants in person. In San Luis Potosi, men approached children at a store and offered money for information about Mr Rivera. In Oaxaca, a man came to the door of Ms Garcia’s aunt. These in-person inquiries in San Luis Potosi and Oaxaca occurred in 2018 – during the period in which the cartel (according to the RAD) was supposedly fragmented and not communicating internally. Recall that the source evidence relied upon by the US Congressional Research Services report was from June 2014 and February 2018.

[57] The RAD did not recognize that its conclusion on fragmentation and non-communication within the cartel was inconsistent with the evidence before it. From the evidence, there were two possibilities that bore directly on the RAD’s assessment of Mexico City as an IFA, neither of which

was considered by the RAD. Either (a) members of the Matamoros cartel cell communicated with other cells in both San Luis Potosi and in Oaxaca to assist them in searching there for the applicants (which would be inconsistent with the RAD's fragmentation and non-communication conclusion in paragraph 23); or (b) the agents of persecution travelled themselves to San Luis Potosi and to Oaxaca in order to search for the applicants. Either option would imply, as the applicants submit, that the agents of persecution could do the same in Mexico City, where the cartel had a presence or could travel just as easily as to San Luis Potosi or to Oaxaca.

[58] The RAD understood the impact of the new evidence as it directly concerned San Luis Potosi and Oaxaca. The RAD quickly rejected them as possible IFAs based on the new evidence. However, if the evidence of cartel inquiries in San Luis Potosi and Oaxaca were sufficient for the RAD to conclude summarily that those cities are not viable IFAs, the same evidence had to be considered as motivation and means evidence for Mexico City as a potential IFA. These facts cannot be ignored. The applicants put the point to the RAD in their written argument (at paras 38 and 55 of their RAD submissions).

[59] In my view, it was a reviewable error for the RAD not to have considered this evidence in its IFA analysis of Mexico City.

[60] The RAD's view that the cartel members were just following the applicants' family members to San Luis Potosi and Oaxaca does not fully answer the new evidence. Following family members does not address the inconsistency with the RAD's finding on fragmentation and non-communication, which is central to its reasoning. There is also another piece of evidence also not

considered by the RAD. Ms Garcia's mother's statement notes the absence of any relationship or family connection between the applicants on one hand, and Ms Garcia's aunt and her family down in Oaxaca on the other. The RAD's reasons do not address or explain why and how the supposedly fragmented and non-communicative cartel members were able to track down family members with whom the applicants had such a tenuous personal connection, in a city in the far south of Mexico, in order to make inquiries about the applicants' whereabouts.

[61] The cartel members have repeatedly made specific threats to Mr Rivera, Ms Garcia and their daughter. They include multiple threats to kill the family (separated by more than a year), and a threat of sexual violence against Ms Garcia and their daughter. Armed and masked men have demanded money. They also appear to seek punishment or revenge for the report to the police. Cartel members went to considerable effort, over at least a year, to identify people who have a family connection to the applicants, in three Mexican cities other than Matamoros, and to send men to make inquiries in two of those cities. They made in-person inquiries of both adults and children, of family members and other people, and offered money in exchange for information.

[62] By the same token, as the respondent observed, none of the cartel's inquiries has involved violence to anyone other than the applicants. Their efforts to locate the applicants have sometimes been hindered by non-disclosure and false information.

[63] All of this goes to the means and motivation of the agents of persecution to find the applicants and it all must be considered in relation to Mexico City as a possible IFA for the family. The RAD's failure to do so renders its decision unreasonable. It will be for the RAD, not this

Court, to weigh all the evidence when it redetermines the applicants' claims under ss. 96 and 97 of the *IRPA*. (For clarity, this conclusion does not impliedly restrict the use of this evidence under the first prong of an IFA analysis.)

[64] There are two other troubling points about paragraph 23 of the RAD's reasons. The RAD's initial statement in that paragraph was that the Gulf Cartel had a strong presence in Matamoros, Reynosa and Neuvo Laredo but not Mexico City. The reasons cited the RPD Record, exhibits 7 and 10, which are respectively Counsel's Disclosure package dated 15 September 2017 and Counsel's Disclosure package dated 17 September 2018, both of which are composite exhibits containing many documents. Yet the RAD does not provide any specific references to which document(s), or which pages, from the disclosure packages support its statement. With one exception, the RAD does not otherwise engage in any analysis of any document found in those exhibits anywhere in its reasons. One is left uncomfortably wondering what evidence the RAD used to ground a foundational proposition in its analysis of Mexico City as a proposed IFA.

[65] The other troubling point in paragraph 23 concerns the RAD's finding that the cartel did not have a strong presence in Mexico City, which it stated was "consistent with" the US Congressional Research Service Report. The RAD's footnote refers to page 16 of the report. That page says nothing expressly about the Gulf Cartel's lack of presence in Mexico City; the closest statement is that the cartel "has operations in other Mexican states on the Gulf side of Mexico" – Mexico City is of course inland. Yet paragraph 23 then immediately recognizes that a map in the same report does indicate the presence of the cartel in Mexico City. Then the RAD's reasons hasten

to add that the map must be read together with the profile of the cartel – which leads the reader back the other way again. There is apparent confusion in the reasoning.

[66] These two additional points reinforce the conclusion that the RAD failed to engage coherently with the evidence in assessing Mexico City as an IFA in this case. In the Supreme Court’s words, the RAD was not “alert and sensitive” to the matter before it: *Vavilov*, at para 128.

[67] While this first reason is sufficient cause to set aside the RAD’s decision, there are two additional reasons that support the same conclusion.

[68] *Second*, the RAD did not consider whether the applicants would have to go into hiding in the proposed IFA to keep themselves safe from the members of the Gulf Cartel, and to cease visiting or communicating with their entire family to take refuge in Mexico City. On the evidence before the RAD, that issue had to be addressed.

[69] The applicants referred to *Ali v Canada (Minister of Citizenship and Immigration)*, 2020 FC 93, in which Justice Russell granted an application for judicial review of a RAD decision. In *Ali*, a family from Pakistan claimed protection under the *IRPA* due to targeted death threats and a demand for money from armed men claiming to represent the Tejrik-i-Taliban Pakistan (the “TTP”), if the family returned to visit the male claimant’s father. The RPD proposed an IFA in Hyderabad, some 1200 km from the father’s home. The RPD found that Hyderabad was a viable IFA and the RAD, after admitting new evidence, dismissed the appeal. The RAD based its decision on the capacity and geographic reach of the TTP, the claimants’ profile, and the size of Hyderabad.

The RAD explicitly noted that it had considered whether the relocation of the claimants to Hyderabad would leave them unable to contact their family members in Pakistan for fear that the TTP would learn their whereabouts. The RAD found that family members should use a “degree of discretion” in discussing the location of the claimants.

[70] The key issue for Justice Russell in *Ali* was whether the TTP was likely to learn of the claimants’ return to Pakistan and their presence in Hyderabad and “whether the TTP has either the willingness or the wherewithal to seek them out in that large city to cause them harm:” *Ali*, at para 46. The “obvious concern” for the claimants was that the TTP would learn of their return and location through family members (at para 48). Speaking of the RAD’s finding that the family members were unlikely to tell anyone that the claimants had taken up residence in Hyderabad, Justice Russell stated that it would be “unreasonable to expect family members to place their own lives in danger by either denying knowledge of the [claimants’] whereabouts or deliberately misleading the TTP” (at para 49). Justice Russell held that the claimants would be forced to hide from family members and friends and cut off communications, something tantamount to going into hiding: *Zamora Huerta v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 586, [2008] F.C.J. No. 737, at para 29). He concluded at paragraph 50 that doing so was not a reasonable requirement and cannot be used to obviate risk under the first prong of the *Rasaratnam* analysis.

[71] The same point on hiding has been made in other factual circumstances that are less comparable to the present case: see Justice Blanchard’s decision in *Huerta*, at paras 26-29, and

Justice Mactavish's reasons in *Zaytoun v Canada (Minister of Citizenship and Immigration)*, 2014 FC 939, at para 16.

[72] The appellate legal source of this analysis is, as all three cases recognize, the Federal Court of Appeal's decision in *Thirunavukkarasu v Canada (Minister of Citizenship and Immigration)* (1993), [1994] 1 FC 589, [1993] F.C.J. No 1172 (CA), at para 14.

[73] In the present case, the RAD did not consider whether the applicants would be required to go into hiding and cut themselves off from their family and friends. Given its finding in paragraphs 21 and 22 that the only means the cartel members used to locate the applicants in Mexico was through their family members, and the importance of that conclusion to the RAD's analysis of the means and motivation of the cartel to do so in Mexico City under the first prong of *Rasaratnam*, the RAD was obligated to deal with this issue, squarely, and to consider all the evidence of the cartel members' searches for the applicants as detailed above. It was a fundamental issue owing to the RAD's own analysis on how the cartel tracked the applicants through family members.

[74] *Third*, the RAD's decision at paragraph 21 found that the newly admitted evidence showed the motivation and ability of the cartel to find the applicants "up to August 2018" only. The RAD relied on the absence of any evidence that the agents of persecution had pursued the applicants "in the last year", i.e., in the year leading up to the RAD's decision in September 2019. The applicants submit that only the period between the last event in August 2018 and the filing of their Application Record in December 2018 should be considered a period in which the cartel members made no known inquiries for the applicants. On that submission, the remaining nine or ten months from

their filing to the RAD's decision should not form the basis of any inference that the cartel had become disinterested in finding them.

[75] The applicants have a point, but it does not need to be resolved in this case. The argument is more attractive when coupled with the evidence. It is of course factually correct that there was "no evidence" that the Gulf Cartel members have been looking for the applicants in the year leading up to the RAD's decision. But equally, there was no evidence that the cartel had lost interest – the evidence showed threatening conduct over more than a year between late May 2017 and August 2018, including specific threats of sexual assault and death, evidence of financial and non-financial motivation, and a geographically diverse effort to locate the applicants within Mexico. The respondent did not identify a reason in the evidence why the cartel had stopped looking or lost interest.

[76] Although this Court typically shows respectful deference to findings of fact and inferences made by decision-makers (including the RAD) based on evidence, the RAD's assessment in this case did not account for any of the already-detailed evidence related to cartel inquiries in San Luis Potosi and Oaxaca up to the end of August 2018. In my view, it was an error for the RAD to consider the passage of the year from the end of August 2018 to early September 2019, in isolation and without assessing all of the evidence about 2017-18, in its analysis of Mexico City as an IFA.

[77] For these reasons, the RAD's decision was unreasonable under *Vavilov* principles and must be set aside.

C. *The Second Prong*

[78] On the second prong of the *Rasaratnam* analysis, the RAD swiftly adopted the RPD's reasoning in its entirety and provided a Lilliputian explanation of why.

[79] As in *Ali*, it is not necessary to address the RAD's assessment of the second prong and specifically whether the RAD member's reasons were unsatisfactory. The RAD's redetermination will have to assess the proposed IFA in Mexico City under that prong on all the evidence, including the personal circumstances of the claimants.

D. *Certain Submissions by the Respondent*

[80] Before closing, I should acknowledge that to support the position that the RAD's decision was reasonable, the respondent's oral submissions took considerable time to identify certain so-called "oddities" in the evidence relied upon by the applicants – for example, the lack of a deadline, initially, for payment of the million pesos demanded by the cartel. The respondent also noted the absence of certain points in the police report filed by the applicants in July 2017, in contrast to Mr Rivera's narrative filed with his Basis of Claim; the absence of threats to family members when the cartel members demanded the applicants' location; and the fact that family members have, without consequences, not disclosed the applicants' location or misled cartel members about it.

[81] In the main, these submissions go more to the correctness of the RAD's decision or to the merits than to its reasonableness on judicial review. I am not persuaded that they should materially influence the outcome of this application for that reason, and because (i) none of these points appeared in the RAD's reasons; (ii) some or all of the submissions could attract substantive counterpoints from the applicants on the merits; (iii) neither the RPD nor the RAD made adverse

credibility findings about any witness's evidence; and (iv) there are plenty of proper reasons (including the assistance of legal counsel) why factual details may appear in a filed narrative that add to the details in an earlier account. There are improper reasons too – although the respondent did not identify any evidence of an improper reason on this application.

VI. Conclusion

[82] For these reasons, the RAD's decision will be set aside and the matter returned to the RAD for redetermination by a different member.

[83] Neither party raised any issue for certification. There is no basis for an award of costs.

JUDGMENT in IMM-6069-19

THIS COURT'S JUDGMENT is that:

1. The decision of the Refugee Appeal Division dated 5 September 2019 is set aside.
2. The applicants' claims are returned to the Refugee Appeal Division for redetermination by a different member.
3. No question is certified under paragraph 74(d) of the *Immigration and Refugee Protection Act*.
4. There is no order as to costs.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6069-19

STYLE OF CAUSE: LUCIO RIVERA BENAVIDES v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 10, 2020

**REASONS FOR JUDGMENT
AND JUDGMENT:** A.D. LITTLE J.

DATED: AUGUST 24, 2020

APPEARANCES:

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Michael Butterfield FOR THE RESPONDENT

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