

Federal Court



Cour fédérale

Date: 20201110

Docket: IMM-6496-19

Citation: 2020 FC 1048

[ENGLISH TRANSLATION]

Montréal, Quebec, November 10, 2020

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**DAMARIS ORNELAS RIZO
LUIS ERNESTO VALADEZ RIZO
YASLEEN DANELY VALADEZ ORNELAS
KORETTI ANELYZ VALADEZ ORNELAS
STACY MILAGROS VALADEZ ORNELAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of the Refugee Appeal Division

[RAD] dated October 2, 2019, upholding a decision of the Refugee Protection Division [RPD], dated January 5, 2018, rejecting the claimants' refugee protection claim.

[2] The parties have agreed that the Court will decide the merits of this application on the basis of the written memoranda and the Tribunal Record.

I. Context

[3] On December 28, 2016, the applicants, a couple and their three children, left Mexico for Canada where they claimed refugee protection status. The principal female applicant fears individuals who allegedly kidnapped the applicants' eldest daughter in September 2012, subsequently releasing her for ransom, and individuals who allegedly attempted to kidnap her younger sister in October 2016, in Leon, in the state of Guanajuato.

A. RPD decision

[4] The applicants raised no grounds to trigger the application of section 96 of the IRPA. The state was not in any way involved in the harm feared by the applicants: paragraph 97(1)(a) of the IRPA, the danger of torture, therefore does not apply. How about paragraph 97(1)(b) of the IRPA? The RPD concluded in this regard that the alleged risk was criminal in nature and a generalized risk. Moreover, the RPD was not satisfied that the people who kidnapped the eldest daughter in September 2012 were the same as those who attempted to kidnap the younger sister in October 2016. Given the difference in *modus operandi* and the long time that elapsed between the two events, the RPD found that the events were isolated and random. The RPD also found that there had been no change in the risk since nothing happened between the kidnapping and the

kidnapping attempt, and the applicants remained in their home between October 2016 and December 2016.

B. RAD decision

[5] The applicants submitted new evidence before the RAD, alleging the following, among other things:

- (a) On January 8, 2018, the female applicant's cousin, who lived in the applicants' house in the city of Silao, was assaulted by four individuals claiming to be members of the Jalisco New Generation Cartel [the Cartel] and saying that they were looking for the female applicant;
- (b) In February 2018, the Cartel left a threatening letter at their home demanding a sum of money and threatening to kill their daughter;
- (c) At the same time, the male applicant's mother, who owned the house where the applicants lived, put the house up for sale and received a call issuing death threats and demanding that the proceeds of the sale be paid to the Cartel; and
- (d) The male applicant's mother reported this situation to a journalist, who published an article about it.

[6] The RAD concluded that the new alleged facts and the new evidence were not credible and that it was unlikely that the Cartel would have been looking for the applicants and would go after them if they were to return to Mexico since:

- (a) The time that elapsed between the alleged criminal acts against the applicants seemed inexplicable and implausible: why would the Cartel have waited until January 2018 to attempt to trace the applicants by assaulting the female applicant's cousin when they had allegedly been on their tail since 2016, or even 2012?
- (b) Given the time that elapsed, it was unlikely that criminals, be they members of the Cartel or not, would have threatened the male applicant's mother when she was trying to sell the house;
- (c) If the Cartel members really had been on the applicants' tail, it was unlikely that the Cartel members would not have contacted the family members still living in Silao since February 2018;
- (d) It was unlikely that the Cartel suddenly became interested in the applicants in January 2018 when it had never have targeted them in the past; and
- (e) It was unlikely that the Cartel would be interested in the applicants, who are not wealthy and who are not involved in Cartel-related criminal activities, such as drug trafficking.

[7] With respect to the new documents, the RAD found that they were not credible and did not corroborate the new allegations. The Mexican newspaper article was allegedly written at the request of the male applicant's mother. With respect to the letters from the mother and the cousin, the RAD found that they merely repeated allegations that had not been found to be credible and that they were from unofficial sources that were unknown to the panel. The RAD

also gave no weight to the photographs of a threatening letter. As for the other documents, they did not support the applicants' version.

II. Analysis

[8] When reviewing a decision against a standard of reasonableness, this Court must begin its inquiry by examining the reasons provided with respectful attention and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion. What the decision maker must do to justify a decision depends on the context in which the decision is made. 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. In short, the decision maker has to assess and evaluate the evidence before it. Absent exceptional circumstances, this Court must not interfere with the decision maker's factual findings (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125 [*Vavilov*]). That said, "[t]he reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

[9] The applicants are essentially challenging the following findings and inferences of the panel:

- (a) The time that elapsed between the 2016 kidnapping attempt and the events of January 2018 is not inconceivable. Given that the events of 2012 and 2016 did not take place at their home, the applicants submit that the Cartel members did not

know their address and that, considering Mexico's large population, it was normal that it took the Cartel time to find them.

- (b) The RAD could not determine that nothing had happened since February 2018 since the female applicant is no longer in touch with her brothers and sisters. As a result, the applicants simply do not know if something else has happened;
- (c) The RAD unreasonably found that it was unlikely that the applicants would be targeted by the Cartel because the Cartel's activities go beyond large-scale drug trafficking and include extortion and kidnapping. Claimants who have lived in the United States and who still have family there are more likely to be targeted; and
- (d) The RAD's finding that the new documents filed as evidence are not credible is reviewable. The journalist did not mention the name of the Cartel directly because he would have taken a significant risk in doing so. Similarly, the RAD should have accepted the male applicant's mother's version stating that she had contacted the journalist because the police did not wish to register her complaint. The RAD should have accepted the letters from the applicants' mother and cousin as they were signed and dated and their provenance had been established. Finally, the applicants submit that the RAD should have found the photographs of a threatening letter credible because it was unreasonable to require that the letter be dated and signed, or that its source be confirmed.

[10] There is no need to intervene in this case. The Court accepts the reasons for dismissal set out in the respondent's written memorandum. The applicants are essentially asking us to

reanalyze the evidence on the record. To reiterate, the role of this Court is not to substitute its own view of the facts for that of the RAD. In the case under review, this Court finds no reviewable error in the RAD's reasoning, and the decision to reject is based on the evidence and reasonable.

[11] In this case, it is not unreasonable to conclude that two events that were four years apart were not related. This is particularly true given that the applicants never moved, the children continued to attend the same school, and the applicants operated a convenience store open to the public. The Cartel is a criminal organization with significant resources and could have found them much earlier. While it is also true that the Cartel's activities go beyond drug trafficking, it was open to the RAD to question the Cartel's interest in the applicants, who are not particularly wealthy. As for the new documentary evidence, it was also open to the RAD to not find it to be credible or conclusive. The letters from the mother and the cousin merely restate the applicants' allegations. As for the newspaper article, it was reasonable not to find it to be credible given its source, the article essentially merely repeating the allegations made by the applicants' mother. Finally, contrary to the applicants' claims, the RAD did not reject the threatening letter because it was missing a signature or a date, but because it was not credible given the context of the claim; this was also a reasonable conclusion that was open to the RAD to draw.

III. Conclusion

[12] For these reasons, this application for judicial review is dismissed. No serious question of general importance was raised in this case.

JUDGMENT in IMM-6496-19

THIS COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed.

No question is certified.

“Luc Martineau”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6496-19

STYLE OF CAUSE: DAMARIS ORNELAS RIZO, LUIS ERNESTO VALADEZ RIZO, YASLEEN DANELY VALADEZ ORNELAS, KORETTI ANELYZ VALADEZ ORNELAS, STACY MILAGROS VALADEZ ORNELAS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CASE DECIDED ON THE BASIS OF THE WRITTEN MEMORANDA AND THE TRIBUNAL RECORD

JUGEMENT AND REASONS: MARTINEAU J.

DATE OF REASONS: NOVEMBER 10, 2020

APPEARANCES:

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