

Federal Court



Cour fédérale

Date: 20210319

Docket: IMM-3450-20

Citation: 2021 FC 244

Ottawa, Ontario, March 19, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**JUAN JOSE CORTEZ LEOS
CATALINA MORENO GALLEGOS
EVELIN ELIZABETH CORTEZ MORENO
TADEO ZAID CORTEZ MORENO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Juan Jose Cortez Leos, his wife Catalina Moreno Gallegos, their daughter Evelin Elizabeth Cortez Moreno (born 2010) and their son Tadeo Zaid Cortez Moreno (born 2014) are citizens of Mexico. They seek judicial review of a decision by the Refugee Appeal Division

[RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed the determination of the Refugee Protection Division [RPD] of the IRB that the Applicants are neither Convention refugees nor persons in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicants claim to be at risk of harm from two criminal organizations, the Zetas and the Gulf Cartel. The RAD concluded that the Applicants have an internal flight alternative [IFA] in Mexico City, and therefore do not require Canada's protection.

[3] Before this Court, the Applicants challenge only the RAD's finding respecting the first prong of the IFA test: whether they would face a serious risk of harm from the Zetas and the Gulf Cartel in Mexico City.

[4] The RAD reasonably found that the Applicants did not demonstrate, on a balance of probabilities, that the Zetas and the Gulf Cartel have an ongoing motivation to actively search for them or harm them in Mexico City. The application for judicial review is therefore dismissed.

II. Background

[5] The Applicants are former residents of Plateros in Fresnillo Municipality, Zacatecas State, where they lived with Catalina's parents. They say that their family has been threatened by the Zetas and the Gulf Cartel since March 2011.

[6] The Applicants arrived in Canada on November 3, 2017 and submitted claims for refugee protection on December 15, 2017. The claims were heard by the RPD on December 17, 2018 and rejected on January 16, 2019.

[7] The RPD found the Applicants to be credible. The RPD accepted that Catalina's father had been extorted by the Zetas and the Gulf Cartel, and that threats had been directed towards the Applicants. However, the RPD found that the Applicants were unable to discharge their burden of demonstrating that they did not have an IFA in Mexico City.

[8] The Applicants appealed the RPD's decision to the RAD. On July 28, 2020, the RAD confirmed the determination of the RPD that the Applicants have an IFA in Mexico City.

III. Issue

[9] The sole issue raised by this application for judicial review is whether the RAD's decision was reasonable.

IV. Analysis

[10] The RAD's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of

justification, intelligibility and transparency” (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[11] The test for a viable IFA is well-established (*Rasaratnam v Canada (Minister of Employment & Immigration)*, [1992] 1 FC 707 (FCA) at paras 5-6, 9-10): first, the IRB must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA to exist; and second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[12] Both prongs of the test must be satisfied. The burden of demonstrating that an IFA is not viable rests with the Applicants (*Hamid v Canada (Citizenship and Immigration)*, 2020 FC 145 at para 31, citing *Farias v Canada (Minister of Citizenship & Immigration)*, 2008 FC 1035 at para 34).

[13] The Applicants challenge the RAD’s findings only with respect the first prong of the IFA: whether they would face a serious possibility of persecution by the Zetas and the Gulf Cartel in Mexico City.

[14] The RAD provided the following summary of the Applicants’ testimony before the RPD regarding the nature of the threat they face in Mexico:

[24] When questioned by the RPD on whether, during the Appellants' temporary stay with the Associate Appellant's sisters in 2011 and 2016 respectively, or between 2011 and 2016, they encountered any further threats or issues, the Associate Appellant responded that they had not. And although the Associate Appellant did testify that during the Appellants' stay with one of her siblings in Aquascalientes in 2011, she had noticed that people were following them, she also concedes that those individuals never talked to the Appellants or sought to harm them. Neither have the Appellants nor the Associate Appellant's parents received any further threats to harm them after 2016 from the cartels.

[15] The RAD therefore affirmed the RPD's conclusion that the Zetas and the Gulf Cartel are no longer seeking to harm the Applicants:

[25] I therefore agree with the RPD's finding. This is because, although I accept the Appellants' allegations that the agents of harm made threats to harm them in the past, based on the evidence that they submitted, I do not find that the Appellants have provided persuasive evidence to corroborate their allegations that the agents of harm continue to be interested in finding them, or in harming them or their family members, even though neither they nor their family members had gone into hiding. In addition, there were no more threats, I find, despite the fact that the Associate Appellant's father has not paid the extortion money that they demanded of him.

[16] The Applicants argue that the RAD misapprehended the nature of the threat they face in Mexico. They say that the risk presented to both the RPD and the RAD was a risk to the Applicants, not a risk faced by Catalina's parents. Because Catalina's father resisted the cartels' extortion demands, any reprisal would be directed to the Applicants, not their parents.

[17] According to the Applicants, there has been no reprisal because the Applicants are in Canada. Any adverse inference drawn from the absence of reprisal against the parents is therefore misplaced and unreasonable.

[18] The RAD cited independent documentary evidence suggesting that there would normally be reprisals against those who do not pay the money demanded of them. It was therefore open to the RAD to draw an adverse inference against the Applicants from the fact that Catalina's father was never subject to reprisals, despite resisting the cartels' attempts to extort him for money.

[19] The documentary evidence relied upon by the RAD also indicated that the cartels would use informants to track down individuals whom they want to harm. The RAD noted that the Applicants were neither tracked down nor threatened by the Zetas after 2011. Although the Gulf Cartel continued to make threatening telephone calls to Catalina's father as late as 2016, it made no efforts to actively search for the Applicants during the six years between the time of the initial threat and their departure for Canada.

[20] According to the National Documentation Package for Mexico relied upon by the RAD, Mexico City is the most densely populated city in North America with a population estimated at 21.5 million in the metropolitan area. Despite the evidence before the RAD that the agents of persecution have the means of operating in Mexico City, the RAD reasonably found that the Applicants did not demonstrate, on a balance of probabilities, that the Zetas and the Gulf Cartel have an ongoing motivation to actively search for them or harm them in Mexico City.

[21] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3450-20

STYLE OF CAUSE: JUAN JOSE CORTEZ LEOS, CATALINA MORENO
GALLEGOS, EVELIN ELIZABETH CORTEZ
MORENO AND TADEO ZAID CORTEZ MORENO v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
VANCOUVER, BRITISH COLUMBIA AND
OTTAWA, ONTARIO

DATE OF HEARING: MARCH 1, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: MARCH 19, 2021

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