

Federal Court



Cour fédérale

**Date: 20210518**

**Docket: IMM-3699-20**

**Citation: 2021 FC 457**

[ENGLISH TRANSLATION]

**Montréal, Quebec, May 18, 2021**

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

**BETWEEN:**

**ARTURO BAEZ DE LA CRUZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of the decision rendered on July 30, 2020, by the Refugee Appeal Division [RAD] confirming the decision of the Refugee Protection Division [RPD] dated October 30, 2018, rejecting the applicant's claim for refugee protection.

[2] For the reasons that follow, the RAD did not breach its duty of procedural fairness or otherwise exceed its jurisdiction, and the impugned decision is reasonable in all respects.

Therefore, there is no need to intervene in this case.

I. Factual background

[3] The applicant is a citizen of Mexico. In support of his claim for refugee protection, he alleges that he took part in a police operation in a city in the state of Chiapas on September 9, 2000, in his capacity as a police officer and as a member of a specialized anti-drug trafficking group. During the operation, a very powerful politician [the individual], who happened to be a friend of the current president, was arrested at his home. Shortly after, the police commander told the officers involved that they could face reprisals. The applicant resigned and moved to Mexico City, where he lived alone for a number of years. However, in November 2009, while staying for a few months with his mother, who lives in Chiapas, the applicant found out that members of the judicial police were inquiring about him. On May 17, 2010, strangers forced their way into his mother's home, but he managed to escape; he then lived in hiding at a friend's place in another city from 2010 to 2017. In February 2017, the applicant went to Canada and claimed refugee protection.

II. Rejection of refugee protection claim, dismissal of subsequent appeal

[4] Noting several contradictions and inconsistencies in the applicant's testimony, the RPD found that the applicant was not credible overall. Moreover, the RPD noted that no one had returned to the applicant's mother's home or other family members' homes to try to find him after 2010, and it concluded that the applicant had not established that he was currently being

sought by the individual and his associates (RPD decision at para 19). The RAD therefore determined that he was not a Convention refugee or a person in need of protection. The applicant appealed to the RAD.

[5] The RAD carried out an independent analysis of the evidence and arrived at its own conclusions. It found that the determinative issues were credibility and the absence of prospective risk (RAD decision at para 5). In particular, the RAD agreed with the RPD's conclusions regarding the answers in the form completed at the port of entry, the contradictions and inconsistencies with respect to the incident at the applicant's mother's home on May 17, 2010, and his behaviour inconsistent with the alleged fear. In its detailed analysis, the RAD did identify a number of errors by the RPD; however, the errors did not affect the validity of the RPD's final determination, and the absence of a prospective risk under section 97 of the IRPA justified the dismissal of the appeal, resulting in this application for judicial review.

### III. Analysis

[6] The applicant submits before this Court that the RAD breached a principle of natural justice and procedural fairness or otherwise exceeded its jurisdiction in dealing in its decision with the issue of prospective risk, which was a new issue, since the sole issue before the RPD was credibility. The applicant had not addressed the issue of prospective risk in his written submissions on appeal. Therefore, the RAD should have offered him the opportunity to make representations on prospective risk. The breach of procedural fairness thus justified setting aside the impugned decision and referring the matter back to a different panel for redetermination.

[7] The respondent, on the contrary, submits that the RAD did not breach procedural fairness or exceed its jurisdiction in concluding that the determinative issues were credibility and prospective risk, which was not a new issue. In this type of hybrid appeal, the RAD must conduct its own analysis of all the evidence on the record and draw its own conclusions, which it did in this case. Moreover, the RPD drew a conclusion on prospective risk in paragraph 19 of its decision. Its decision is reasonable in all respects, and this application for judicial review must therefore be dismissed.

[8] The standard of review on issues of procedural fairness is correctness. In such cases, the Court undertakes its own analysis and determines whether procedural fairness was violated by the decision of the administrative decision maker (*Bouchra v Canada (Citizenship and Immigration)*, 2020 FC 1063 at para 16). In this case, the applicant has not satisfied me that the RAD made a reviewable error that affects the validity of the conclusion to dismiss the appeal. In that respect, I accept the arguments for dismissal raised by the respondent in the written and oral submissions of its counsel. I would, however, add the following.

[9] First, the applicant has raised only the issue of procedural fairness before the Court today; he is not challenging the reasonableness of the multiple credibility findings. However, the conclusions on which the RAD agreed with the RPD relate to important elements of the applicant's story. They are in themselves sufficient to confirm the RPD's determination and justify dismissal of the appeal. The applicant has not persuaded me that the matter should be referred back for redetermination. The fact is that the applicant's story is not credible; therefore, the conclusion that there is no prospective risk is reasonable.

[10] Second, the RAD had jurisdiction to consider the issue of prospective risk. In this case, the RAD did not breach procedural fairness in determining that, even if it believed the applicant regarding all of the information provided as evidence, it would still conclude that the applicant had not established, on a balance of probabilities, that he faced a prospective risk (RAD decision at para 69). This is not a new issue, as the applicant claims; the existence of a prospective risk is always central to the right to protection under section 97 of the IRPA (*Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678 at para 40). It is clear from paragraph 19 of the RPD's decision, read in light of the decision as a whole, that the RPD also had in mind the absence of a prospective risk and that it ruled on this issue, if not explicitly, then at least implicitly.

[11] There is no dispute that the lack of sufficient explanation for the inconsistency and contradiction regarding the incident of May 17, 2010, greatly undermined applicant's credibility:

- At paragraph 10 of his Basis of Claim Form [BOC Form], the applicant stated that he heard noises while he was sleeping and saw masked people in the courtyard of his mother's home (RAD decision at para 43).
- During his testimony, the applicant stated that he saw shadows in the room while watching television on May 17, 2010, and that this alerted him that people were about to enter the home (RAD decision at paras 42–43).
- When questioned by the RPD, the applicant stated that he did not hear any noise but saw shadows in the room while watching television (RAD decision at para 43).

[12] Moreover, the RPD and the RAD could reasonably have concluded that the evidence on the record showed behaviour inconsistent with the alleged fear. In this case, in the absence of new facts, I fail to see how the applicant can claim that there is a prospective risk. The RAD's decision is reasonable in all respects.

IV. Conclusion

[13] The application for judicial review is dismissed. No serious question of general importance was raised by counsel, and none arises in this case.

**JUDGMENT in IMM-3699-20**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed. No question is certified.

“Luc Martineau”

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Judge

Certified true translation  
Michael Palles, Reviser

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

**DOCKET:** IMM-3699-20

**STYLE OF CAUSE:** ARTURO BAEZ DE LA CRUZ v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE BETWEEN  
QUÉBEC, QUEBEC, AND MONTRÉAL, QUEBEC

**DATE OF HEARING:** MAY 5, 2021

**JUDGMENT AND REASONS:** MARTINEAU J.

**DATED:** MAY 18, 2021

**APPEARANCES:**

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