Federal Court  Cour fédérale

Date: 20220125

Docket: IMM-1036-21

Citation: 2022 FC 71

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 25, 2022

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

VICTOR JAVIER SOLIS RAMIREZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Victor Javier Solis Ramirez is a citizen of Mexico who has made a claim for refugee protection in Canada. His claim was rejected by both the Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD). It is the RAD's decision that is the subject of this application for judicial review. For the reasons that follow, the application for judicial review,

made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, is dismissed.

I. Facts

[2] The applicant left Mexico on October 22, 2018. The Basis of Claim Form (BOC Form) was signed on October 31, 2018. In his BOC Form, the applicant stated that he had lived in the state of Guanajuato, Mexico. He worked in a car parts plant and lived in his mother's house. His ex-wife and their two children live elsewhere in the same state.

[3] The allegation is that his problems reportedly began on July 16, 2018, barely three months before the applicant left for Canada. He allegedly began receiving verbal, telephone and in-person threats from a group identifying itself as the [TRANSLATION] "Santa Rosa Group". The applicant noted that it is a criminal group operating in that state and in other Mexican states.

[4] The applicant's brother is a Mexican soldier who started his military service in July 2015. He reportedly informed the applicant that the threats were in relation to operations that had resulted in arrests involving, among others, Santa Rosa. Afraid, the applicant moved in with a friend. It was when he noticed what he believed to be unusual cars driving by the house that his fear intensified. His friend told him that drug [TRANSLATION] "distributors" were [TRANSLATION] " asking for me" (BOC Form). After saving the money necessary to purchase a plane ticket, he arrived at the Montréal airport on October 22, 2018.

II. RAD's decision

[5] The determinative issue is the internal flight alternative (IFA) in Mexico, the same issue raised by the RPD.

[6] Two Mexican states were identified as IFAs: the states of Michoacán and Jalisco. The applicant claimed that the cartel Santa Rosa de Lima (CSRL) would be able to find him in those states. However, no evidence was submitted even though the National Documentation Package (NDP) notes a rivalry between the CSRL, involved in hydrocarbon trafficking in the state of Guanajuato, with another cartel, Cartel Jalisco Nueva Generación (CJNG) [Jalisco New Generation Cartel], in which the CJNG had gained the upper hand.

[7] Moreover, the CSRL does not have a significant presence in the states of Michoacán or Jalisco, according to the NDP. In addition, these states are controlled by the CJNG, the enemies of the CSRL: it is doubtful that the CSRL could rely on the assistance of the CJNG to find the applicant in one of these two states, to the extent that the applicant could be a target at all. Indeed, the applicant did not in any way challenge the lack of threats against him by the CJNG.

[8] Finally, the applicant alleged that he would be in danger in the states of Michoacán and Jalisco because of the high homicide rate and forced recruitment by the cartels. The only evidence offered by the applicant was a written document (InSight Crime, 17 July 2019) which refers to the recruitment of children and teenagers to work as lookouts in drug transportation or cultivation, thus involving them in violent crimes. The applicant is 27 years old (born in 1994).

The RAD noted that the applicant failed to explain how he would be exposed to a risk of recruitment and his risk, if any, was no different than that faced by the general public. The RAD concluded as follows:

> [32] Finally, although he refers to his vulnerable state, he fails to explain that vulnerable state in any way and the RAD sees no information on the record that would suggest the existence of a vulnerability to bear in mind when reviewing an IFA.

III. Arguments and analysis

[9] The applicant was required to show, by virtue of the burden of proof resting on him (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraph 100), that the decision rendered was unreasonable. To make this determination, consideration is given to whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints. In this case, the internal flight alternative issue is considered in two stages. The first stage consists in determining that the applicant does not face a serious possibility of persecution where he finds an IFA. The second stage is the determination that it would not be unreasonable to seek refuge in that part of the country. As the Federal Court of Appeal stated in *Ranganathan v Canada (Minister of Citizenship and Immigration) (CA)*, [2001] 2 FC 164, demonstrating this is not an easy thing to do.

[10] However, in the case at bar, these two determinations of unreasonableness were not made. The applicant merely speculated from passages he found in the NDP. Thus, he speculated that because cartels are said to be capable of forming ad-hoc alliances, this could happen in his case. He simply stated that despite the fact that a specific cartel was operating in the two states

proposed as safe havens, and that it was the rival of the cartel the applicant feared, the two cartels could still forge an alliance to go after him. The burden is to demonstrate, on a balance of probabilities, not to make unfounded speculations.

[11] The same is true of the speculation offered by the applicant on the ability to find a person beyond the area of influence of a given cartel. The RAD concluded on the basis of the documentation consulted that the CSPL was losing power to the CJNG, whose base of influence was in the states where refuge would be possible. The applicant never even attempted to dispute that this was the situation in the two states where the CSPL was not present. In other words, the CSPL, which was losing ground at the hands of the CJNG in the state where it was active, did not appear to have the ability to even attempt to find the applicant where its adversaries were. It is therefore highly probable that the applicant's speculation lacked granularity without presenting a narrative that was supported by facts, which he did not do. It is impossible in these circumstances to determine that the unreasonableness of the RAD's decision was demonstrated.

[12] The applicant made much of the violence in Mexican society, with thousands of murders each year. However, as the RAD stated in its decision, this is not in dispute. The issue, rather, is that the applicant failed to explain how the risk to which he claimed he would be subjected differed from that to which, unfortunately, other people living in those states were subjected as well. Thus, the SAR concluded that the applicant would, on a balance of probabilities, be able to seek refuge and that he is no more at risk of being subjected to generalized violence than the rest of the population. The applicant failed to demonstrate that there were any contentious issues that would render the decision unreasonable.

[13] Surprisingly, the applicant devoted three paragraphs to the applicant's credibility at the end of his factum. The fact that the applicant had a subjective fear is one thing. However, the applicable test rather requires that the applicant show that "there is a serious possibility of persecution throughout the country, including the area which is alleged to afford an IFA" (*Thirunavukkarasu v Canada (Minister of Employment and Immigration) (CA)*, [1994] 1 FC 589 [*Thirunavukkarasu*]). The onus is on the applicant to establish this, and his subjective fear cannot be determinative.

[14] The second part of the test to be applied is the reasonableness of seeking refuge there. The Court of Appeal in *Thirunavukkarasu* described the types of circumstances that may be so unreasonable that the internal flight alternative would no longer be appropriate. The bar is high:

> **12** . . .
>
> Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. This test is a flexible one, that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.
>
> **13** Let me elaborate. It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to

> another less hostile part of the country before seeking refugee status abroad?
>
> **14** An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.
>
> **15** In conclusion, it is not a matter of a claimant`s convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location, before travelling half-way around the world to seek a safe haven, in another country. Thus, the objective standard of reasonableness which I have suggested for an IFA is the one that best conforms to the definition of Convention refugee. That definition requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country.
>
> [Emphasis added.]

[15] In any event, the applicant offered no such argument or evidence with respect to the second part. Clearly, he did not seek to rely on it.

IV. Conclusion

[16] Accordingly, the application for judicial review is dismissed. The applicant failed to meet either part of the test to demonstrate that he faced a serious risk of persecution where there was a flight alternative and that it would be unreasonable for him to seek refuge there.

[17] There is no question for certification under section 74 of the Act.

JUDGMENT in IMM-1036-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question for certification under section 74 of the Act.

"Yvan Roy"
Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

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