

Federal Court



Cour fédérale

Date: 20220217

Docket: IMM-5167-21

Citation: 2022 FC 202

Ottawa, Ontario, February 17, 2022

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

EVLIN ROBERTO DURAN ALEMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Evlin Roberto Duran Aleman's refugee claim was dismissed by the Refugee Appeal Division [RAD], which found that he had an internal flight alternative [IFA] in Santa Barbara, Honduras. He now seeks judicial review of that decision, claiming that his agent of harm, his sister's ex-boyfriend, has both the means and motivation to locate him in the proposed IFA.

II. Decision under review

[2] The RAD confirmed the Refugee Protection Division's [RPD] negative decision. While it found several errors in the RPD's decision, the RAD was satisfied that the evidence on record was sufficient to confirm the RPD's determination that the Applicant has a viable IFA in Santa Barbara, Honduras.

[3] While the RAD found that the agent of harm was motivated to locate the Applicant in the IFA, it found he did not have the means to do so. This alone supports a finding that Santa Barbara is a suitable IFA location.

[4] The RAD also confirmed that the Applicant had not met his burden to show that it would be unreasonable for him to relocate to Santa Barbara. The RAD noted that whether the Applicant decides to reside at the farm or elsewhere in Santa Barbara, the evidence suggests that seeking refuge in either location would not be unreasonable for him.

[5] As for the Applicant's submission that the RPD misunderstood that living at the farm was tantamount to living in hiding, the RAD noted that there is a distinction between remaining in hiding to avoid problems, and having a viable internal flight alternative. The IFA gives the Applicant the opportunity to safely live and work in a location that removes him from the persecution or harm he fears, including in a remote area. It noted that living and working in a remote area, out of the reach of an agent of harm, does not equate to living in hiding.

III. Issue and Standard of Review

[6] The only issue raised by this application is whether the RAD erred in finding that the Applicant has a viable IFA in Santa Barbara, Honduras.

[7] There is no dispute that this is to be assessed against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 CSC 65 at para 25).

IV. Analysis

[8] The two-pronged test for a viable IFA requires that the decision-maker be satisfied that: (i) a refugee claimant would not face a serious possibility of persecution in the proposed IFA location, or be personally subject to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture; and (ii) it would not be unreasonable in all the circumstances, including those particular to the claimant, for the claimant to seek refuge in the proposed IFA location (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 163 NR 232, at pp 593, 597). Both prongs of the test must be satisfied for the RPD or the RAD to conclude that there is a viable IFA (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 9). Once the issue of a potential IFA is raised, the onus is on the claimant to prove that it is not viable (*Thirunavukkarasu* at pp 594-595).

[9] In my respectful view, the problem with the RAD's decision is that it is not clear whether the proposed IFA is the city of Santa Barbara or where his sister's farm is located. Although the farm is located in Santa Barbara department, it is quite remote and at least a few hours drive

from the city of Santa Barbara. The RAD seems to confuse the two. It seems to infer that the farm is located near the city of Santa Barbara, which apparently is not the case. This confusion, in my view, renders the decision unintelligible. The assessment of both prongs of the IFA test, and therefore the review of this assessment by the Court, might have a different outcome whether the RAD is considering one or the other.

[10] For this reason alone, I will grant this application for judicial review and send the matter back to the RAD for a new determination.

JUDGMENT in IMM-5167-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted;
2. No question of general importance is certified;
3. No costs are granted.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5167-21

STYLE OF CAUSE: EVLIN ROBERTO DURAN ALEMAN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 27, 2022

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: FEBRUARY 17, 2022

APPEARANCES:

Dean D. Pietrantonio FOR THE APPLICANT

Aminollah Sabzevari FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dean D. Pietrantonio FOR THE APPLICANT
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia