

Federal Court



Cour fédérale

Date: 20220302

Docket: IMM-4269-20

Citation: 2022 CF 293

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 2, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN :

**LORENA PAREDES ROJAS
MELANIE ZARATE PAREDES
KEVIN BERNARDO ZARATE PAREDES**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The principal applicant, Lorena Paredes Rojas, and her two children are seeking judicial review of a Refugee Appeal Division [RAD] decision dated March 4, 2020, that confirmed the

rejection of their claims for refugee protection on the basis of an internal flight alternative [IFA] elsewhere in their country of origin.

[2] The applicants are citizens of Mexico. They allege domestic and family violence by the principal applicant's former spouse, AZL, who is also the father of the other two applicants. The applicants state that AZL has friends who are police officers, including a commandant of police, and would therefore be immune from investigation and prosecution.

[3] On October 30, 2019, the Refugee Protection Division [RPD] determined that the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RPD found that the applicants were credible with respect to their allegations of having experienced domestic violence. However, it found that the applicants had an IFA in two locations in Mexico, deeming that AZL had neither the interest nor the motivation to search for them in the proposed IFAs.

[4] The claimants appealed that decision to the RAD. The RAD dismissed the appeal and confirmed the RPD's decision. Despite the numerous arguments raised by the applicants on appeal, the RAD considered the determinative issue to be the RPD's conclusions regarding a viable IFA in Mexico. It concluded that the RPD had not erred.

[5] The applicants submit that the RAD's decision is unreasonable and contrary to the evidence.

II. Analysis

[6] The parties agree that the applicable standard of review is reasonableness. The Court agrees.

[7] Where the standard of reasonableness applies, the Court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. It must ask 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 that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). Moreover, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

[8] The applicants raise multiple arguments against the RAD's decision. However, one will be enough to determine this application for judicial review.

[9] The applicants submit that the RAD erred in its analysis of the facts and that its reasoning on AZL's motivation to locate them is therefore flawed.

[10] The RAD did in fact err when it stated that the principal applicant, along with her children, was able to live at her sister's home without incident or harm for several months prior to her departure. Rather, the evidence shows that the principal applicant stayed with her half-

sister when she arrived in Canada. The evidence cited in the footnotes by the RAD is scarcely more helpful as it does not support its assertion.

[11] The Court agrees with the applicants that this error directly affected the RAD's analysis of AZL's motivation to locate them. In its analysis, the RAD acknowledges that the incidents described by the applicants show AZL's continuing intention "to terrorize the Appellants". However, it concludes that the applicants failed to establish AZL's motivation to find them, since the principal applicant, as well as her children, were able to live at her sister's house without incident or prejudice for several months before she left Mexico. This is the RAD's only ground for finding a lack of motivation, and it is based on a misreading of the facts.

[12] Moreover, the Court notes that this is not the RAD's only factual error. In its overview, the RAD states that the principal applicant and her daughter left Mexico in June 2017. However, the evidence shows that they left at different times, the principal applicant on June 5, 2017, and her daughter on December 3, 2017. This error is not in itself determinative. However, in considering AZL's motivation to find them, the RAD states that the evidence shows that AZL continued to harass "the Associate [*sic*] Appellants into 2018", whereas the daughter of the principal applicant was no longer in Mexico in 2018.

[13] The respondent acknowledges the errors made by the RAD. However, it submits that the Court should consider the decision as a whole, in light of the evidence in the record and relying on the RPD's decision. The Court cannot agree with that argument.

[14] Although the RAD's decisions are indeed entitled to deference, the Court is of the opinion that the errors made go to the very basis of the finding as to AZL's motivation to locate the applicants. The outcome of the case may well be the same on reconsideration. Nevertheless, it is not enough for the outcome of a decision to be justifiable, as the respondent has tried to demonstrate. The decision must also be justified in relation to the relevant facts, and it must be intelligible and contain reasons that are understandable. The Court is not persuaded that the RAD's decision bears the hallmarks of reasonableness (*Vavilov* at para 99).

[15] For these reasons, the application for judicial review is allowed. The decision is set aside, and the matter is referred back for reconsideration by a differently constituted panel.

[16] No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.

JUDGMENT in IMM-4269-20

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is allowed;
2. The decision of the Refugee Appeal Division of March 4, 2020, is set aside;
3. The matter is referred back to the Refugee Appeal Division for reconsideration by a differently constituted panel; and
4. No question of general importance is certified.

“Sylvie E. Roussel”

Juge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4269-20

STYLE OF CAUSE: LORENA PAREDES ROJAS ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEO CONFERENCE

DATE OF HEARING: MARCH 1, 2022

**JUDGMENT AND REASONS
BY:** ROUSSEL J

DATED: MARCH 2, 2022

APPEARANCES:

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