

Federal Court



Cour fédérale

Date: 20220912

Docket: IMM-4207-21

Citation: 2022 FC 1281

Ottawa, Ontario, September 12, 2022

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

**MARIO ALBERTO GONZALEZ DE LOS
SANTOS**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Mario Alberto Gonzalez de los Santos arrived in Canada in 2019 seeking employment. Prior to his arrival, he says he was targeted by an organized crime group who had killed his sister. He claims that the group threatened him because he was assisting the police in their investigation of his sister's murder. After he had been in Canada for several months, a

neighbour in Mexico informed him that several men had come looking for him. Mr Gonzalez de los Santos decided not to return to Mexico and to seek refugee protection in Canada.

[2] Mr Gonzalez de los Santos presented his claim to a panel of the Refugee Protection Division which dismissed it. The RPD found that he lacked credibility, had delayed seeking refugee protection, and could have lived safely in Mexico, either in Merida or Campeche, instead of seeking asylum in Canada.

[3] Mr Gonzalez de los Santos appealed the RPD decision to the Refugee Appeal Division. The main issue before the RAD was whether he had a viable internal flight alternative [IFA] in Merida or Campeche, as the RPD had concluded. The RAD found that there was little evidence showing that Mr Gonzalez de los Santos was being pursued by cartel members, that he had been threatened frequently, or that there was any risk to other family members still living in Mexico. Further, it concluded that it would not be unreasonable to expect him to move to Merida or Campeche.

[4] Mr Gonzalez de los Santos submits that the RAD's decision was unreasonable because it failed to make any clear adverse credibility findings, overlooked evidence that supported his claim, and unreasonably concluded that he had an IFA in Mexico. He asks me to quash the RAD's decision and order another panel to consider his appeal.

[5] I can find no basis on which to overturn the RAD's decision. It properly considered the evidence before it and reasonably concluded that Mr Gonzalez de los Santos had an IFA in Mexico. I must, therefore dismiss this application for judicial review.

[6] There are three issues:

1. Did the RAD fail to make clear credibility findings?
2. Did the RAD overlook relevant evidence?
3. Was the RAD's IFA conclusion unreasonable?

II. The RAD's Decision

[7] The RAD set out the two-part test for an IFA. First, there must be no serious possibility of persecution or likelihood of serious mistreatment in the location under consideration. Second, it must not be unreasonable to expect the claimant to move there.

[8] The RAD confirmed the RPD's conclusion that Mr Gonzalez de los Santos had not proved that he was being pursued by members of a cartel or an organized crime group. The RPD had found that his testimony on this issue was inconsistent and speculative. In particular, Mr Gonzalez de los Santos testified that he was sought by two cartels. However, he had not mentioned those groups in his basis of claim form. He conceded that he was not sure who was pursuing him.

[9] The RAD also doubted Mr Gonzalez de los Santos's claim that the perpetrators of his sister's murder had left a note containing threats against the rest of the family. His father identified the sister's body and, according to Mr Gonzalez de los Santos, saw the note. But the RAD found no evidence to support that assertion, and there was no evidence that any harm had come to any family members remaining in Mexico.

[10] The RAD confirmed the RPD's finding that Mr Gonzalez de los Santos had embellished his evidence about the threats he had received. He stated in his basis of claim form that he received a threatening phone call on the day he went to authorities to inquire about his sister's case. He later amended his narrative to state that he was receiving two or three threats a week. At the hearing, when asked to explain the difference, Mr Gonzalez de los Santos said it was due to faulty interpretation. The RAD did not accept his explanation and concluded that he had not received as many threatening phone calls as he claimed.

[11] The RAD dismissed Mr Gonzalez de los Santos's assertion that the RPD had overlooked evidence supporting his claim of ongoing threats. Mr Gonzalez de los Santos relied on letters from his lawyer and a neighbour. The RAD found that the lawyer's letter did not corroborate the claim of ongoing threats; nor did the neighbour's letter.

[12] The RAD also found that there was no evidence showing that Mr Gonzalez de los Santos's sister's killers intended to pursue him. Authorities dropped their investigation into the murder so there was no reason for the perpetrators to seek out Mr Gonzalez de los Santos. In addition, Mr Gonzalez de los Santos's claim that he could identify possible perpetrators of the

crime was mere speculation. Further, the RAD doubted that cartel members would pursue Mr Gonzalez de los Santos as a way of locating his brother-in-law who was allegedly involved in human trafficking; there was no evidence suggesting that Mr Gonzalez de los Santos knew his brother-in-law's whereabouts.

[13] In respect of the two possible IFAs, the RAD noted that the crime rate in those areas is generally low. Further, there was no evidence that Mr Gonzalez de los Santos and his family would have any difficulty living or working there.

III. Issue One – Did the RAD fail to make clear credibility findings?

[14] Mr Gonzalez de los Santos submits that the RAD doubted his evidence about being targeted by criminals in Mexico but failed to make an explicit adverse credibility finding against him. Credibility was not even identified as an issue, according to Mr Gonzalez de los Santos.

[15] I disagree with this submission.

[16] The RAD made numerous credibility findings within its IFA analysis, which it had determined to be the central issue in the case. The following are some of the RAD's explicit references to a lack of credibility in Mr Gonzalez de los Santos's evidence: "a series of credibility concerns", "credibility is undermined", "undermines the credibility of his allegation", "embellished his evidence", "insufficient credible evidence", "speculative and inconsistent".

[17] It was unnecessary for the RAD to state explicitly that credibility was an issue. It made clear and well-explained credibility findings within its analysis of whether Mr Gonzalez de los Santos faced a risk of persecution or serious mistreatment in the proposed IFAs. I see nothing improper about its approach. Mr Gonzalez de los Santos can be in no doubt about the basis for the RAD's conclusions.

IV. Issue Two – Did the RAD overlook relevant evidence?

[18] Mr Gonzalez de los Santos contends that the RAD failed to consider evidence supporting his claim — in particular, the letters from his lawyer and his neighbour in Mexico. He says that the letters contradict the RAD's findings that he was not targeted by cartel members.

[19] Mr Gonzalez de los Santos made a similar argument before the RAD, asserting that the RPD had ignored the same evidence. In responding to that argument, the RAD explicitly considered the two letters.

[20] The RAD noted that the lawyer's letter stated that he withdrew from the investigation into the death of Mr Gonzalez de los Santos's sister because it was dangerous to remain involved. In fact, authorities have now dropped the investigation entirely. Therefore, the RAD concluded that there is no longer an ongoing threat against Mr Gonzalez de los Santos or his family; the RAD found that the lawyer's letter does not suggest otherwise.

[21] With respect to the neighbour's letter, the RAD considered the author's allegation that he had been approached in 2019 by people who were asking about the whereabouts of Mr Gonzalez

de los Santos and his family, and who offered him money for that information. But the RAD noted that these people had not located Mr Gonzalez de los Santos or his family even when he lived nearby within the same state. It was doubtful, therefore, that these alleged pursuers would seek him out in the proposed IFAs.

[22] The RAD considered the evidence cited by Mr Gonzalez de los Santos and concluded that it did not show an ongoing threat to him or his family, especially in the proposed IFAs. I see nothing unreasonable about its treatment of this evidence.

V. Was the RAD's IFA conclusion unreasonable?

[23] Mr Gonzalez de los Santos maintains that the RAD failed to take account of the fact that cartel members are capable of locating their targets throughout Mexico, including in the proposed IFAs. Its failure to consider the risk to him and his family, according to Mr Gonzalez de los Santos, rendered the RAD's conclusion that he could live safely in Merida or Campeche unreasonable.

[24] I disagree. The RAD specifically considered Mr Gonzalez de los Santos's allegation that he was at risk throughout Mexico. It agreed with him that "cartel members are able to locate people when they are motivated to do so". However, it found that there was no evidence that cartel members continued to be interested in finding him or his family. They had not located him even when he lived nearby; his family has not been harmed since he left Mexico. As the RAD stated, "there is no evidence that they located him before he left Mexico while he continued to

live in an area with a population of just over one thousand people where he had lived for almost 18 years”.

[25] I see nothing unreasonable about the RAD’s conclusion on the issue of IFA.

VI. Conclusion and Disposition

[26] The RAD properly considered the evidence before it and its conclusion on the issue of IFA was not unreasonable. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-4207-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

ANNEX

**Immigration and Refugee Protection Act
(S.C. 2001, c. 27)****Convention refugee**

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries;

Or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

**Loi sur l'immigration et la
protection des réfugiés (L.C. 2001, c. 27)****Définition de réfugié**

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4207-21

STYLE OF CAUSE: MARIO ALBERTO GONZALEZ DE LOS SANTOS v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HEARING HELD BY VIDEOCONFERENCE IN
TORONTO, ONTARIO

DATE OF HEARING: APRIL 21, 2022

JUDGMENT AND REASONS O'REILLY J

DATED: SEPTEMBER 12, 2022

APPEARANCES:

Marcia Pritzker Schmitt FOR THE APPLICANT

Leila Jawando FOR THE RESPONDENT

SOLICITORS OF RECORD:

Wayforth LLP FOR THE APPLICANT

Kitchener, Ontario

Attorney General of Canada FOR THE RESPONDENT

Toronto, Ontario