

Federal Court



Cour fédérale

Date: 20221019

Docket: IMM-8032-21

Citation: 2022 FC 1427

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 19, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**DAVID ISRAEL PEREZ PASILLAS
JESSICA PAOLA AGUILA MC PHERSON
MATEO DAVID PEREZ AGUILA
KATIA PAOLA PEREZ AGUILA
JULIETA FERNANDA PEREZ AGUILA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] David Israel Perez Pasillas (the principal applicant), his spouse, Jessica Paola Aguila Mc Pherson (the secondary applicant), and their children Mateo David, Katia Paola and Julieta Fernanda Perez Aguila, are citizens of Mexico. They are seeking judicial review of the decision dated October 14, 2021, of the Refugee Appeal Division [RAD] rejecting their appeal of the refusal by the Refugee Protection Division [RPD] to grant them refugee protection status. The RPD found that they were neither Convention refugees under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], given that they were not victims of persecution in Mexico, nor persons in need of protection within the meaning of section 97 of the IRPA because of a lack of credibility.

[2] I am not satisfied that the intervention of the Court is warranted. The application for judicial review is dismissed for the reasons that follow.

II. Background

[3] The principal applicant claims to fear the Sinaloa Cartel [Cartel] and a man who lives in his neighbourhood and who is linked to this Cartel [Mr. X]. The principal applicant met Mr. X through the business he owns. In fact, the principal applicant had been selling used cars from a location near his home. Mr. X wanted to trade a Mazda X9 2011 as a partial payment for one of the principal applicant's vehicles. On July 9, 2019, the transaction with Mr. X was finalized with a cash payment of the remaining balance of the value of the sale of the car. The trade of the Mazda X9 2011 is central to the applicant's assertions in this claim for refugee protection.

[4] On July 28, 2019, while driving the Mazda X9, the spousal applicants were stopped and searched by the state police. A police officer questioned them about the provenance of the vehicle and asked the applicants which cartel they belonged to. The police officer showed the principal applicant cellphone photos of a number of individuals standing next to the Mazda X9. The principal applicant replied that he didn't know the people in the photos, but he had in fact recognized Mr. X. According to the police, the Mazda X9 had been used in kidnappings and the distribution of drugs by the Cartel. A police officer notified the couple that they would be watching them for Cartel-related activities. The family no longer took the vehicle out and sold it on September 22, 2019.

[5] In their refugee protection claim, the principal applicant reported receiving a call from an unknown number on August 5, 2019, in which an associate of Mr. X threatened to kill him if he disclosed Mr. X's address. During this call, the associate also mentioned the Cartel and made threats against the principal applicant's family.

[6] Following this call, the applicants saw some men in a car parked in front of their home. Later that day, one of the men presented himself at the door, but the applicants did not answer. A few days later, an unknown man presented himself at their daughter's school to pick her up, posing as her uncle. At that point, the applicants decided to leave Mexico.

[7] The applicants also stated that they were Mormons. They alleged that they were persecuted within the meaning of section 96 of the IRPA on the basis of their religious beliefs. They claim that their return to Mexico would once again expose them to persecution.

III. Decision under review

[8] Two issues were before the RAD: First, did the RPD err in its assessment of the applicants' credibility with respect to their declared fear of the Cartel? Second, did the RPD err in concluding that the discrimination suffered by the applicants as Mormons did not rise to the level of persecution?

[9] Applying the correctness standard of review after an independent examination of the evidence, the RAD concluded that the principal applicant was not a credible witness regarding the facts related to the sale of the Mazda X9. The RAD noted that in his testimony the principal applicant asserted that the Mazda X9 had been sold to Mr. X, contrary to the written account in his Basis of Claim form [BOC Form], in which he wrote that Mr. X had given a 2011 Mazda X9 as a down payment for one of his cars. According to the RAD, the transaction involving the Mazda is central to the applicants' alleged fear. The details of the transaction, including dates, names and circumstances, should have been recounted in the BOC Form, and unless satisfactorily explained, the written account should not contradict what the applicants testified to before the panel. Here, the contradictions were not isolated, given that the applicants also contradicted each other during their testimony.

[10] The applicants had a number of opportunities to explain the various discrepancies. Instead, they gave contradictory versions of the transaction involving the Mazda. As all other allegations regarding their claim for refugee protection under section 97 of the IRPA flowed from these contradictory explanations, the RAD determined that the applicants had not

established on a balance of probabilities that they would be exposed to a risk to life or a risk of cruel and unusual treatment or punishment by Mr. X or the Sinaloa Cartel.

[11] As for the religious fear, the RAD identified the principles set out in the case law that must be taken into account in assessing whether acts of harassing behaviour rise to the level of persecution (*Canada (Citizenship and Immigration) v Munderere*, 2008 FCA 84 at para 41 [*Munderere*]). After considering the written accounts of the principal applicant and the secondary applicant and their testimonies, the RAD acknowledged that the applicants had been discriminated against in Mexico but concluded that, considered cumulatively, these acts did not rise to the level of persecution. The RAD determined that the applicants had not demonstrated a serious possibility of persecution on the basis of their religious beliefs.

IV. Issue and standard of review

[12] The applicants raised two issues:

- A. Did the RAD err in its credibility analysis?
- B. Did the RAD err in its analysis of the notion of persecution versus discrimination?

[13] The parties agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision bears the hallmarks of justification, transparency and intelligibility (*Vavilov*, above, at para 99). A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker. Instead, the reviewing court must consider only

whether the decision made by the decision maker, including both the rationale for the decision and the outcome to which it led, was unreasonable (*Vavilov* at para 83).

V. Analysis

A. *Credibility*

[14] The RAD's decision was reasonable. The story of the Mazda transaction evolved throughout the applicants' testimony. The evolution did not concern peripheral or insignificant details, but rather affected key aspects of the narrative. On the one hand, the written account stated that the Mazda had been received by the principal applicant in payment for another vehicle. On the other hand, the applicant specified in his testimony before the RPD that he had sold the Mazda to Mr. X. When the RPD raised this inconsistency, the applicants testified that there had been several transactions, which raised further questions and inconsistencies. Under these circumstances, it was therefore reasonable for the RAD to conclude that the applicants were not credible.

[15] It was also reasonable for the RAD to conclude, as it did, that the transaction involving the Mazda was central to the refugee protection claim under section 97. Having no credible and reliable evidence that the alleged transaction had taken place, the RAD could thus reasonably conclude that a risk to life under section 97 had not been established.

B. *Discrimination versus persecution*

[16] In order to determine whether the discrimination suffered by the applicants as Mormons in Mexico rose to the level of persecution, the RAD identified the applicable case law. The RAD then detailed each of the acts of discrimination alleged by the applicants and conducted an analysis to determine whether the individual discriminatory acts rose to the level of persecution. Having determined that this was not the case, the RAD then examined the alleged acts of discrimination cumulatively. In conducting this analysis, the RAD correctly identified the applicable principles (*Munderere*, above, at para 41, citing *Mete v Canada (Minister of Citizenship and Immigration)*, 2005 FC 840 and *Rajudeen v Canada (Minister of Employment and Immigration)*, (1984) 55 NR 129 (FCA)) and provided a transparent rationale for its conclusions.

[17] The applicants argue that the only reason they have continued to be involved in society at large is because they have stopped publicly demonstrating their association with the Mormon religion. The secondary applicant testified that the family had made the decision to put religion aside because they did not want their children to suffer the psychological attacks alleged by the female applicant.

[18] The RAD acknowledged this evidence, but found that it was insufficient to meet the seriousness threshold so as to constitute persecution. Indeed, in coming to this conclusion, it reasonably considered the fact that the children were enrolled and attending school, that the family is a mixed Catholic/Mormon family and that the applicants testified that they were leading a very stable life in Mexico. Thus, I am not persuaded that the RAD committed any error warranting the Court's intervention.

VI. Conclusion

[19] The RAD's decision was reasonable. The application for judicial review is dismissed.

There is no question of general importance to be certified.

JUDGMENT in IMM-8032-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed; and
2. No question is certified.

“Patrick Gleeson”

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8032-21

STYLE OF CAUSE: DAVID ISRAEL PEREZ PASILLAS ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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**JUDGMENT AND REASONS
BY:** GLEESON J.

DATED: OCTOBER 19, 2022

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