Federal Court  Cour fédérale

Date: 20221216

Docket: IMM-6176-20

Citation: 2022 FC 1752

Ottawa, Ontario, December 16, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MARIA DEL CARMEN AGUIRRE PEREZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Mexico who has lived in Canada since 1998. She first sought refugee protection in Canada in 2012.

[2] This is a judicial review of the redetermination of a September 5, 2018 negative decision by the Refugee Protection Division [RPD].

[3] On October 8, 2019, that decision was set aside by Mr. Justice Ahmed who sent it back for redetermination by a different decision-maker.

[4] In this application, the Applicant seeks to set aside the November 2, 2020 decision by the RPD refusing her claim [the Decision].

[5] For the reasons that follow, this application is dismissed.

II. **Decision**

[6] The references hereafter to the RPD all pertain to the redetermination panel.

[7] The RPD found that an internal flight alternative (IFA) to Cancun was determinative of the claim. For that purpose, the RPD found the Applicant to be credible except in relation to the availability of a viable IFA.

[8] The Applicant's claim for protection is and was based on sexual abuse and threats of violence by her older brother. The threats began when the Applicant was five and continued until she fled to Canada in 1998.

[9] On the basis that an IFA was available to the Applicant in Cancun, the RPD concluded the Applicant is not a Convention refugee or a person in need of protection.

III. **Issue**

[10] The Applicant seeks judicial review of this Decision alleging that the RPD failed to assess the reasonableness of the IFA as required under the second prong of the IFA test.

[11] This is the only issue in this review. There are three sub-issues, which will be discussed in the Analysis section below.

IV. **Standard of Review**

[12] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23. While this presumption is rebuttable, no exception to the presumption is present here.

[13] The focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and at least as a general rule, to refrain from deciding the issue themselves: *Vavilov* at para 83.

[14] To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of

justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

[15] A reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up": *Vavilov* at para 104.

V. **Analysis**

A. *IFA principles*

[16] A number of legal principles have been set out in the jurisprudence to establish what is entailed in determining whether there is a valid IFA.

[17] As with other legal issues, the Applicant as the person wishing to overturn the Decision bears the onus of proving her case on a balance of probabilities.

[18] There are two prongs to the IFA test. If one of them is defeated, there is no IFA and the Applicant has met their onus to show it is not viable for her.

[19] The two prongs are set out in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*].

[20] The first prong requires a claimant to prove, on a balance of probabilities, that there is a serious possibility of the claimant being subjected to persecution in the proposed IFA. In the

context of section 97, it must be established that the claimant would be personally subjected to a danger or risk described in section 97 (on a "more likely than not standard") in the proposed IFA location: *Thirunavukkarasu* at pages 594-595, paragraph 9.

[21] The second prong for the purposes of both section 96 and section 97 of the IRPA, requires proof that conditions in the IFA are such that it would be unreasonable, in all the circumstances, including those particular to the claimant, for the claimant to seek refuge in that location.

[22] In addition to the two prongs, the Federal Court of Appeal has established that the threshold for what makes an IFA 'unreasonable' is very high, considering the personal circumstances of the claimant. It has been found that the second prong test "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant": *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) [*Ranganathan*].

[23] The Court of Appeal has established that a claimant must also prove that requiring them to relocate to the proposed IFA would be "unduly harsh": *Thirunavukkarasu*.

B. *The IFA arguments*

[24] The Applicant submits that the RPD erred three different ways when it found Cancun was a viable IFA.

[25] First, the Applicant submits the RPD erred in making a negative credibility finding concerning her evidence about Cancun's viability as an IFA.

[26] Second, the Applicant says the RPD erred when it determined she would not face any risk or serious possibility of persecution in Cancun.

[27] I have considered these two arguments together, below, as they overlap.

[28] The Applicant relies on the presumption of truth established in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) saying that any evidence she presented at the refugee hearing was presumed to be true.

[29] The RPD found the Applicant had failed to establish her brother had the means and motivation to find her in Cancun. That is not a question of doubting the Applicant's truth or disbelieving the Applicant.

[30] To the contrary, in drawing that conclusion, the RPD noted the Applicant had previously escaped from her brother by relocating. The Applicant testified there were two calls from her sister saying her brother was looking for her. One was a telephone call from her sister 22 years ago. The other was a call "this past December". The RPD reasonably found the telephone calls did not establish the brother's means or motivation to locate the Applicant throughout Mexico.

[31] As well, the RPD noted the threats occurred in Ocotlan, where her brother still lives and there was no evidence to indicate he had the means and willingness to locate the Applicant elsewhere. For example, in 1989 the Applicant fled to Guadalajara and lived there until 1997 without any interaction with her older brother.

[32] The RPD concluded that even if her brother was motivated to find the Applicant she had not established that he had the means to find her in another location in Mexico. The Applicant also testified that she believed her older brother thought she was residing in the United States.

[33] I find the RPD's logic, based as it is on the Applicant's evidence and noting the lack of her evidence concerning the ability or motive of the brother to find her is reasonable. As required by *Vavilov*, it is justified, intelligible and transparent without any serious flaws or shortcomings. The findings are not merely superficial or peripheral to the merits of the Decision; they are central to the Decision.

[34] The Applicant's third submission is that the RPD erred by failing to consider her age (60), employment and residency saying it is not reasonable for her to relocate to Cancun, for the first time, at the age of 60.

[35] The RPD noted the Applicant is very well-educated and has lived outside of Mexico for more than 20 years. She speaks Spanish and is familiar with the culture.

[36] The RPD acknowledged the difficulty in locating employment and housing in Cancun but noted the Applicant had been able to find work and maintain employment in Toronto despite having no fluency in English at the time and not having previously lived there.

[37] Relying on a decision by Mr. Justice Mosley in *Okechukwu v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1142, at paragraph 37, the RPD noted that "the hardship associated with relocating is not the kind that renders an IFA unreasonable."

[38] It is recalled that in *Ranganathan* the Court of Appeal determined that the threshold for objective unreasonableness is very high and "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to" the area where a potential IFA has been identified.

[39] The jurisprudence is clear that rejecting a claim on the basis that there is a viable IFA is not simply a matter of concluding the claimant has not met their onus. Rather, the decision-maker must conclude affirmatively, on a balance of probabilities, that the claimant does have an IFA.

[40] In other words, they must find there is a place where the claimant would not be at risk (in the relevant sense and on the applicable standard) and to which it would be reasonable for the claimant to relocate: see *Rasaratnam* at 710.

[41] The RPD reviewed the facts and considered the tests set out in the jurisprudence. Amongst other findings, the RPD specifically stated "[o]f course, it is expected for it to be stressful and difficult to return to Mexico, a country the claimant has been outside of for more than 20 years. Despite this, I cannot find that the location suggested is unreasonable."

[42] That specific finding is based on, amongst other facts, the Applicant's 21 years of education, her ability to speak English and Spanish, her familiarity with the culture, and the various factors that informed the finding of a lack of risk from her brother. I am satisfied the RPD's reasoning on the second prong of the IFA test "adds up" and is reasonable.

VI. **Conclusion**

[43] Having reviewed the Decision in detail and considering the submissions of the parties, both written and oral, I am satisfied for all the reasons set out above that the RPD reasonably found the Applicant had a viable IFA in Cancun.

[44] This application is dismissed.

[45] No question was posed for certification nor does one arise on these facts.

JUDGMENT in IMM-6176-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Ash Mazinani	FOR THE APPLICANT
Andrea Mauti	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mazinani & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT