

Federal Court



Cour fédérale

**Date: 20230125**

**Docket: IMM-4776-21**

**Citation: 2023 FC 109**

**St. John's, Newfoundland and Labrador, January 25, 2023**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**LUIS ANGEL MORENO ORDAZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Mr. Luis Angel Moreno Ordaz (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), dismissing his claim for recognition as a Convention refugee, pursuant to section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). The RPD dismissed his claim on the basis of negative credibility findings and the lack of prospective risk, assessed upon the balance of probabilities.

[2] The Applicant is a citizen of Mexico. He sought refugee protection on the grounds set out in the claims for persecution filed earlier by his mother, stepfather and sister. The mother was the principal claimant and provided a narrative in support of her Basis of Claim (“BOC”). Her narrative set out a fear of persecution from the Los Zetas Cartel who allegedly kidnapped her first husband and demanded money for his release. She alleged that the cartel continues to threaten and extort her and her family.

[3] The mother also claimed that she was at risk of persecution from the ex-wife of her first husband. She alleged that the ex-wife of her first husband and her family are involved with the Sinaloa Cartel.

[4] The Applicant and his sister each filed a BOC.

[5] In his BOC, the Applicant outlined that in April 2019 he began to see men watching him from trucks outside his university. He also alleged that the agents of persecution had contacted his family members and threatened to harm him.

[6] The claims were heard together and dismissed. The RPD found that the claims of the Applicant and his family had no nexus to the grounds for Convention refugee status, as set out in section 96 of the Act. The claims were assessed under subsection 97(1) of the Act. The RPD found that the evidence did not show likelihood of harm or personal risk to the Applicant and his family members, and dismissed the claims.

[7] The Applicant's mother, stepfather and sister appealed to the Immigration and Refugee Board, Refugee Appeal Division (the "RAD"), and their appeals were allowed. The Applicant did not have the right to appeal since he was subject to the bar set out at paragraph 110(2)(d) of the Act, since he had entered Canada via the United States of America. His remedy is limited to an application for judicial review.

[8] The Applicant included a copy of the positive RAD decision in his book of authorities. The Minister of Citizenship and Immigration (the "Respondent") objected to the inclusion of this decision. However, leave was granted to the Applicant to retain it in his authorities.

[9] Upon this application, the Applicant now argues that the RPD drew unreasonable inferences from the evidence, failed to consider the explanations given for gaps and omissions in the evidence, made speculative negative credibility findings, made unreasonable credibility findings about some of the documentary evidence, failed to take into account reasonable explanations for the Applicant's failure to claim protection in the United States, and generally failed to consider the evidence in its totality.

[10] The Applicant further submits that the Court should adopt the reasoning of the RAD panel that allowed the appeal of his family members since similar risks and legal considerations are involved.

[11] The Respondent argues that the decision is reasonable and shows that the RPD considered the evidence. He submits that the Applicant is now inviting the Court to reweigh the evidence. As well, he notes that the determinative issue for the RPD was credibility.

[12] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the decision of the RPD is reviewable on the standard of reasonableness.

[13] In considering reasonableness, the Court is to ask if the decision under review "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"; see *Vavilov, supra* at paragraph 99.

[14] I agree with the Respondent that the various arguments now raised by the Applicant go to the weight of the evidence. Assessing evidence is the role of the decision maker, not of the Court.

[15] The fact that a panel of the RAD allowed the appeal of the Applicant's mother, stepfather and sister is not dispositive of this application for judicial review.

[16] In *Canada (Citizenship and Immigration) v. Tobar Toledo*, [2015] 1 F.C.R. 215, the Federal Court of Appeal commented about claims made by members of the same family, at paragraphs 52, 53 and 55 as follow:

[52] It is clear from reading these regulations that each member of a family unit claiming refugee protection makes his or her own claim, otherwise it would not be possible to hear them jointly or separately. When the claims are all based on the same facts, hearing them jointly is a cost-saving measure that avoids the need to hear the same evidence multiple times with the risk of contradictory outcomes. [...]

[53] It occasionally happens that one of a group of jointly heard claims is accepted while others are rejected, a result that is only possible if all the applications are independent of one another. [...]

[...]

[55] Such a result can be explained by the fact that each claim for refugee protection is independent of other claims made by members of a single family unit, regardless of the similarity of the facts underlying the claims. This does not mean that the similarity of the facts has no impact on the outcome of these claims. When the facts supporting several claims are the same, it is not surprising that all of the claims have the same outcome. When the facts underlying the claims are not the same, it is also to be expected that each claim will be judged on the basis of its own facts.

[17] In the present case, the evidence submitted by the Applicant and on behalf of family members is largely the same. Although the RPD rejected all claims, the RAD allowed the appeals of the mother, stepfather and sister.

[18] The decision in *Tobar Toledo, supra* suggests that the reviewing Court should look at the facts where different decisions have been made relative to members of the same family.

[19] In the present case, the RPD specifically addressed the claim advanced by the Applicant, at paragraphs 47 to 52. Its conclusions are set out at paragraphs 51 and 52 as follow:

[51] The panel finds that the agent of harm as described by Luis Angel after he decided to stay behind when his family left Mexico is vague, lacking in detail, and is not clear, convincing, and cogent.

His fear is speculative. He was not approached, nothing was said to him and he was not harmed, even though he kept seeing the same people frequently.

[52] On a balance of probabilities, the panel finds that there is no specific agent of harm making Luis Angel personally at risk. Therefore, the panel finds on a balance of probabilities that there is no likelihood of harm if Luis Angel were to return to Mexico.

[20] Upon considering the evidence in the Certified Tribunal Record, and the oral and written submissions of the parties, I am not persuaded that the RPD's decision fails to meet the applicable standard of review, that is reasonableness.

[21] The Applicant did not leave Mexico with his family members. He delayed his departure by several months. He did not claim protection in the first country he entered after he left Mexico but waited until he arrived in Canada.

[22] The RPD described his fear of risk in Mexico as "speculative". This conclusion was open to the RPD, upon the basis of the evidence submitted.

[23] The outcome may have been different if other evidence had been presented. If the decision of the RAD is considered to be "evidence", it cannot affect the judicial review of the RPD decision since that "evidence" was not before the decision maker, indeed it did not exist at the time of that hearing.

[24] If the decision of the RAD is considered as "jurisprudence", it is not binding upon this Court.

[25] In the result, the application for judicial review will be dismissed. There is no question for certification.

**JUDGMENT in IMM-4776-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification.

“E. Heneghan”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4776-21

**STYLE OF CAUSE:** LUIS ANGEL MORENO ORDAZ v. THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 26, 2022

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** JANUARY 25, 2023

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