

Federal Court



Cour fédérale

Date: 20230124

Docket: IMM-1000-22

Citation: 2023 FC 110

Toronto, Ontario, January 24, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

ANDRES VIVEROS REYES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] that confirmed the determination of the Refugee Protection Division [RPD], both of which concluded that he is not a Convention refugee. For the reasons that follow, I will dismiss the Judicial Review challenging the RAD decision.

I. Background

[2] The Applicant, a citizen of Mexico, sought refugee protection in Canada based on his alleged fear of Los Zetas, a Mexican criminal organization. He lived and worked on his father's farm in El Viejon Nuevo, in the state of Veracruz. He alleges that Los Zetas threatened him since early 2016, after he refused to work with them to steal gasoline from a pipeline that runs through his father's farm. The Applicant alleges that as a result of the threats from Los Zetas, he had to move to the state of Pueblo with his wife and child.

[3] The Applicant claims that Los Zetas abducted his wife in July 2016, and that they demanded a ransom of one million pesos in exchange for her life. The Applicant alleges he was unable to raise the money so he had to send his daughter to live with his parents while he tried to gain refuge in the United States [U.S.].

[4] After two unsuccessful attempts to cross into the U.S., the Applicant returned to El Viejon Nuevo in early 2017, where he worked until he was able to fly to Canada in September 2018. The Applicant filed for refugee protection in June 2019.

[5] In August 2021, the RPD rejected the Applicant's claim and determined that he was not a Convention refugee nor a person in need of protection, because his fear of Los Zetas was speculative and he had a viable Internal Flight Alternative [IFA] in Cabo San Lucas, which is located in the state of Baja California Sur. The RPD also found that the Applicant's credibility was seriously undermined by his actions prior to arriving in Canada. The RPD also took issue

with the Applicant's delay of approximately nine months before filing for refugee protection status in Canada. The Applicant appealed the RPD decision to the RAD.

[6] On January 17, 2022, the RAD dismissed the appeal based on both credibility findings as mentioned above, as well as an IFA for the Applicant in Cabo San Lucas.

II. Analysis

[7] The Applicant argues that the RAD erred (i) in concluding that his fear of Los Zetas was speculative; and (ii) in its IFA finding. The Applicant submits that he would be at risk of persecution from Los Zetas in Cabo San Lucas and that his particular circumstances would make it unreasonable for him to relocate there. The standard of review for these issues is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

A. *The Applicant's credibility is seriously undermined by his actions*

[8] I begin by addressing the RAD's finding about the Applicant's credibility. It was reasonable for the RAD to conclude that the Applicant's actions undermined his credibility with respect to his subjective fear of Los Zetas.

[9] First, the Applicant returned to El Viejon Nuevo in 2017 and worked there for 18 months, despite his claims that Los Zetas had first threatened him there, forcing him to relocate to Pueblo with his wife and child. He argues that his return to El Viejon Nuevo was necessary to obtain his

passport to come to Canada. I note that this challenge is not properly before this Court since the Applicant did not challenge the credibility finding about his return to El Viejon Nuevo on appeal before the RAD (*Canada (Citizenship and Immigration) v R K*, 2016 FCA 272 at para 6). For the Applicant's edification, I will nonetheless address it in my analysis.

[10] Second, the Applicant did not seek refugee protection upon his arrival in Canada, but waited nine months to do so. He submits that the delay of nine months in claiming refugee protection in Canada is not significant for someone who was completely unfamiliar with the procedures in Canada.

[11] I find the RAD's conclusion on the credibility issue to be entirely open to it and fully justified in its rationale. With respect to the Applicant's return to El Viejon Nuevo, an applicant's return to the location of feared persecution is inconsistent with their claim of subjective fear (*Njomo v Canada (Citizenship and Immigration)*, 2021 FC 1402 at para 26). Moreover, this Court has held on numerous occasions that the failure to make a timely claim can be a significant factor in assessing the subjective fear (*Labana v Canada (Citizenship and Immigration)*, 2022 FC 414, citing *Zeah v Canada (Citizenship and Immigration)*, 2020 FC 711 at para 61; *Kayode v Canada (Citizenship and Immigration)*, 2019 FC 495 at para 29; *Dawoud v Canada (Citizenship and Immigration)*, 2015 FC 1110 at para 41).

[12] It was thus reasonable for the RAD to uphold the RPD's adverse credibility findings based on the Applicant's return for 18 months to the home in which he feared persecution in

Mexico, followed by a subsequent delay of nine months in seeking refugee protection once he arrived in Canada.

B. *The Applicant's fear of Los Zetas is speculative*

[13] The Applicant argues that the RAD unreasonably concluded that his fear of Los Zetas is speculative, and that it erred by misconstruing National Documentation Package [NDP] evidence. The Applicant argues the RPD asked him to speculate, and then turned the tables against him in concluding that his testimony was speculative. He submits the RAD focused on the fact that the NDP indicated that Los Zetas had “fragmented operations” in Veracruz – the seaside state in which El Viejon Nuevo is located – to conclude that Los Zetas were not active in the region, and that it was not likely that they were behind the fuel theft activities and the threats received by the Applicant.

[14] The RAD's conclusion demonstrates an internally coherent and rational chain of analysis that is justified based on the NDP evidence (*Vavilov* at para 85). The country condition evidence indicates that Los Zetas only had fragmented operations in Veracruz and that fuel theft in that region was also carried out by local criminal groups, some of whom adopt the Zeta name to get the benefit of the Los Zetas reputation. While the Applicant disagrees with the RAD's findings, he provided no supporting evidence beyond his testimony to show that it was more likely that his agents of persecution were the Los Zetas and not fuel theft criminals operating in Veracruz.

[15] The Applicant's belief that he will be targeted by Los Zetas is not a replacement for sufficient reliable evidence as to the identity of the agents of persecution (*Ocampo v Canada*

(*Citizenship and Immigration*), 2021 FC 1058 at para 30). Given the totality of the record, it was reasonable for the RAD to conclude the Applicant's testimony was speculative based on his undermined credibility buttressed by the objective NDP evidence that the RAD relied on in making its decision.

C. *The Applicant has a viable IFA in Cabo San Lucas (Baja California Sur)*

[16] The Applicant argues that the RAD erred in upholding the RPD's conclusion on the first prong of the IFA test – namely that the Applicant would not be subject to a serious possibility of persecution in the IFA. The Applicant claims he has unique knowledge of the land where both his father's farm and an important fuel pipe are located, which makes him an invaluable resource for the Los Zetas' fuel theft operations in the region of Veracruz.

[17] The Applicant focuses on one particular item in the NDP submitting that item 7.8 (a Response to Information Request [RIR] dated July 2021) confirms that he would be subject to a serious possibility of persecution in Cabo San Lucas. Item 7.8 discusses the organized crime and cartel activities in Mexican cities, including Cabo San Lucas. The Applicant argues that the RIR indicates powerful cartels like Los Zetas have the means to track down individuals across Mexico, even outside of the cartel's area of influence, and that they are motivated to pursue individuals as retaliation for refusing to be recruited. The Applicant contends this is sufficient evidence to demonstrate that his agents of persecution have the means and the motivation to track him down.

[18] I find that the Applicant has not submitted sufficient evidence to show that his particular circumstances and profile would make him a target of Los Zetas. Specifically, item 7.8 does not support the Applicant's argument that Los Zetas have the means or motivation to track him down and persecute him in Cabo San Lucas. Rather, it indicates that (i) Los Zetas have no presence in Cabo San Lucas, and (ii) that "it really depends on who you are and what you did. Low ranking members are not worth the time or resources for armed groups to track and kill."

[19] It was thus reasonable for the RAD to find that the Applicant did not have the profile of a target based on all the facts, and his claimed risk was speculative. The RAD may assess and evaluate evidence before it and this Court should not interfere with the RAD's findings absent "exceptional circumstances". Here, the Applicant has not pointed to any exceptional circumstances that would constitute a reviewable error (*Vavilov* at para 125).

[20] As for the second prong of the IFA test – as to whether the Applicant's particular circumstances would make it unreasonable for him to relocate to the IFA – the Applicant argues that it would indeed be unreasonable for him to relocate to Cabo San Lucas, which is located in the state of Baja California Sur, because (i) NDP item 7.8 indicates that Baja California is one of the areas most affected by drug-related and gang violence, and (ii) the widespread violence and ungovernability of the region will make it impossible for the Applicant to access state protection.

[21] I note that the RAD acknowledged, as did the RPD, that criminality is a widespread problem in Mexico, but concluded, based on objective documentation evidence, that the risk of violence in Cabo San Lucas and the state of Baja California Sur – while generalized – is

nonetheless lower than other Mexican states. The RAD's analysis of the second prong of the IFA test was thorough: it addressed the Applicant's arguments of his emotional and psychological trauma and lack of childcare for his daughter, even when the Applicant submitted no concrete evidence in support of these submissions.

[22] The threshold for unreasonableness of an IFA is high: "[i]t requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions" (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, (FCA) [2001] 2 FC 164 at para 15). I find that the RAD reasonably determined that the Applicant's circumstances did not meet this high threshold, and that it would not be unreasonable for him to relocate to Cabo San Lucas.

III. Conclusion

[23] For the reasons outlined above, the RAD's Decision was reasonable. I will therefore dismiss the Judicial Review. The Parties propose no question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-1000-22

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.
2. No questions for certification were argued and I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1000-22

STYLE OF CAUSE: ANDRES VIVEROS REYES v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 17, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** DINER J.

DATED: JANUARY 24, 2023

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