

Federal Court



Cour fédérale

Date: 20230201

Docket: IMM-823-22

Citation: 2023 FC 144

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 1, 2023

PRESENT: Madam Justice Walker

BETWEEN:

**ALEJANDRO AMADOR SANCHEZ
CLEMENTE AMADOR SANCHEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP,
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The principal applicant, Alejandro Sanchez, and the associate applicant, Clemente Sanchez, are citizens of Mexico. They are seeking judicial review of a decision rendered by the Refugee Appeal Division (RAD) on January 5, 2022, confirming the rejection of their refugee protection claims on the basis of an internal flight alternative (IFA) in their countries of origin.

[2] For the reasons that follow, the application is dismissed. The RAD's analysis of the motivation of the agents of persecution to find the applicants wherever they are in Mexico is comprehensive and intelligible. Its conclusions are justified in light of the evidence on record and the legal constraints to which the RAD is subject.

I. Background

[3] The applicants, two brothers, are from the state of Tlaxcala. They allege that they fear members of the *Los Zetas* cartel (the Cartel) who will be looking for them, because they worked at the same mine as a colleague who escaped from the Cartel. The applicants also allege that they are targeted by the cartel because of their advantageous wages, which were four times higher than the average wage of Mexicans.

[4] The applicants worked at a mine in Mazapil, Zacatecas, for a company called MITSA, a contractor of the mine's management.

[5] On April 20, 2018, while the applicants were on vacation, Cartel members threatened mine workers and killed one of their colleagues. Another worker ran away after being hit by a bullet. The applicants learned of this news when they returned from leave at the end of April. Soon after, when the mine's management learned that one of the workers had been found dead, MITSA lost its contract and, as a result, the applicants lost their jobs. They allege that MITSA hid the death of their colleague from management.

[6] The principal applicant then returned to live in the state of Tlaxcala with his wife and children. The associate applicant moved to the state of San Luis Potosí. The applicants were never contacted or threatened by members of the Cartel. However, they allege that in 2019, some unknown people were still looking for them in their home village.

[7] On March 14, 2019, the applicants arrived in Canada and made a claim for refugee protection.

[8] The Refugee Protection Division (RPD) found the applicants credible, stating that they gave direct, spontaneous and credible testimony. However, the RPD found that the applicants had a viable IFA in the cities of Durango and Tepic (Mexico) and therefore rejected their refugee protection claims. The RPD considered that the Cartel's interest in finding them no longer exists. There is no evidence that the members of the Cartel have been pursuing the applicants since January 2019. As for the second criterion for determining whether there is a viable IFA, the RPD found that the applicants' fear of being found is sincere, but that they made no argument against the reasonableness of the identified IFAs.

[9] The applicants appealed the RPD's decision. They criticized the RPD for finding them credible and then stating the contrary. The applicants argued that the RPD made a disguised credibility decision when it found that the Cartel was not motivated to find them. They also argued that the RPD failed to consider their particular circumstances in its assessment of the second prong of the IFA test and that the remoteness test is not sufficient in itself to make an IFA reasonable.

II. RAD decision

[10] The RAD dismissed the appeal, stating that the applicants' credibility was accepted by the RPD, but "the evidence that the [applicants] had to prove with regard to the IFA did not meet their burden." According to the RAD, the RPD's finding is not a disguised negative credibility finding.

[11] The RAD's determinative findings were the following:

1. If a cartel of the size of Los Zetas decides to spend time and money, it would have the ability to find the applicants anywhere in Mexico.
2. However, on its own, the ability of the Cartel to locate their targets is not enough for an IFA to be unviable; applicants must also demonstrate the Cartel's motivation to locate them in the proposed IFAs.
3. In this case, there is no direct contact between Cartel members and the applicants. The only evidence that suggests that the cartel is still looking for them is the principal applicant's statement that third parties informed him that unknown persons were asking for the applicants in January 2019 in their village in the State of Tlaxcala.
4. The evidence does not show that the Cartel would make efforts find the applicants. The possibility that their former employer was cooperating with the cartel does not prove anything about the applicants' personal risks and does not meet the threshold of probability.
5. Regarding the second component of the IFA test, Durango and Tepic are more than five hours by car from Mazapil, where the mine was located. Police corruption, whether in Durango or elsewhere in Mexico, is unfortunately part of the social climate of the country and fits into the pattern of generalized crime, which is not relevant to determining a personalized risk for the applicants.
6. The applicants' personal characteristics do not indicate that they could not find employment, somewhere to stay and somewhere to have their children educated in the IFAs. The RPD's conclusion that it would not be unreasonable for the applicants to seek refuge in the IFAs, given all the circumstances, is correct.

III. Analysis

[12] The issue in this application is whether the RAD's findings on its assessment of viable IFAs for the applicants are reasonable.

[13] The parties are of the view, and I agree, that the standard of review applicable to a RAD decision regarding an IFA is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 [Vavilov]; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32).

[14] The applicants submit that the RAD did not consider their credibility and did not consider all of the evidence presented. They allege that the RAD's reasons do not address the behaviour of their former employer, MITSA, who hid the extortion of its workers and the killing of one of the workers by the Cartel to escape responsibility. The applicants submit that this omission is important because it is central to the Cartel's motivation to find them in order to obtain information.

[15] I do not agree with the applicants' arguments.

[16] The fundamental issue for the RAD is the Cartel's motivation to locate the applicants in the proposed IFAs. Like the RPD, the RAD found the applicants to be credible. However, the RAD found that the applicants did not discharge their burden of proving, on a balance of probabilities, that the Cartel had the motivation to find them. The panel succinctly points out that there is "a difference between giving testimony in a credible manner and the preponderance of

the evidence required to demonstrate that a person is in need of protection.” I agree with the respondent that the RAD did not make a disguised credibility finding.

[17] The applicants rely on *Dominguez Bando v Canada (Citizenship and Immigration)*, 2007 FC 980 at paras 9–10 and *Aviles Yanez v Canada (Citizenship and Immigration)*, 2010 FC 1059 at para 41, in support of their position that the RAD made a disguised credibility finding. I find that the facts in those cases are distinguishable from the decisions under review: in this case, the RAD found that there is insufficient evidence. It was aware of all the significant evidence and did not undermine the applicants’ credibility.

[18] The applicants argue that the RAD limited its analysis of the Cartel’s motivation to extortion, a limitation that renders the decision unreasonable. According to the applicants, the RAD ignored their accounts that the Cartel is looking for them to question them about the investigation launched at the mine concerning the events of April 2018.

[19] I find that the applicants are attempting to recharacterize their refugee protection claims. The past and present extortion of their former colleagues at the mine is emphasized in their narratives.

[20] The RAD undertook a comprehensive assessment of the Cartel’s motivation to find the applicants, whether for the purpose of extorting them or extracting information. The panel reiterated that it is up to the applicants to demonstrate, on a balance of probabilities, that the members of the cartel continue to look for them. The RAD found that the evidence shows that

the Cartel does not know the applicants; that they lost their jobs and their high pay before their identities were known to the cartel members; that there is no direct contact between Cartel members and the applicants; and that the applicants were not threatened by the Cartel. In addition, the RAD noted the principal applicant's allegation that unknown people are looking for him to find out what he knows about the co-worker who was allegedly killed, but remarked that no other effort to find the applicants was demonstrated.

[21] The applicants submit that the RAD erred in failing to consider the two visits to their home village by the unknown persons looking for them. The RAD noted that Cartel members allegedly asked for the applicants in January 2019 without specifying the number of visits. The principal applicant's account does not include the dates of the two visits, so I cannot determine if he speaks of two visits in January 2019. Even though the RAD noted only one visit, this error does not significantly undermine its overall analysis of the Cartel's motivation. The visit or visits date no later than January 2019 and the applicants have not filed any evidence suggesting that Cartel members are currently looking for them.

[22] The applicants further submit that the RAD's reasons do not address MITSA's behaviour, but their argument is not convincing. In its summary of the relevant facts, the RAD lists the applicants' allegation that MITSA hid the death of one of the workers at the mine. The RAD summarized its analysis of the Cartel's motivation and the first prong of the IFA test as follows:

[24] As for the argument that the cartel has more than one modus operandi and that the RPD should have taken this into consideration, I reiterate that the burden of proof is borne by the refugee protection claimants when an IFA is identified. There is nothing in the evidence that demonstrates that the cartel would operate otherwise to find the appellants. This element does not

meet the threshold of probability, which is the test here. The same goes for the argument that their former employer could have been collaborating with the cartel. While not impossible, it proves nothing as to the personal risk that the appellants allege facing and does not meet the threshold of probability. . . .

[Emphasis added.]

[23] I find that the RAD did not ignore the allegations regarding MITSA’s behaviour and the possibility that the Cartel would like information about MITSA and the investigation of the April 2018 incident. I also find that it was open to the RAD to find that these allegations “[do] not meet the threshold of probability”.

[24] The applicants challenge three RAD findings that they characterize as arbitrary. First, they claim that the absence of visits by Cartel members to their families does not indicate the absence of Cartel interest because cartels do not have a single *modus operandi*. In response, the RAD noted that the applicants’ evidence provided no proof that the Cartel would make any further effort to find them. The lack of direct contact between the cartel and their family “is another element that suggests that the cartel members have no interest in spending the resources to find the [applicants]”. The RAD therefore did not rely solely on this lack of contact. Its analysis is in no way arbitrary.

[25] The applicants also argue that the RAD contradicted itself in finding that the Cartel did not know them despite its reference to visits by Cartel members to their village. However, the evidence shows that the Cartel never contacted the applicants and that they lost their jobs even before their identities were known to the Cartel. The principal applicant did not provide information as to the identity of the third party who informed him of the visits or the extent of

the questions Cartel members asked during those visits. In light of the evidence on the record, it was open to the RAD to conclude that the Cartel did not know the applicants notwithstanding the allegation that the Cartel members looked for the principal applicant in his home village.

[26] The applicants next argue that there is no basis for the RAD's conclusion that the current extortion of its former colleagues does not prove that the Cartel would have an interest in pursuing the applicants. They argue that the passage of time does not show that the cartel is not interested in finding them. In my view, this argument suggests that the lack of contact since 2019 is a determinative reason in the RAD's analysis, but that is not the case. In addition, the passage of a significant amount of time since there was contact with the agents of persecution is an obvious and reasonable consideration when assessing the current motivation of the agents of persecution (*Idris v Canada (Citizenship and Immigration)*, 2019 FC 24 at para 13). I accept that the distinction cited by the RAD between the applicants and former colleagues who are still extorted by the Cartel is an error because all MITSA employees lost their jobs. At minimum, the RAD's analysis in this regard did deserve better reasons, but this deficiency is not sufficiently central or significant to render the RAD's ultimate conclusion unreasonable (*Vavilov* at para 100). The applicants have failed to demonstrate that the Cartel is still motivated to find them.

[27] In conclusion, it was open to the RAD to conclude that the applicants did not demonstrate that the Cartel would have an interest in finding them wherever they were in Mexico, having regard to the applicants' evidence and arguments. The application for judicial review is therefore dismissed.

[28] No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-823-22

THIS COURT'S JUDGMENT is as follows:

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

“Elizabeth Walker”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-823-22

STYLE OF CAUSE: ALEJANDRO AMADOR SANCHEZ, CLEMENTE
AMADOR SANCHEZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 23, 2022

JUDGMENT AND REASONS: WALKER J.

DATED: FEBRUARY 1, 2023

APPEARANCES:

Claudia Andrea Molina FOR THE APPLICANTS

CHANTAL CHATMAJIAN FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cabinet Molina Inc. FOR THE APPLICANTS
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec