Federal Court  Cour fédérale

Date: 20230302

Docket: IMM-8004-21

Citation: 2023 FC 291

Ottawa, Ontario, March 2, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Cesar Oswaldo SAUCEDO VILLAVERDE
Noemi Eunice RIVAS BOLANOS
Anna Victoria SAUCEDO RIVAS

Applicants

and

The Minister of Immigration, Refugees, and Citizenship Canada

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family from Mexico who fear the Jalisco New Generation Cartel [CJNG]. The Principal Applicant, Cesar Oswaldo Saucedo Villaverde, alleges that the CJNG targeted him because he worked at a medical clinic in Jalisco, Mexico that treated shooting

victims the CJNG wanted dead. The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] dismissed their claim.

[2] The Refugee Appeal Division [RAD] of the IRB dismissed the Applicants' appeal [Decision] and confirmed the decision of the RPD dismissing the Applicants' refugee claim. Finding the Applicants generally credible, the determinative issue before both tribunals was the availability of an internal flight alternative [IFA] for the Applicants in Merida, Yucatan.

[3] The Applicants seek judicial review of the Decision.

[4] I am not persuaded that the Applicants have satisfied their burden of showing that RAD's IFA analysis is unreasonable. For the reasons below, I therefore dismiss this application for judicial review.

II. Issues and Standard of Review

[5] Having considered the parties' written and oral submissions, the evidence of record and the applicable jurisprudence, I find that this matter raises the following issues:

A. *Did the RAD err by failing to address evidence that the CJNG operates in Yucatan state?*

B. *Is the RAD's finding that the CJNG would not target the Applicants unsupported by the evidence?*

C. *Did the RAD err by requiring corroborative evidence?*

[6] The presumptive review standard of reasonableness applies to the above issues before the Court: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at

paras 10, 25. To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (para 99). A decision may be unreasonable if the decision maker misapprehended the evidence before it (paras 125-126). The party challenging the decision has the onus of demonstrating that the decision is unreasonable (para 100).

III. Analysis

[7] A claim for refugee protection will fail if the claimant has a viable IFA: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*]. To maintain the claim for protection, the refugee claimant bears the burden of establishing, on a balance of probabilities, that (i) there is a serious possibility of persecution in the proposed IFA; and (ii) objectively, considering all the circumstances including those particular to the Applicants, it would be unreasonable or unduly harsh for them to move there: *Thirunavukkarasu*, above; *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Olasina v Canada (Citizenship and Immigration)*, 2021 FC 103 at para 4; *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 at para 29.

[8] I note that the Applicants have not challenged the RAD decision regarding the second part of the IFA test. Only the reasonableness of the Decision regarding the first part of the test thus is relevant.

[9] I further note the RAD found that the RPD erroneously phrased the IFA test as the following: “I have considered … whether, on a balance of probabilities, there is a serious possibility of persecution…” Specifically, the RAD found the combination “balance of probabilities” and “serious possibility of persecution” is incorrect. The Federal Court of Appeal, however, articulated the test in this way in *Thirunavukkarasu,* above.

[10] In my view, the RAD’s misstatement in itself does not undermine reasonableness of the Decision because, like the RPD, the RAD concluded the Applicants had not established a nexus between their allegations and a Convention ground pursuant to section 96 or a risk pursuant to section 97(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*]. The crux of the matter before me is whether the Applicants have satisfied their onus to establish a reviewable lack of justification, transparency or intelligibility in the Decision, including the RAD’s reasons, to warrant the Court’s interference. As I explain next, I am not persuaded that they have done so.

[11] I analyze next the specific issues before the Court.

A. *Did the RAD fail to address evidence that the CJNG operates in Yucatan state?*

[12] Contrary to the Applicants’ submissions, this is not a situation in my view where the RAD failed to mention evidence that was contradictory to its conclusion: *Malveda v Canada (Citizenship and Immigration),* 2008 FC 447 at para 43; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration),* 1998 CanLII 8667 (FC).

[13] The Applicants argue that the RAD ignored evidence in the IRB's National Documentation Package [NDP] that show the CJNG is active in Yucatan. The RAD, however, discussed, and did not dispute, the specific documentary evidence cited by the Applicants. Acknowledging evidence of the CJNG's expanding reach, including through possible alliances, and of the organization's power and violence, the panel nonetheless reasonably concluded, in my view, that the evidence does not indicate the group is active in Yucatan or specifically in Merida.

[14] I find the Applicants' submissions are tantamount to a disagreement with the way the RAD considered and weighed the very evidence to which the Applicants point; in essence, they ask the Court to reweigh the evidence, which is not the role of the Court in judicially reviewing the Decision: *Vavilov*, above at para 125.

B. *Is the RAD's finding that the CJNG would not target the Applicants unsupported by the evidence?*

[15] I am not convinced the RAD erred, as the Applicants assert, in its assessment of the CJNG's motivation and means to pursue them. In my view, the RAD reasonably concluded, in the circumstances, that the Applicants had not satisfied their burden of establishing that the CJNG has the motivation to find them. Further, the means of the CJNG to find the Applicants was not the determinative issue for either the RPD or the RAD.

[16] The Applicants argue that the RAD accepted that they are targeted by the CJNG and illogically assumed that the Applicants did not have a meaningful enough profile for the CJNG to expend significant resources to search for them. The RAD did not find, however, that the

CJNG would not have the motivation to track the Applicants because of the resources required to do so, but rather, because there was not enough evidence that the CJNG would be interested in doing so.

[17] In my view, it was open to the RAD, and not unreasonable in the circumstances, to base this finding on the insufficiency of evidence: *Torres Zamora v Canada (Citizenship and Immigration)*, 2022 FC 1071 at para 14.

C. *Did the RAD err by requiring corroborative evidence?*

[18] I find this issue also turns on the RAD's determinations regarding the insufficiency of evidence and, thus, as I explain, the short answer to the question is no.

[19] The Applicants submit the RAD erred by requiring the Applicants to produce evidence to establish on a balance of probabilities that the CJNG was targeting or searching for them, beyond their credible testimony: *Dayebga v Canada (Citizenship and Immigration)*, 2013 FC 842 at para 26-28.

[20] The RAD's focus, however, was on the insufficiency of evidence available to establish the CJNG's motivation to pursue the Applicants. The RAD noted there was an insufficiency of evidence generally, including whether the CJNG also targeted other colleagues who worked at the clinic with the Principal Applicant at the time of the incident that triggered the targeting of the Applicants. The RAD also noted the lack of evidence substantiating that the CJNG is their agent of harm, that the CJNG has been searching actively for the Applicants or monitoring their

whereabouts, or that the CJNG would know or learn if they returned to Mexico or where they were located.

[21] I similarly find that it was open to the RAD, and not unreasonable in the circumstances, to determine the evidentiary record was insufficient, in a context where other evidence would be expected, to establish the Applicants' risk: *Olusola v Canada (Citizenship and Immigration),* 2020 FC 799 at para 26.

[22] Further, the fact that the RAD may have come to a different conclusion on the evidence before it does not render its analysis flawed or unreasonable: *Krishnapillai v Canada (Citizenship and Immigration),* 2007 FC 563 at para 11; *Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at para 43.

IV. Conclusion

[23] I find the RAD's reasons viewed holistically permit the Court to understand why the RAD dismissed the appeal: *Vavilov,* above at paras 102-104. For the above reasons, I in turn dismiss the Applicants' judicial review application.

[24] The parties did not propose any question for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-8004-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8004-21
STYLE OF CAUSE:	CESAR OSWALDO SAUCEDO VILLAVERDE, NOEMI EUNICE RIVAS BOLANOS, ANNA VICTORIA SAUCEDO RIVAS v THE MINISTER OF IMMIGRATION, REFUGEES, AND CITIZENSHIP CANADA
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