

Federal Court



Cour fédérale

Date: 20230327

Docket: IMM-9777-21

Citation: 2023 FC 418

Ottawa, Ontario, March 27, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

**JESUS ALBERTO GALLARDO
GUTIERREZ**

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jesus Alberto Gallardo Gutierrez, is a citizen of Mexico. He claims to fear for his life at the hands of the Barrendera cartel on the basis that he refused to pay a monthly extortion fee and lodged a complaint with the police.

[2] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD], dated December 9, 2021, to dismiss the Applicant's appeal and confirm the decision of the Refugee Protection Division [RPD] to reject his claim for refugee protection, finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27* [IRPA]. Both the RPD and the RAD concluded that the Applicant had viable internal flight alternatives [IFA] in Mexico City and Merida.

[3] The Applicant submits that the RAD erred by committing fatal errors in its analysis of both prongs of the test for an IFA. In particular, the Applicant alleges that the RAD failed to address objective documentary evidence in the national documentation package [NDP] regarding the means of the cartel to locate him in the IFA. The Applicant further alleges that, as to the second prong, the RAD microscopically analyzed the evidence in the NDP. The Respondent submits that the RAD reasonably determined that the Applicant has viable IFAs in the aforementioned cities.

[4] The only issue is whether the RAD reasonably concluded that the Applicant has viable IFAs in Mexico City and Merida.

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

II. Analysis

[6] The parties agree that the standard of review is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (Vavilov at para 85).

[7] If a refugee claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97 of the IRPA, regardless of the merits of other aspects of the claim (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 7). The test for establishing the viability of an IFA is two-pronged. Both prongs must be satisfied in order to make a finding that a claimant has an IFA. The first prong consists of establishing, on a balance of probabilities, that there is no serious possibility of the claimant being subject to persecution or would face a risk described in section 97 in the proposed IFA. The second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including of the claimant's personal circumstances, for the claimant to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597-598; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10-12; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5 [Mora Alcca]; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17).

[8] The Applicant submits that the RAD erred in finding that the Barrendera cartel did not have the means to search for and locate him in the IFAs. The Applicant pleads that the RAD failed to address Tab 7.8. of the NDP which addresses the ability, and thus the means, of organized crime groups to track and retaliate against individuals. The Applicant relies on *Zheng v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 140 [*Zheng*], and pleads that the RAD was obliged to acknowledge this evidence in the NDP which directly contradicts its findings.

[9] The Respondent submits that the Applicant's argument is without merit on the basis that the RAD in fact cited Tab 7.8 in its reasons, and the NDP does not mention the Barrendera cartel, nor does the Applicant provide any documentary evidence regarding the cartel. The Respondent pleads that the onus was on the Applicant to demonstrate that the cartel exists and that it has the means to locate him.

[10] I am not persuaded that the RAD erred in concluding that the evidence did not establish that the members of the Barrendera cartel had the means to locate the Applicant. Both the RPD and the RAD found that the NDP did not mention the Barrendera cartel, despite the extensive evidence on organized crime in Mexico. The RAD noted that it could not identify any evidence about this group, nor did the Applicant point to any evidence about the group in his memorandum to the RAD. The RAD further considered that the Applicant, when asked by the RPD about the group, was unable to provide specific evidence about it or its zone of influence.

[11] The Applicant pleads that the RAD's analysis was microscopic because Tab 7.8 of the NDP refers to organized crime groups being able to track and retaliate against individuals in other parts of Mexico easily. He submits that the fact that the Barrendera cartel is not mentioned in the NDP should not detract from the objective evidence that such criminal groups have the means to locate him should they wish to.

[12] The difficulty for the Applicant is that ultimately, it was his burden and the RAD cannot be faulted for an absence of objective evidence on the Barrendera cartel. Moreover, the evidence provided by the Applicant does not serve to compensate for the lack of objective documentary evidence. The Applicant pleads that it does on the basis his credibility is not in issue and, as such, he benefits from the presumption of truthfulness. While I note that the RPD concluded that the Applicant was credible with respect to the attack from two assailants and the resulting injuries he suffered, the RPD found that the Applicant failed to establish that the assailants were linked to the cartel or that this cartel had more than a local or regional influence. The RAD did not address credibility but rather found that the evidence did not establish that members of this cartel had the necessary means to locate the Applicant in the IFAs. The issue is not, therefore, one of credibility.

[13] With respect to the second prong, the Applicant bears the onus of demonstrating that the IFA is unreasonable (*Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21). As stated by Justice René LeBlanc in *Mora Alcca*, the onus is an exacting one:

[14] I am well aware that the onus of demonstrating that an IFA is unreasonable in a given case, an onus that rests with the claimant, is an exacting one. In fact, it requires nothing less than demonstrating 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.

[Citations omitted.]

[14] In order to demonstrate that an IFA is unreasonable, the Applicant must provide actual and concrete evidence of the existence of conditions that would jeopardize his life and safety in relocating to the IFA. The thrust of the Applicant's argument is that because the Barrendera cartel can locate him there, he is at risk and thus the IFA is unreasonable. Moreover, the Applicant also states that, more generally, the two cities are unsafe as per the evidence in Tab 7.8 of the NDP, and the RAD's finding otherwise, without acknowledging the contrary evidence, is unreasonable on the basis of *Zheng*.

[15] The Respondent submits that the Applicant has engaged in a selective reading of Tab 7.8, and the RAD reasonably concluded that Merida is located in the safest and most peaceful state in Mexico based on the evidence before it. The passages cited by the Applicant do not, in the Respondent's view, directly contradict the findings of the RAD.

[16] Given the documentary evidence before the RAD, and in particular Tabs 1.5 and 7.8 of the NDP, I have not been persuaded that the RAD engaged in a microscopic analysis of the evidence so as to render its decision unreasonable.

III. Conclusion

[17] For the foregoing reasons, I am not convinced that the RAD's decision is unreasonable. Accordingly, this application for judicial review is dismissed.

[18] No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-9777-21

THIS COURT'S JUDGMENT is that:

1. The Applicant' application for judicial review is dismissed; and
2. There is no question for certification.

“Vanessa Rochester”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9777-21

STYLE OF CAUSE: JESUS ALBERTO GALLARDO GUTIERREZ v
MINISTER OF CITIZENSHIP AND IMMIGRATION

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