Federal Court   Cour fédérale

Toronto, Ontario, May 4, 2023

PRESENT: Madam Justice Go

BETWEEN:

ALAN CUELLAR ORTEGA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

<u>**JUDGMENT AND REASONS**</u>

I.   <u>Overview</u>

[1]   The Applicant, Mr. Alan Cuellar Ortega, is a citizen of Mexico. For many years, he

worked as a taxi driver in Sahagun, Hidalgo, for his father's company. In 2016, the Applicant

inherited his father's taxi and plates. The Applicant fears harm by the Jalisco New Generation

Cartel [CJNG], which he claims threatened him with extortion and harm.

[2]   The Applicant's brother, who fled to Canada in November 2017, was targeted by the Los Zetas cartel for his skills as a welder.

[3]   In November 2018, the Applicant was stopped by two men who questioned him, seemingly conflating him with his brother. In February 2019, two taxi drivers in the area were killed, with a third being severely beaten in March 2019. On March 18, 2019, three men from the CJNG entered the Applicant's taxi, threatened his life, and demanded a fee in exchange for his safety. Two more incidents took place over the next few days with men approaching the Applicant for money and threatening him. The Applicant went to Mexico City to stay with a friend and filed a denunciation with the Deputy Prosecution on March 26, 2019. On the following day, the Applicant fled Mexico and arrived in Canada.

[4]   The Applicant and his brother filed a joint claim for refugee protection. The Refugee Protection Division [RPD] rejected both of their claims in August 2021 on the basis of a viable Internal Flight Alternative [IFA] in Culiacan. In a split decision dated January 31, 2022, the Refugee Appeal Division [RAD] upheld the RPD's IFA finding and confirmed 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*] [Decision]. The RAD allowed the Applicant's brother's appeal and concluded that he is a person in need of protection under subsection 97(1) of *IRPA*.

[5]   The Applicant seeks judicial review of the Decision. I dismiss the application as I find the Decision reasonable.

II.   Issues and Standard of Review

[6]   The only issue on judicial review is whether the RAD's IFA analysis was reasonable.

[7]   The parties agree that the Decision is reviewable on a reasonableness standard, per

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65.

[8]   A reasonable decision is one that is based on an internally coherent and rational chain of

analysis and that is justified in relation to the facts and law that constrain the decision-

maker: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant

administrative setting, the record before the decision-maker, and the impact of the decision on

those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[9]   For a decision to be unreasonable, the Applicant must establish the decision contains

flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns

about a decision will warrant intervention. A reviewing court must refrain from reweighing

evidence before the decision-maker, and it should not interfere with factual findings absent

exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than

superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov* at para 100.

III.   Analysis

[10]   The two-pronged test for finding a viable IFA is well-established. The decision-maker

must be satisfied on a balance of probabilities that (1) there is no serious possibility of the

claimant being persecuted in the proposed IFA, and (2) the conditions in the proposed IFA are such that it would not be unreasonable, in all the circumstances, for the Applicant to seek refuge in the city: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*] at 711.

[11] The Applicant argues that the RAD:

    a. erred in the first prong in finding that the CJNG does not have the motivation to pursue him by ignoring evidence including country condition evidence, mischaracterizing the Applicant's risk profile, and misunderstanding the influence of the CJNG; and

    b. erred in its analysis of the second prong of the IFA test in finding that it would not be unreasonable for the Applicant to locate to Culiacan.

(1)   First Prong

[12] While the Applicant raises several arguments to support his challenge of the RAD's IFA analysis, his arguments can be summarized, in my view, as follows:

> It is the Applicant's contention that he is being targeted by the CJNG not only as a taxi driver, but also because of his connection to his brother, his decision not to comply with the CJNG's extortion, and his filing of the denunciation with the Mexican authorities. In finding that the CJNG was not motivated to track down the Applicant, the RAD erred by focusing solely on the Applicant's profile as a taxi driver. The RAD ignored the Applicant's own testimonial evidence, as well as the objective evidence about the influence of the CJNG and its motivation to track down those it perceives as a "rat." The Applicant would be perceived as a traitor to the CJNG because he cooperated with the authorities, and as such would be dealt with in order to "send a message."

[13]   While I am sympathetic to the Applicant's situation, and I agree that decision-makers must not adopt a compartmentalized approach when conducting an IFA analysis, I find that the Applicant has failed to demonstrate any reviewable errors in the Decision. On the contrary, I find that the RAD reasonably considered all of the objective and personal evidence in this case in arriving at its findings.

[14]   First, the Applicant submits that the RAD discounted his testimony and the country condition evidence regarding the CJNG's status as a dangerous cartel and the Applicant's encounters with them as someone who refused to pay and who filed an official denunciation. I reject this argument as the reasons demonstrate that the RAD clearly considered the evidence. For example, the RAD dealt directly with the Applicant's denunciation in the Decision:

> The [Applicant] tendered no evidence to support that the filing of a denunciation itself would serve as a motivation for the CJNG to find him wherever he relocated in Mexico. First, there is no evidence that the police in Sahagan investigated the [Applicant's] complaints, or that his denunciation led to a crack down on the CJNG's extortion of taxi-drivers, or that it affected the cartel's operations in any way. Second, according to sources contacted and quoted in the RIR at tab 7.8 of the NDP, 80% of police forces in Mexico are controlled by criminals, while almost 60 or 70% are "corrupted" by organized crime. Criminal groups bribe the police and judges… In light of this evidence, I find on a balance of probabilities that the [Applicant's] filing of a denunciation would not serve to motivate the CJNG to locate the [Applicant] in the proposed IFA given that it is more likely than not that the cartel has infiltrated or corrupted the police in Sahagun, and it is more likely than not that the [Applicant's] denunciation did not hamper the cartel's activities.
>
> > At the hearing, I asked counsel for the Applicant to address the above-cited passage in the Decision. Counsel appeared to side-step my question by pointing out that the denunciation is not the only reason why the CJNG is motivated to find the Applicant.

[15]   I also reject the Applicant's submission that the RAD failed to consider and appreciate

the significance of the evidence that the CJNG connected the Applicant to his brother. As the

Respondent notes, and I agree, the RAD understood that the Applicant was initially confused for

his brother, and that months later, the Applicant was targeted as a taxi driver. The RAD

considered the evidence that the CJNG connected the Applicant with his brother, but found the

evidence "vague", and that it at best implied that he was being used to locate the brother. The

RAD noted the lack of evidence and the fact that the brother was targeted by a different cartel

before concluding that the Applicant was targeted for extortion due to his profile as a taxi driver.

The Applicant does not assert any shortcomings with this chain of analysis, nor do I find any.

[16]   The Applicant also argues that the RAD failed to demonstrate its knowledge and

consideration of the country condition evidence, contrary to its duty to do so: *Abdalghader v*

Canada (Citizenship and Immigration), 2015 FC 581 [*Abdalghader*] at paras 23-24. The

Applicant contends that this case is one where the reviewing Court cannot be satisfied that

certain information was considered, as was the case in *Marin v Canada (Minister of Citizenship*

and Immigration), 2004 FC 1683 at para 10.

[17]   The Applicant points to various sections of the National Documentation Package [NDP]

highlighting the CJNG as one of the most dangerous and powerful cartels currently operating in

Mexico. The Applicant also quotes portions of the NDP describing the types of individuals who

the cartel are likely to target and the means with which the CJNG would track these individuals

down. The Applicant argues that the NDP confirms the violent ways that the CJNG would deal

with people that they believe to be non-compliant. The Applicant maintains that he fits the

profile of those being targeted due to his non-compliance with the extortion demands and his filing of the denunciation.

[18]   With respect, the Applicant's argument lacks merit. The RAD reviewed the NDP and agreed that the CJNG has the means to track down the Applicant, contrary to the RPD's conclusion. However, the RAD found it more likely than not that the CJNG has no ongoing motivation to pursue the Applicant, for some of the reasons already outlined above, which I find reasonable.

[19]   Thus, notwithstanding the RAD's findings regarding the influence and power of the CJNG, the RAD concluded that there is no documentary evidence to support an ongoing motivation to pursue the Applicant as a taxi driver who refused to be extorted. The Applicant has not impugned that aspect of the RAD's findings.

[20]   The Applicant cites several cases which are distinguishable on facts.

[21]   In *Monsalve v Canada (Citizenship and Immigration)*, 2022 FC 4 [*Monsalve*], the applicant was targeted by a gang due to his role of being a witness to a crime: at para 2. The threats to the applicant and his family arose eight years after the crime took place, when the gang member was released from prison: *Monsalve* at para 2. The Court found in *Monsalve* that the RPD improperly conflated the concepts of "presence" and "influence" of the agents of persecution, and erred in finding that the gang lacked motivation to target the applicant: at paras 15 and 17. Here, the RAD accepted the CJNG's means and influence to track down the

Applicant. The RAD's finding that the CJNG does not have the motivation to do so was made reasonably based on the evidence – or the lack thereof.

[22]   The Applicant also analogizes the case at bar to *Campos v Canada (Citizenship and Immigration)*, 2022 FC 1641 [*Campos*], where the Court found that the RAD failed to address materially relevant evidence establishing a continued motivation of the CJNG to pursue the applicants: at para 72.

[23]   I do not accept this argument. Like *Campos*, the RAD in this case acknowledged that the CJNG's interest in looking for a person arises from specific situations: at para 62. But in *Campos*, there was evidence that the CJNG broke into the applicant's aunt's house after he fled Mexico. Despite this evidence, the RAD found that the CJNG lacked the motivation to find the applicant in the proposed IFA. It was in this context that Justice Zinn commented:

> [65]   This strongly suggests that there was a determination on the part of the CJNG to recruit Nelson and punish him and his family for refusing. The RAD fails to make this connection. The strength of the motivation to harm a person established by incidents personal to a claimant and to his family when they are in the country of origin, is indicative of the length of time that motivation will continue.

[24]   In the case at bar, as the RAD noted, and as the Respondent submits, there is no evidence that the CJNG attempted to contact the Applicant's family members for example, to inquire of his whereabouts after he fled Sahagun.

[25]   In conclusion, I find that the RAD did not err with respect to the first prong of the IFA analysis. The RAD did not ignore evidence, mischaracterize the Applicant's profile, or otherwise fail in its assessment of the evidence.

(2)   Second Prong

[26]   For the second prong of the IFA analysis, the Applicant argues that the RAD failed to engage with the conditions specific to Culiacan and failed to take into account the Applicant's personal circumstances when assessing the reasonableness of the proposed IFA. The Applicant recalls that the second prong of the IFA analysis requires an assessment of "all the circumstances including circumstances particular to [the claimant]" and that the test is a "flexible one, that takes into account the particular situation of the claimant": *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at 597, citing *Rasaratnam* at 711.

[27]   The Applicant relies on the jurisprudence to show that the RAD committed a reviewable error in finding Culiacan to be a viable IFA without a firm grounding in the evidence: *Okoloise v Canada (Citizenship and Immigration)*, 2018 FC 1008 at paras 10-18; *Abdalghader* at paras 27-30; *Utoh v Canada (Citizenship and Immigration)*, 2012 FC 399 at paras 15-21.

[28]   Specifically, the Applicant argues that a similar error was committed in *Abdalghader*, where the Court found that the RPD "limited itself to general statements without really looking at the personal situation of the Applicants or at the general country conditions", which warranted its intervention: at para 28; see also *Paxi v Canada (Citizenship and Immigration)*, 2016 FC 905 at paras 36 and 40.

[29]   With respect to employment, the Applicant submits that the RAD cannot expect an individual to return to their home country and live as someone they are not: *Cuevas v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1169 at para 13. The Applicant asserts that it was unreasonable for the RAD to assume that he would no longer work as a taxi driver if returned to Mexico. The Applicant notes that he has spent his entire life in this trade and that his identity as a taxi driver was material to his forward-facing risk profile.

[30]   I reject the Applicant's arguments.

[31]   As the Respondent reiterates, the onus was on the Applicant to demonstrate that the relocation would be unreasonable, and the threshold for unreasonableness is high: *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at para 12; *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at para 15. The Applicant needs to show the existence of conditions which would jeopardize his life and safety in the proposed IFA.

[32]   Contrary to the Applicant's assertion, the RAD did consider the Applicant's submission that he ran a taxi business for many years and would not be able to resume his life as a taxi driver. The RAD rejected that argument because it found the CJNG does not have the motivation to locate the Applicant in the IFA. The RAD also considered the Applicant's specific situation but noted that he "adduced no evidence" that he would face impediments in securing housing or employment in Culiacan that would jeopardize his life or safety, or face cultural, religious or other barriers that would render Culiacan an unreasonable IFA.

[33]   In light of these findings, I agree with the Respondent that the RAD duly considered the second prong of the IFA analysis and addressed the Applicant's personal circumstances.

[34]   As I have noted above, I am sympathetic to the Applicant's circumstances. That the Applicant has not demonstrated a personalized risk in the proposed IFA location to the satisfaction of the RAD does not mean the Applicant would not face challenges should he be returned to Mexico. However, my role in an application for judicial review is limited to an assessment of the Decision in question. Whether the Applicant may yet have other bases to remain in Canada is beyond my mandate to determine in this case.
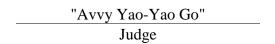
IV.   Conclusion

[35]   The application for judicial review is dismissed.

[36]   There is no question for certification.

<u>JUDGMENT in IMM-1901-22</u>

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

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"Avvy Yao-Yao Go"
Judge

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