

Federal Court



Cour fédérale

Date: 20230721

Docket: IMM-9185-22

Citation: 2023 FC 1045

Ottawa, Ontario, July 31, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**EDER CHRISTIAN FERNANDEZ
COLLAHUA and LUZ MILAGROS RAMOS
LUQUE**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB] dated August 19, 2022 [the Decision]. In the Decision, the RAD confirmed the decision of the Refugee Protection Division [RPD], which determined that the Applicants have viable internal flight alternatives [IFAs] in Trujillo, Arequipa, and Chiclayo, Peru. As such, the RAD confirmed the RPD's determination that the

Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in greater detail below, this application is dismissed, because the Applicants' arguments do not undermine the reasonableness of the Decision.

II. Background

[3] Eder Christian Fernandez Collahua [the Principal Applicant] and his wife, Luz Milagros Ramos Luque [the Associate Applicant], are citizens of Peru. They have two minor children. The Applicants fear harm by members of a criminal organization called Los Malditos de la Loma [LML], also known as Los Malditos Del Agustino.

[4] According to the Applicants' Basis of Claim [BOC] forms, they lived in the city of Lima and allege that in October 2017 a family (identified in the Decision as EBST, SFV, and JSF) moved into a house across from them and began engaging in criminal activity, including the sale of drugs. The Applicants claim the family are members of LML.

[5] On December 7, 2017, the Associate Applicant filed a police complaint, after which the Applicants allege they were threatened, insulted, and assaulted by EBST and his family. On July 8, 2017, EBST, SFV, and JSF attempted to run over the Associate Applicant with a car. When that failed, they insulted and physically assaulted her. While EBST managed to flee, the police arrested SFV and JSF. However, both were released on the same day. Later that day, EBST

returned to the Applicants' house and threatened that the Associate Applicant would regret it if she did not withdraw her police complaint.

[6] Due to EBST's threat, the Applicants moved an hour away to another district of Lima. However, on November 27, 2018, EBST and two other men located the Principal Applicant at his workplace and beat him unconscious. He was treated for his injuries at a hospital. While the Applicants filed a police report, they claim the police did nothing because they were paid off and because Peru is very corrupt.

[7] On March 24, 2019, EBST and three other men again attempted to enter the Applicants' house by force. The Applicants escaped and took shelter with a neighbour. The Associate Applicant testified that they did not file another police report, as the police had not acted on their previous reports. Afterwards, the Applicants moved again and hid in a friend's apartment.

[8] The Applicants' friend connected them with an agent who could help them travel to Canada. After travelling through Mexico, the Applicants arrived in Canada in May 2019 and claimed refugee protection. Due to lack of funds, they left their two children with family members in Peru.

[9] The RPD heard the Applicants' claim on February 10, 2022, and issued a decision on March 31, 2022. The RPD found the Applicants generally credible and accepted that EBST and his family, as well as members of the LML, had targeted them due to their police complaint.

[10] However, the RPD concluded that the Applicants had viable IFAs in Peru. The RPD noted that, apart from asking a mutual neighbour about their whereabouts sometime in the previous year, the LML had not actively searched for the Applicants or threatened them since March 2019. Assessing the claim under section 97 of IRPA, the RPD held the Applicants had viable IFAs in Trujillo, Arequipa, or Chiclayo, because their agents of persecution did not have the motivation or ability to pursue them in those cities, and it was reasonable for them to relocate there.

[11] The Applicants appealed this decision to the RAD.

III. Decision under Review

[12] On August 19, 2022, the RAD dismissed the Applicants' appeal, in the Decision that is the subject of this application for judicial review.

[13] As a preliminary matter, the RAD addressed whether to accept new evidence filed by the Applicants. They claimed the new evidence, four online news articles published between Jan 6, 2020 and Apr 7, 2022, would establish that the agents of persecution did have the means and motivation to pursue them in the IFAs.

[14] The RAD found that three of these articles did not meet the requirements of subsection 110(4) of the IRPA, which governs the admission of new evidence in an appeal to the RAD. As these articles were issued before March 31, 2022, the date of the RPD's decision, the RAD concluded that the articles were reasonably available before the RPD rejected the claim. The Applicants argued that they could not reasonably have been expected to locate and produce these

articles, because they were not included in the National Documentation Package [NDP] for Peru and counsel was only able to locate them recently. However, the RAD noted that the NDP does not purport to include every news article from every country of origin. The RAD held that the onus was on the Applicants to do their research and provide supporting documents within the statutory time frame.

[15] Based on the same principles, the RAD accepted one of the articles as new evidence, as it was dated April 7, 2022, and therefore post-dated the RPD's March 31, 2022 decision. This item is a brief article from the online news source n60 stating that the criminal gang, Los Malditos de la Cantera, was dismantled in Trujillo. The RAD accepted that the source was credible and that its contents related to criminal activity in one of the proposed IFAs.

[16] With respect to its substantive analysis, the determinative issue before the RAD was the viability of the three IFAs identified by the RPD. Except for the one article accepted as new evidence, the RAD held that the evidence and arguments before it were the same as those before the RPD. After conducting an independent assessment and considering the new evidence, the RAD concluded that the IFAs were viable and that the new evidence did not prove otherwise.

[17] Under the first prong of the IFA test, the RAD found that the Applicants had failed, on a balance of probabilities, to show that the agents of persecution would be motivated to pursue them in the IFAs. While the new evidence supported the Applicants' contention that there was gang activity in Trujillo, it did not demonstrate that the Applicants faced a personalized risk of

harm in the IFAs that was different from the general population. It simply proved that Peruvians generally faced a risk of violence from criminal actors in the proposed IFA locations.

[18] Further, the RAD found that the Applicants' profiles would not render them more susceptible to being targeted by criminal actors. The Applicants argued that the Associate Applicant should be considered a youth rights activist, at risk of harm throughout Peru, because she filed police denunciations with the intent of protecting her children and other youth and will file a complaint in the future in similar circumstances, no matter where she lives in the country. However, the RAD held this to be speculative, as the Associate Applicant had no history of activism, and there was no evidence of her acquiring a reputation or profile as an activist. As such, the RAD concluded that the Applicants' risk of harm by the agents of persecution was identical to the risk generally faced by Peruvian citizens.

[19] Under the second prong of the IFA test, the RAD found that it would be reasonable for the Applicants to relocate to the IFAs. The new evidence did not demonstrate that the Applicants' lives or safety would be jeopardized if they relocated to Trujillo. Further, while evidence in the record and the NDP indicated there was generalized criminality in the IFAs, it also did not sufficiently show that relocating would jeopardize the Applicants' health or safety.

[20] Concluding that viable IFAs existed, the RAD dismissed the appeal.

IV. Issues and Standard of Review

[21] The Applicants' arguments raise the following two issues for consideration by the Court:

- A. Did the RAD err by refusing to admit the new evidence submitted by the Applicants?
- B. Did the RAD err in its IFA analysis, including by making conclusions unsupported by the evidence?

[22] The Applicants submit that the standard of review is reasonableness with respect to the RAD's assessment of the totality of the evidence and the circumstances of this case, but correctness with respect to its interpretation and application of the law. The Respondent submits that the standard of review is reasonableness for all issues raised in this application.

[23] It is not clear from the Applicants' submissions which aspects of the Decision they consider to be reviewable on the standard of correctness. However, reasonableness is the presumptive standard of review for the merits of an administrative decision (see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). For the issues raised by the Applicants in this matter, there is no basis to depart from that standard.

V. Analysis

- A. *Did the RAD err by refusing to admit the new evidence submitted by the Applicants?*

[24] The Applicants submit that the RAD erred in refusing to admit three of the four articles that the Applicants submitted as new evidence. As they argued before the RAD, the Applicants submit that they cannot reasonably have been expected to have located these articles by the time

of the RPD's decision, given that the IRB, with all the resources at its disposal, had not located these articles and included them in the NDP by the time of the decision.

[25] The RAD rejected this argument, noting that the NDP does not purport to include every news article from every country of origin and that parties appearing before the RPD and RAD routinely submit country condition evidence that is not contained in the NDP. The RAD reasoned that the fact that these articles were not in the NDP does not mean the information was not reasonably available to the Applicants. As required by *Vavilov* (at para 15) in order to withstand reasonableness review, this analysis is intelligible.

[26] The Applicants also rely on *Ogundipe v Canada (Citizenship and Immigration)*, 2016 FC 771, in which the Court concluded that the RAD should have accepted as new evidence an article that predated the relevant RPD decision (see paras 25-29). However, as the Respondent submits, that case involved an article that was published only two days before the RPD decision and related to an event that occurred the day before the publication. The Court concluded that the Applicants could not reasonably have been expected to present this article in that short period of time. Those circumstances are distinguishable from the present case, in which the latest of the articles not accepted was dated February 15, 2022, approximately six weeks before the RPD's decision.

[27] The Applicants' arguments raise no basis for a finding that the RAD's treatment of the proposed new evidence was unreasonable.

B. *Did the RAD err in its IFA analysis, including by making conclusions unsupported by the evidence?*

[28] In arguing that the RAD erred in its IFA analysis, the Applicants first submit that the RAD erred by unreasonably relying on an irrelevant comparison of the relative safety of Peru in relation to neighbouring countries. In advancing this submission, the Applicants appear to be relying on a footnote in the Decision, in which the RAD referenced a document in the NDP identifying that Peru is relatively peaceful compared to other countries in the region. However, this footnote then references the media both over-representing and under-representing certain aspects of violent crime, and the RAD concludes in the body of the Decision that there is evidence in the NDP of criminal activity in Peru including in the proposed IFA locations, such that Peruvians in general may face a risk of violence from criminal actors.

[29] As such, it is clear that the RAD did not reason that the proposed IFAs were viable based on relative safety in comparison with neighbouring countries. Rather, the RAD concluded based on the referenced evidence that criminal activity was a risk in the IFAs. Its reasoning that the first prong of the IFA test was satisfied turned on this risk being a generalized risk faced by the Peruvian population rather than a personalized risk faced by the Applicants.

[30] The Applicants also challenge the RAD's conclusion that they do not face a personalized risk in the IFAs. They argue that, although a widespread threat of criminality will not support a claim under section 97 of the IRPA, the threat of criminality will be grounds for protection where the threat is specifically focused on the claimant or involves an escalation of threats (see *Argueta Calderon v Canada (Citizenship and Immigration)*, 2013 FC 229 at para 15). The

Applicants submits that a personalized risk arises where the claimant is perceived as a police informant and is personally targeted (see *Galeas v Canada (Citizenship and Immigration)*, 2015 FC 667 at paras 43-48).

[31] I agree with the principles that the Applicants advance. However, the Decision discloses no reasoning inconsistent with these principles. The RAD accepted that the Applicants face a personalized risk from their agents of harm in Lima. The RAD rejected their claim because they had not demonstrated on a balance of probabilities that their agents of harm have the motivation to find them in the IFA locations. In the absence of risk from their agents of harm in the IFAs, the RAD found the Applicants' residual profile would not make them more susceptible than the general population to targeting by criminal actors in the IFA locations. In conducting that analysis, the RAD considered the profile advanced by the Applicants in their submissions (that of the Associate Applicant being treated as a youth rights activist) and found that the evidence did not support such a profile. The Applicants have raised no argument undermining the reasonableness of that conclusion.

[32] Finally, in connection with the RAD's finding that the Applicants had not demonstrated on a balance of probabilities that their agents of harm have the motivation to find them in the IFA locations, at the hearing of this application the Applicants' counsel referred the Court to the Associate Applicant's evidence before the RPD. She testified that the Applicants moved from the El Agustino district approximately one hour away to the Vitarte district and were still targeted by their agents of harm. The Respondent submits that (consistent with the recitation of events in the RPD's decision) these are both districts of Lima and that these events therefore do not undermine

the reasonableness of the RAD's IFA analysis. While the Applicants' counsel appeared to dispute the Respondent's submission that both districts were in Lima, he offered no evidentiary support for this position. Again, I find nothing in the Applicants' argument that undermines the reasonableness of the Decision.

[33] Having considered the Applicants' arguments, I find that the Decision is reasonable and that this application for judicial review must therefore be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-9185-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: Eder Christian FERNANDEZ COLLAHUA Et Al. v.
MCI

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