Date: 20230818

Docket: IMM-4845-22

Citation: 2023 FC 1121

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 18, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

MAXO LAUTURE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Lauture [the applicant] is a Haitian citizen who also has permanent residence in Mexico. The Refugee Appeal Division [RAD] confirmed the decision of the Refugee Protection Division [RPD] that the applicant is excluded from the protection offered by Canada under Article 1E of *the United Nations Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137, Can TS 1969 No 6 [Convention], and section 98 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [IRPA], because he failed to establish that he faced a risk or serious possibility of persecution in his country of residence, Mexico. The applicant is now seeking judicial review of the RAD decision [the Decision].

[2] For the reasons set out below, the application for judicial review is dismissed. The applicant did not persuade me that the Decision is unreasonable in light of the evidence and arguments submitted to the RAD. Moreover, the procedures adopted by the RPD and the RAD did not breach the applicant's right to procedural fairness.

II. Facts

[3] The applicant left Haiti for Mexico, where he lived for 11 years and obtained his permanent residence through his child's mother, a citizen of Mexico. He states that he returned to Haiti in 2013 because of the climate of racial discrimination he experienced in Mexico. He subsequently left Haiti permanently on September 22, 2016, as a result of threats he had received, and went to the United States.

[4] On September 4, 2017, Mr. Lauture arrived in Canada and claimed refugee protection.

[5] In his refugee claim, the applicant sought protection in Canada from both his country of residence, Mexico, and his country of nationality, Haiti.

[6] Mr. Lauture claimed protection in Canada from Mexico pursuant to section 96 of the IRPA based on a fear of persecution by reason of his race, his nationality and his membership in

the particular social groups of [TRANSLATION] “social leader” or “defender of the rights of members of the Afro-Mexican community and/or of immigrants in Mexico”.

[7] With regard to Haiti, he claimed refugee status on the grounds of a fear of persecution by reason of real or imputed political opinion and/or membership in the particular social group of social leaders. He alleges that he received death threats because of positions he expressed in the media and on the radio.

[8] In the alternative, he claimed status as a person in need of protection from both countries pursuant to paragraph 97(1)(b) of the IRPA.

[9] The RPD conducted an analysis of the risk faced by the applicant in his country of residence, Mexico, before determining whether he was covered by Article 1E of the Convention and section 98 of the IRPA.

[10] Following this analysis, the RPD concluded that the applicant was excluded by the combined effect of Article 1E of the Convention and section 98 of the IRPA, and rejected his claim for refugee protection. The two determinative issues were “the objective basis for his alleged fear” with regard to Mexico and the lack of credibility.

III. Impugned decision

[11] On appeal to the RAD, the applicant argued a breach of procedural fairness and presented new evidence demonstrating an objective basis for his fear of persecution in Mexico.

[12] After conducting an independent analysis of the record, the RAD agreed that the determinative issue was exclusion under Article 1E of the Convention. The applicant did not challenge the conclusion that he is a permanent resident of Mexico and did not deny that he has essentially the same rights as Mexican citizens.

[13] The RAD confirmed that the RPD's decision to assess the risks for the applicant in Mexico was correct and that there had been no breach of procedural fairness.

[14] The RAD refused to admit certain new pieces of evidence and confirmed the rejection of the applicant's claim for refugee protection. It determined that the applicant would not be persecuted upon his return to Mexico and that he was therefore excluded by the combined effect of section 98 of the IRPA and Article 1E of the Convention.

IV. Issues and standard of review

[15] The three determinative issues are as follows:

a. Did the RAD breach the applicant's right to procedural fairness?
b. Is the applicant excluded under Article 1E of the Convention and section 98 of the IRPA?
c. Is the RAD decision unreasonable with respect to the applicant's fear of persecution in Mexico?

[16] The applicable standard of review in this case is reasonableness. There is no reason to depart from the presumption that this standard applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16–17, 23–25).

[17] The applicable standard with regard to procedural fairness is "best reflected in the correctness standard" even though, strictly speaking, no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at para 54).

[18] Indeed, the Federal Court of Appeal [FCA] stated in *CPR* at para 56 that:

> [56] No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. It would be problematic if an *a priori* decision as to whether the standard of review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice – was the party given a right to be heard and the opportunity to know the case against them? Procedural fairness is not sacrificed on the altar of deference.

[19] It goes without saying that procedural fairness "goes to the manner in which a decision is made rather than to the substance of the decision, as Justice Binnie aptly observed in *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539, at paragraph 102. What matters, at the end of the day, is whether or not procedural fairness has been met" *(Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

V. Analysis

A. *The RPD and the RAD did not breach the applicant's right to procedural fairness*

[20] First, the applicant argues that he was prevented from submitting evidence relevant to the RPD's decision making because the member did not inform him that one of the determinative issues was the "objective basis" for his fear in regard to Mexico. He states that he could have filed additional written submissions and evidence before a decision was rendered that would have addressed the RPD's doubts, rather than limiting himself to the requirements of subsection 110(4) of the IRPA before the RAD. The applicant relies on *Gomes v Canada (Minister of Citizenship and Immigration)*, 2006 FC 419 at paragraph 12 and *Kerimu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 264 at paragraph 27 to support his argument.

[21] The applicant submits that the RAD erred in finding that the RPD did not commit a breach of procedural fairness with respect to the "determinative issue."

[22] On this point, the applicant submits that the RPD considered his claim in relation to his <u>country of residence</u>, Mexico, and concluded that objective fear was the determinative issue. It did not so inform the applicant as it should have done, because the decision in *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118 [*Zeng*], only requires the decision maker to consider the risk faced by <u>the claimant in his home country</u> and not in his country of residence. The applicant submits that if he had known that there would be such an analysis with regard to the country of residence, he would have provided more evidence.

[23] In other words, the applicant submits that the RPD failed to advise him that the determinative issue was objective fear in Mexico, which violates the principles of procedural fairness.

[24] However, as the applicant notes in his memorandum of fact and law, the RPD indicated that the issue of exclusion under Article 1E was one of the determinative issues, and also advised the applicant that the question of the risk of persecution <u>in Mexico</u>, his country of residence, was in play.

[25] Moreover, as the RAD states at paragraph 23 of its reasons, the applicant even submitted new evidence at the hearing before the RPD regarding the discrimination experienced by Black people in Mexico. The applicant therefore knew that the issue was relevant. He knew that the Minister would intervene and that the exclusion under Article 1E and his credibility were contested. As such, he was not prevented from making full answer and defence. The applicant should therefore have expected the RPD to analyze the issue of risk in his country of residence before concluding that the exclusion applied (see *Jean v Canada (Citizenship and Immigration)*, 2019 FC 242 [*Jean*]).

[26] As clarified by the RAD at paragraph 23, fear is an underlying issue where exclusion under Article 1E is concerned, and the RPD was not required to inform the applicant of every detail from the decisions in *Shamlou v Canada (MCI)*, (1995), 103 FTR 241 [*Shamlou*], and *Zeng*.

[27] The RAD and the RPD did not breach their procedural fairness obligations. The question of risk in the country of residence was part of the determinative issue, which implicitly included an analysis of subjective and objective fear of persecution in the country of residence.

B. *The RAD was required to examine the issue of risk analysis in the country where the applicant has permanent residence before determining whether the Article 1E exclusion applied*

[28] Article 1E of the Convention states that a person who benefits from the rights and obligations that are attached to possession of the nationality of the country in which he has taken residence is excluded from the application of the Convention:

Convention	**Convention**
1 E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	**1 E.** Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.

[29] Under section 98 of the IRPA, a person to whom Article 1E of the Convention applies is excluded from being recognized as a refugee or a person in need of protection in Canada:

Exclusion — Refugee Convention	**Exclusion par application de la Convention sur les réfugiés**
98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	**98** La personne visée aux sections E ou F de l’article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[30] In 2010, the FCA established at paragraph 28 of *Zeng* that the first question to be asked before concluding that the exclusion applies is whether a claimant has status substantially similar to that of nationals of that country:

> [28] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[31] This paragraph was written in the context of an ongoing debate at the time as to whether there should be an assessment of the risk or serious possibility of persecution in the third country where the claimant holds status substantially similar to that of nationals of that country, or whether the claimant is excluded from the outset pursuant to section 98 of the IRPA and the exclusion under Article 1E of the Convention. If such were the case, there would be no need to assess the risk of persecution in the country of residence.

[32] For example, in *Celestin v Canada (Citizenship and Immigration)*, 2020 FC 97, Justice Pamel went no further than the first prong of the *Zeng* test, asserting that if the claimant had substantially the same rights as nationals of the country in which the claimant had residence, the analysis stopped there.

A Preliminary remarks on the test developed in *Zeng*

> [33] The case before me provides this Court with an opportunity to clarify the analytical framework for Article 1E of the Convention. In *Zeng*, the Federal Court of Appeal established a test that serves as the starting point for the entire analysis of Article 1E [at paragraph 28]:
>
>> Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.
>
> [34] This test has three prongs. Under the first prong, the decision maker must ask whether the claimant has status substantially similar to that of nationals of the country in question. It is here that the decision maker must examine whether the claimant enjoys substantially the same rights as a national of the country referred to in Article 1E of the Convention. This analysis concerns the rights and protections provided by the state referred to in Article 1E of the Convention.
>
> ...
>
> [37] If the answer is yes, the exclusion codified in Article 1E applies (*Zeng* at para 28). The analysis stops there.

[33] In *Jean*, however, Justice Gagné (now Associate Chief Justice) specified that even if the applicant had substantially the same rights as the nationals of his country of residence, he was not automatically excluded. A risk analysis in respect of that country of residence should still be performed before finding that the exclusion applied. She explained the two conflicting positions:

[23] The applicant did not take a position, whereas the respondent submits that the RPD must [TRANSLATION] "assess the risks alleged by a refugee protection claimant in respect of an Article 1E country" and that [TRANSLATION] "the stage at which the risk in the country concerned is assessed is not a determinative issue or likely to induce an error in the administration of the IRPA, as the existence of a risk or reasonable fear of persecution in that country will defeat the application of the exclusion clause". A little further on, the respondent clarifies this reasoning, adding that [TRANSLATION] "as soon as it is determined that a risk or a reasonable fear of persecution in that country exists, the exclusion clause of Article 1E of the Convention cannot apply. Thus, whether this fear is examined prior to or after the consideration of an individual's status as a resident having rights and obligations similar to those of a national of that country is of no consequence".

[24] With respect, there is a contradiction in the respondent's position. If an individual cannot be a person referred to in Article 1E of the Convention if he or she is at a risk of persecution in his or her country of residence, the risk analysis in respect of that country must necessarily be performed before the individual can be found to be a person referred to in Article 1E of the Convention, as once that finding is made, the individual is excluded from Canada's protection.

...

[26] In my view, two interpretations of the mechanism offered by Article 1E of the Convention and section 98 of the IRPA are possible. The first requires adding to the text of Article 1E of the Convention, whereas the second requires adding to the text of section 98 of the IRPA.

[27] Article 1E can be interpreted as requiring an analysis of the risk in respect of the country of residence before concluding that the Convention does not apply. Said article should therefore be interpreted as reading as follows (emphasis added to the addition):

> (Convention) 1 E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country **and who does not fear persecution in that country for reasons of race, religion, nationality, membership in a particular social group, or political opinion, or fear being**

subjected to a danger of torture, a risk to his life or a risk of cruel and unusual treatment or punishment, when he cannot avail himself of that country's protection the risk exists throughout the country.

[28] In this first scenario, the risk analysis in respect of the country of residence must necessarily be performed before concluding that Article 1E of the Convention can be applied.

[29] However, section 98 of the IRPA can also be interpreted as limiting the exclusion from Canada's protection only in respect of the risk of return to the refugee protection claimant's country of citizenship. Section 98 should therefore read as follows (again, emphasis added to the necessary addition):

> (IRPA) 98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection **in respect of his country of citizenship**.

[30] In this second scenario, the risk analysis in respect of the country of residence can be performed at any time.
[Emphasis in the original and underlining added]

[34] Justice Shore also summarized the debate in *Mwano*:

> [21] In this case, the applicant has raised a ground of persecution with respect to his country of residence, as opposed to his country of nationality (the DRC). Where a refugee protection claimant raises a ground of persecution with respect to his or her country of nationality when he or she is otherwise excluded under Article 1E of the Convention, the case law of this Court is clear: that claimant cannot be a refugee or a person in need of protection under the IRPA, and the RPD and the RAD are not required to conduct this analysis (*Augustin v Canada (Citizenship and Immigration)*, 2019 FC 1232 at para 34; *Saint-Fleur v Canada (Citizenship and Immigration)*, 2020 FC 407 at para 10; *Milfort-Laguere v Canada (Citizenship and Immigration)*, 2019 FC 1361 at para 46). Where a claimant otherwise excluded by Article 1E raises a ground of persecution with respect to his or her country of residence, there remains to this day some jurisprudential debate as to whether the RPD or the RAD should conduct an analysis with respect to the country of residence [citations omitted]. In *Celestin*, Justice Pamel certified the following question:

> If the decision maker has already concluded that the refugee protection claimant has status substantially similar to that of the nationals of their country of residence (meaning an affirmative answer to the first question of the *Zeng* test), should the decision maker take into account the fear or risk raised by the refugee protection claimant in their country of residence before excluding the claimant by the combined effect of Article 1E of the *United Nations Convention Relating to the Status of Refugees* and section 98 of the *Immigration and Refugee Protection Act*?

[22] In *Saint Paul*, Justice St-Louis certified the same question. The Minister of Citizenship and Immigration has appealed that decision.

[23] In light of the applicable law and case law, I must conclude that the RAD had to conduct an analysis of the applicant's risk with respect to his country of residence. Like my colleague, Justice Annis, I believe that an unduly textual and restrictive interpretation of section 98 of the IRPA and Article 1E of the Convention would impose a result that is inconsistent with and contrary to the objectives of the IRPA (*Constant v Canada (Citizenship and Immigration*), 2019 FC 990 at paras 36–39). The purpose of Article 1E of the Convention is to ensure that a person fleeing his or her country of nationality cannot claim refugee protection in a third country when he or she may already be residing in another country. If the refugee protection claimant fears persecution in both his or her country of nationality and that of residence (which is the case here), such an interpretation would not reflect the spirit of the law as a whole and would be contrary to Canada's international obligations in not allowing him or her to seek Canada's protection simply because he or she has the right of residence in both countries.

[24] This interpretation is also favoured by authors Hathaway and Foster and the United Nations High Commissioner for Refugees [UNHCR]. Hathaway and Foster interpret Article 1E to the same effect as Justice Gagné proposed in *Jean*, that is, by reading it as implicitly establishing protection in the country of residence as an intrinsic limitation (*The Law of Refugee Status*, 2nd ed (Cambridge, UK: Cambridge University Press, 2014) at page 509). For its part, the UNHCR states in its note on the interpretation of the Convention:

> Although the competent authorities of the country in which the individual has taken residence may consider that he or she has the rights and obligations attached to the possession of the nationality of that country, this does not exclude the possibility that when outside that country the individual may nevertheless have a well-founded fear of being persecuted if returned there. To apply Article 1E to such an individual, especially when a national of that country who is in the same circumstances, would not be excluded from being recognized as a refugee, would undermine the object and purpose of the 1951 Convention. **Thus, before applying Article 1E to such an individual, if he or she claims a fear of persecution or of other serious harm in the country of residence, such claim should be assessed vis-à-vis that country.** [Emphasis added.]
>
> (*UNHCR Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees*, at para 17.)

[Emphasis in the original and underlining added]

[35] The debate now appears to be closed. Although the FCA did not directly rule on the certified question in *Canada (Citizenship and Immigration) v Saint Paul*, 2021 FCA 246 [*Saint Paul*], given that the parties agreed that the question of risk in the country of residence should indeed be taken into account, the Court nevertheless issued the following order confirming the joint position of the parties:

> **WHEREAS** in concluding as it did, the Federal Court certified the following question: "If the decision maker concludes that the claimant, a citizen of one country, has residence status in another country and that this status confers rights similar to those of citizens of that country (an affirmative answer to the first part of the *Zeng* test), should the decision maker take into account the fear or risk raised by the refugee protection claimant in respect of their country of residence before excluding the claimant by the combined effect of Article 1E of the *United Nations Convention*

> *Relating to the Status of Refugees* and section 98 of the *Immigration and Refugee Protection Act*?"
>
> **WHEREAS** the parties agree that the certified question should be answered in the affirmative; ...
>
> [Emphasis added]

[36] Consequently, before a claimant is refused entry on the grounds of exclusion under Article 1E of the Convention, a determination must be made as to whether the claimant is at risk of persecution in the third country where he or she has "status substantially similar to that of nationals of that country".

[37] As such, the applicant cannot claim protection in Canada when he can return to a country where he has resident status or where he is not persecuted. On the other hand, if the applicant is persecuted in the third country where he has resident status, as well as in his country of origin, he can seek refugee protection in Canada.

[38] In this case, the approach taken by both the RPD and the RAD is the one that was confirmed by the FCA in *Saint Paul*, and which benefits the applicant in that both the RPD and the RAD analyzed the risk in the third country where he has resident status, by assessing whether he had a fear or faced a serious possibility of persecution in Mexico.

C. *The RAD decision is reasonable with respect to fear of persecution in Mexico*

[39] In this case, therefore, it must first be determined whether the applicant enjoys the same rights as citizens in Mexico, as per the decision in *Shamlou*. In other words, the applicant must

be able to demonstrate that he does not enjoy one or more of the following four fundamental rights:

a) The right to return to the country of residence;

b) The right to work freely without restrictions;

c) The right to study; and

d) Full access to social services in the country of residence.

[40] The RPD examined the evidence in light of the *Shamlou* test and concluded that the applicant enjoyed the same rights as Mexican nationals. The applicant did not challenge this conclusion before the RAD (see the RAD's reasons at paragraph 30).

[41] The issue here, therefore, is whether the applicant has discharged his burden of demonstrating that the Decision is not reasonable as to his fear or the serious possibility of persecution in Mexico.

[42] In analyzing the risk or reasonable possibility of persecution in Mexico, the RAD was required to assess subjective and objective fear (*Sierra v Canada (Citizenship and Immigration)*, 2023 FC 881 [*Sierra*]). A claimant may have a genuine fear of persecution, but that fear must be objectively well founded; that is, there must be an assessment of the situation in that country to determine whether the subjective fear is in fact well founded.

[43] The applicant argues in his memorandum of fact and law that the analysis carried out by the RAD did not adequately address the evidence related to his fear of persecution in the country

of residence and that the reasons provided by the RAD do not meet the criteria for a reasonable decision, which are justification, transparency and intelligibility (*Vavilov* at para 99).

[44] First, the applicant asserts that he experienced a series of incidents that led him to flee Mexico and return to Haiti and subsequently travel to Canada, and that therefore the RAD erred in stating that "[i]t is not sufficient, however, to mention documents from the NDP on Mexico to prove that he faces a serious possibility."

[45] According to the applicant, the RAD incorporated a requirement relating to section 97, the personalization of the risk, i.e. that [TRANSLATION] "he would face a risk that is not faced generally by other individuals in the country", which should not be applied to the analysis of section 96 of the IRPA. Indeed, under section 96 of the IRPA, claimants are not required to show they have been personally persecuted in the past (*Abusamra v Canada (Citizenship and Immigration)*, 2022 FC 917 at paras 27–29). The applicant therefore contends that the RAD imposed an additional burden and failed to take into account the treatment afforded similarly situated persons, as required by section 96 of the IRPA and *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250.

[46] He further argues that the objective evidence provided supports his story that he would be at risk of experiencing discriminatory and xenophobic behaviour should he return to Mexico. On appeal, he drew the panel's attention to evidence corroborating the deplorable conditions of Africans, Haitians, Afro-Mexicans and non-whites in Mexico, as well as evidence of persecution, discrimination and risks to Black people like himself.

[47] Before the Court, the applicant reiterated that he had suffered abuse while using public transit, verbal and physical aggression, employment discrimination and abuse, and difficulty obtaining housing. He also claims to have been the victim of harassment and extortion. He maintains that the objective evidence corroborates his allegations, but that neither the RPD nor the RAD commented on it.

[48] The respondent refutes these arguments and submits that it is not sufficient to cite articles regarding inequality in Mexico to establish the objective basis of a fear of persecution under section 96. The respondent also argues that the applicant is asking the Court to reassess the evidence, and that the applicant already had every opportunity to demonstrate that he was persecuted in Mexico, but was unable to do so (*Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 at paras 41–43.

[49] In my opinion, the RAD's reasons in this case are reasonable. The RAD noted that the burden is on the applicant to demonstrate a serious possibility of persecution if he returns to Mexico, and that it is not sufficient to mention documents in the National Documentation Package [NDP] on Mexico to prove this. In this regard, the RAD pointed out that although the evidence presented by the applicant tends to show that he has experienced discrimination, the discrimination does not amount to persecution in his case. The RAD cited in particular *Noël v Canada (Citizenship and Immigration)*, 2018 FC 1062, in which Justice Gagné explains:

> [29] However, for discrimination against a person to amount to persecution, it must be serious and occur with repetition, and must have consequences of a prejudicial nature for the person, such as when an individual is denied a core human right, such as the right to practice religion or to earn a livelihood (*Sefa v Canada (Citizenship and Immigration)*, 2010 FC 1190 at para 10).

[50] As I concluded in *Sierra*, while it is true that the applicant is not required under section 96 of the IRPA to show that his fear of persecution is “personalized” because of his membership in the Afro-Mexican group, he must nevertheless demonstrate that this group is subject to persecution (*Sierra* at para 78).

[51] Therefore, to succeed on this argument, the applicant must still discharge his burden, on a balance of probabilities, of demonstrating that he is part of a group that is subject to generalized persecution. The applicant was not able to do so. Both the RAD and the RPD concluded that the evidence did not establish that the applicant would face a serious possibility of persecution as a result of his membership in the Afro-Mexican group, notwithstanding the discrimination faced by this group, given that this discrimination does not amount to persecution (see *Camacho v Canada (Citizenship and Immigration)*, 2022 FC 1507 at paras 11, 14, 28; *Sebok v Canada (Citizenship and Immigration)*, 2012 FC 1107 at paras 7, 24, 25; *Donarus v Canada (Citizenship and Immigration)*, 2021 FC 1457 at paras 12, 44–47).

[52] In its decision, the RAD also specified that it was necessary to take into account the fact that the applicant lived in a suburb of Mexico City (Amecameca) and that his situation was therefore not the same as that of the migrants referred to in the objective evidence he provided.

[53] The RAD also considered objective evidence demonstrating that several measures had been put in place by the Mexican government to combat discrimination.

[54] Therefore, the RAD took into account the applicant's specific situation and concluded that in his case, although he was a member of the Afro-Mexican group in Mexico, the discrimination experienced by the group did not amount to persecution. The RAD's analysis is therefore intelligible, clear and justified. It is a reasonable conclusion in light of the objective evidence in the NDP, as well as that presented to the RAD by the applicant himself.

[55] The application for judicial review is therefore dismissed.

[56] The parties did not identify a question of general importance for certification and I agree that none arises.

<u>JUDGMENT in IMM-4845-22</u>

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Guy Régimbald"
Judge

Certified true translation
Norah Mulvihill

FEDERAL COURT

SOLICITORS OF RECORD

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