Federal Court  Cour fédérale

Date: 20240209

Docket: IMM-7822-22

Citation: 2024 FC 221

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 9, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

DANNY ALEXIS MUNOZ RAMIREZ,
DANIELA PAZ VEAS RAMIREZ,
SOFIA VICTORIA MUNOZ VEAS,
ISIDORA IGNACIA MUNOZ VEAS and
TRINIDAD LUCIAN MUNOZ VEAS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of Chile. They are seeking judicial review of a decision by the Refugee Appeal Division [RAD] dated July 25, 2022, which allowed the respondent's appeal and set aside the decision by the Refugee Protection Division [RPD] dated April 26, 2021, that had

allowed the applicants' claim for refugee protection. The RAD concluded that the applicants were not refugees within the meaning of the Convention and did not qualify as persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], since the applicants have an internal flight alternative [IFA] in the cities of Arica, Iquique, Antofagasta, Concepcion or Puerto Montt.

[2] For the reasons that follow, the application for judicial review is dismissed. The RAD decision is clear, justified and intelligible in relation to the evidence submitted (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 8; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99). The applicants did not meet their burden of showing that the RAD decision was unreasonable.

I. Factual Background

[3] The applicant, Danny Alexis Munoz Ramirez [principal applicant], his wife and their minor children [together, the applicants] are citizens of Chile.

[4] The principal applicant had been the owner of a seafood and fish store in Santiago since 2011. He got his supplies at the "Pesquero Metropolitano" terminal, a large seafood trade centre in Santiago.

[5] On September 19, 2017, the principal applicant went to obtain shellfish. He then noticed that the shellfish was spoiled. The next day, he returned to see the supplier for a reimbursement and the supplier insulted and threatened to kill him.

[6] Two months after that incident, on November 15, 2017, the principal applicant filed a complaint with the police and internal tax services for the sale of spoiled shellfish and death threats by the supplier.

[7] On November 21, 2017, the spoiled shellfish supplier and two accomplices went to the principal applicant's store and threatened him. The principal applicant suspected that the supplier was angry with him because he learned that the principal applicant had filed a complaint against him with the authorities.

[8] The next day, November 22, 2017, the applicants decided to leave the country. On November 23, 2017, the principal applicant closed his store and he and his family left Santiago for Lago Rappel, a city in the Santiago metropolitan area.

[9] The applicants left Chile on March 5, 2018, to come to Canada, and filed their claim for refugee protection on March 6, 2018.

[10] The applicants were successful with the RPD, and the family was granted refugee protection in Canada. The RPD concluded that the applicant and his family were [TRANSLATION]

"the target of the mafia in Chile." On this point, the RPD concluded that the applicants did not have an IFA since the Chilean mafia had a high ability to find persons of interest throughout the country.

[11] This issue was appealed to the RAD, which set aside the RPD decision and instead found that the applicants had several IFAs in Chile, namely in Arica, Iquique, Antofagasta, Concepcion or Puerto Montt. This is the decision that is the subject of the applicants' judicial review.

II. RAD Decision

[12] After conducting its own analysis of the file, the RAD concluded that the applicants had several reasonable IFAs in Chile. The onus was on the applicants to demonstrate that they would face a serious risk of persecution in these IFAs, by showing the ability and motivation of the agents of persecution to find them in these IFAs. The RAD found that the agents of persecution had neither the ability nor the motivation, and therefore that the proposed IFAs were valid.

[13] According to the documentary evidence, the fishing industry is very important in Chile; as a result, there is a "fishing mafia" network that affects the distribution of fishing resources. That said, after examining the evidence on record, the RAD concluded that there was no evidence that this "fishing mafia" commits acts of violence or that it is part of an organized criminal network that goes after fishers such as the principal applicant, or that this "mafia" is present in cities outside Santiago. In summary, on the basis of these observations, the RAD concluded that there was a low

probability that the agents of persecution had the ability to pursue the applicant and his family in the proposed IFAs.

[14] Moreover, the RAD also analyzed the motivation of the agents of persecution to pursue the applicants outside Chile, and concluded that the evidence to this effect was also weak. The RAD ruled that since there was no follow-up to the principal applicant's 2017 complaint, the agents of persecution would not be motivated to find the principal applicant to intimidate him. Additionally, the incidents between the applicants and the agents of persecution took place more than three years earlier, and were limited to the region of Santiago. For these reasons, the RAD considered that the applicants had not established, on a balance of probabilities, that they would face a risk in the proposed IFA cities.

[15] In the second prong, the RAD reviewed the principal applicant and his spouse's conditions, namely the fact they have university educations and several years of business experience. The RAD also relied on the low unemployment rate in Chile and the fact it has the highest Human Development Index in Latin America to conclude that the applicants could reasonably start their lives over in one of the proposed IFA cities.

III. Standard of Review and Issue

[16] The only issue before the Court is whether the RAD decision that the applicants have an IFA in Arica, Iquique, Antofagasta, Concepcion or Puerto Montt is reasonable.

[17] The applicable standard of review is reasonableness (*Vavilov* at paras 10, 25; *Mason* at paras 7, 39–44). 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; *Mason* at para 8); and that is justified, transparent and intelligible (*Vavilov* at para 99; *Mason* at para 59). A review under the reasonableness standard is not a "rubber-stamping" process; it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). A decision can be unreasonable if the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Lastly, the burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

IV. Analysis

[18] The test to determine whether there is an IFA was developed in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 1993 CanLII 3011 (FCA). The test has two prongs: (i) the administrative decision maker must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the IFA area; and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15). Both prongs must be satisfied in order to make a finding that there is an IFA (*Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 15).

[19] The onus is on the refugee protection claimant to show that an IFA is unreasonable and it is an exacting onus (*Huenalaya Murillo v Canada (Citizenship and Immigration)*, 2022 FC 396 at para 13; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 14). In this case, the applicants did not meet this onus.

[20] The applicants allege that the RAD's analysis regarding the identity of the agents of persecution was unreasonable. The applicants submit that the RAD erred by finding that the agents of persecution would not turn to violence, that the agents of persecution did not have the motivation and means to persecute the applicants throughout Chile, and that the RAD should have granted more weight to the principal applicant's testimony about the violence he suffered since he was found to be credible.

[21] The applicants also submit that the RAD erroneously reversed the burden of proof during the first prong of its IFA analysis. In their opinion, the RAD unduly expected the applicants to "establish" the existence of a national network that would give the agents of persecution the ability to pursue them throughout Chile. The applicants submit that the use of the verb "establish" in the RAD reasons indicates that the wrong burden of proof was applied (*Lawal v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 301 [*Lawal*] at para 10).

[22] Lastly, the applicants argue that the RAD's analysis with regard to the motivation of the agents of persecution is unreasonable. They allege that the agents of persecution are motivated to find the principal applicant, because they want to reprimand him for having filed a complaint with

the authorities. According to the applicants, it was unreasonable for the RAD to rely on the fact there was no follow-up to the complaint and that the incidents took place several years earlier to conclude that the agents of persecution were not motivated to find them. The applicants note that the agents of persecution questioned the principal applicant's brother and went after his father after the applicants arrived in Canada. Moreover, the principal applicant states that the fact he no longer owns the fish store should not have been a factor that was taken into consideration.

[23] In my opinion, the RAD'S analysis regarding the identity and nature of the agents of persecution group is reasonable. The RAD examined the documentary evidence and concluded that it showed the existence of a "fishing mafia" but did not show that this particular "mafia" used violence against fish merchants. During the hearing, the applicants cited several articles that were before the RAD to show that there is a violent "cartel" or "mafia" in Chile, in particular involving natural resources. Indeed, it is clear that there is violence regarding fish quotas and in the Port of Santiago. That said, as the RAD concluded, the overall objective evidence does not show that there is an organized criminalized group that works throughout Chile, in particular in the proposed IFA cities. Lastly, the evidence also showed that the existing violence in Santiago, particularly at the port, is not all tied to issues involving the "fishing mafia." As for the other articles the applicants noted during the hearing, they show that there is violence in several other places in Chile, in particular related to drug trafficking, but the evidence did not show a link between these criminalized groups and the agents of persecution in this case, including the "fishing mafia."

[24] The principal applicant is asking the Court to consider his testimony to supplement the information in the documentary evidence, but this would require a reconsideration of the evidence, which is not appropriate at this stage or before this Court. Unless they present evidence that contradicts the RAD's finding (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 1998 CanLII 8667 (FC)), the applicants cannot expect the Court to intervene in the RAD's assessment and weighing of the evidence.

[25] Moreover, the RAD did not unduly reverse the burden of proof in its analysis of the first prong of the IFA test. After reading the RAD's reasons on the first prong of the test, I find that it is clear that the RAD concluded that the applicants did not meet their burden of showing that there was a serious possibility of persecution in the proposed IFA cities (*Omoruan v Canada (Citizenship and Immigration)*, 2021 FC 153 at para 31). The use of the verb "establish" in the context of the applicants' burden of showing, on a balance of probabilities, the motivation and ability of the agents of persecution to pursue them in the proposed IFA cities is not erroneous. Claimants have the burden of showing or "establishing," on a balance of probabilities, that the agents of persecution have the motivation and the means to find and persecute them in the proposed IFA cities. *Lawal* is therefore of no assistance to the applicants since in that decision, the use of the verb "establish" indicated the genuine use of an erroneous standard of proof—the RAD had required the claimant in that case to "establish" that she would be persecuted, when her burden was much lower, namely to show or "establish" only a "serious possibility" or "reasonable possibility" of persecution (see also *Sierra v Canada (Citizenship and Immigration)*, 2023 FC 881).

[26] Lastly, in my opinion, the analysis of the motivation of the agents of persecution was not unreasonable. The applicants allege that the RAD drew an implausibility finding in its analysis of the motivation of the agents of persecution. I do not agree with this. In my opinion, after reading the RAD's reasons in their entirety, the RAD does not conclude that it is "implausible" that the agents of persecution will pursue the applicants. The RAD analyzed factors such as the lack of follow-up to the complaint and the prior persecution that took place in Santiago and reasonably concluded that the motivation of the agents of persecution to pursue them in one of the proposed IFA cities was not established on a balance of probabilities.

[27] It is true that a finding that the danger posed by an agent of persecution is "implausible" is tricky and should only be raised "in the clearest of cases" (*Ansar v Canada (Citizenship and Immigration)*, 2011 CF 1152 at para 17). However, I am not convinced that the RAD concluded that the danger posed to the applicant was "implausible;" the RAD began an analysis of the ability and motivation of the agents of persecution to pursue the applicants in the proposed IFA cities and consequently concluded that the applicants had not met their burden of proving that they would face a serious possibility of persecution in those cities.

[28] The applicants also argue that the RAD should not have considered the fact that the principal applicant no longer has the fish store to evaluate the motivation of the agents of persecution. In my opinion, it is a relevant factor, among many others, to determine the motivation of the agents of persecution. The RAD did not consider this element in its assessment of the motivation, but did in its analysis of the second prong of the IFA test. It makes a brief mention of

it, without analyzing it, during the analysis of the motivation, while stating that it would be considered in the second prong of the IFA test. For this reason, I do not see any error in the RAD's analysis in this regard.

[29] In short, the RAD did not err in its evaluation of the reasonableness of the IFAs.

[30] Finally, during the hearing, the applicants alleged for the first time that there was a violation of procedural fairness since the RAD did not allow them to present complete evidence about the existing risk and the reasonableness of the IFA cities the respondent proposed in the context of the appeal. On this point, the applicants had the opportunity to submit evidence by affidavit, as well as several articles supporting their arguments. The applicants' argument in this case is limited to the fact that the RAD should have granted them a hearing, which it did not. First, the Court is not required to rule on the issue because it was not included in the arguments in the applicants' memorandum and, since it was raised at the hearing without prior notice to the respondent, could prejudice it (*Kabir v Canada (Citizenship and Immigration)*, 2023 FC 1123 at paras 19–22). That said, there is no violation of procedural fairness in this case. The applicants did not submit any evidence by affidavit during this judicial review that shows how the procedure followed by the RAD violated their right to procedural fairness. Moreover, contrary to the oral arguments, there was nothing to indicate that the applicants were not sufficiently advised of the relevant issues on which the RAD would be ruling. On the contrary, the RAD advised the applicants of the respondent's appeal and they had the opportunity to present evidence and arguments to show that

the proposed IFA cities were not safe or reasonable for them. Lastly, when they submitted their evidence and arguments, the applicants did not request an oral hearing before the RAD.

V. Conclusion

[31] The RAD decision was reasonable and justified in relation to the relevant factual and legal constraints of the case (*Vavilov* at para 99).

[32] For these reasons, the application for judicial review is dismissed.

[33] No question of general importance was submitted for certification and the Court is of the opinion that this case does not give rise to any.

JUDGMENT in IMM-7822-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Guy Régimbald"

Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7822-22
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