Federal Court  Cour fédérale

**Date: 20240207**

**Docket: IMM-2284-23**

**Citation: 2024 FC 120**

**Ottawa, Ontario, February 7, 2024**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**MONICA PAOLA DE JESUS FACUNDO**
**AURA VIVEKA OROZCO DE JESUS**
**SOPHIA DUBHE OROZCO DE JESUS**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by a Senior Immigration Officer (the "Officer") rejecting the Applicants' pre-removal risk assessment ("PRRA") application under section 112(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act").

[2] The Decision found that the Applicants would not be subject to a risk of torture or persecution, nor face a risk to life or a risk of cruel and unusual treatment or punishment if returned to Mexico. The Decision permits the Canada Border Services Agency (the "CBSA") to enforce an existing removal order against the Applicants.

## II. Background

[3] Monica Paola De Jesus Facundo (the "Principal Applicant") entered Canada in June 2019 with her children (collectively with the Principal Applicant, the "Applicants"). The children are 16 and 12 years old, respectively. The Applicants are citizens of Mexico.

[4] Upon entry to Canada, the Applicants claimed refugee protection, alleging that they were targeted by the Jalisco New Generation Cartel (the "CJNG"). The Immigration and Refugee Board's (the "IRB") Refugee Protection Division (the "RPD") denied the application in December 2020 after holding an oral hearing.

[5] The RPD found that the Applicants were not Convention refugees under section 96 of the Act because their allegations of persecution were grounded in criminality, which is not an established Convention refugee ground. The RPD also concluded that the Applicants were not persons in need of protection under section 97 of the Act, because their allegations were speculative, contradictory, and non-credible, particularly their allegation that the CJNG was behind the purported acts of violence against them. The RPD also concluded that the Applicants had a viable internal flight alternative within Mexico.

[6] The Applicants appealed the RPD's decision to the Refugee Appeal Division (the "RAD"). The RAD dismissed the Applicants' appeal in August 2021 and agreed with the RPD that the Applicants' allegations were not credible and that the Applicants failed to establish that they have been targeted as alleged. The RAD also affirmed the RPD's finding that the Applicants' allegations were grounded in criminality, not an established Convention refugee ground. The RAD disposed of the appeal without assessing whether the Applicants had a viable internal flight alternative.

[7] The decisions of the RPD and the RAD (the "IRB decisions") both cited various sources in their analysis, particularly from the National Documentation Package for Mexico. They are not the decisions under review here.

[8] Given that the Applicants' refugee protection claim was denied, a removal order was issued against them.

[9] With some exceptions, section 112(1) of the Act allows an individual who is subject to a removal order to seek refugee protection by way of a PRRA. If the IRB has already decided that the individual is not in need of protection, then the PRRA is generally available only after 12 months from the date of the decision.

[10] The Applicants submitted their PRRA application in September 2022, after the 12-month period elapsed. The application repeated the same allegations as their initial claim before the IRB, namely that:

1. the CJNG continues to threaten the Applicants;

2. the Applicants will be tortured or killed if removed to Mexico;

3. the Applicants do not have a viable internal flight alternative; and

4. the police are corrupt and will not protect the Applicants.

[11] In support of the PRRA application, the Applicants submitted new evidence of an incident in September 2022, in which a severed pig's head was left at the residence of the Principal Applicant's spouse in Mexico. A note addressed to the spouse was attached. It threatened the Applicants.

[12] The Applicants' new evidence included pictures of the severed pig's head and of the note, as well as a statement from the Principal Applicant's spouse. The Applicants argued this incident was attributable to the CJNG.

[13] The Principal Applicant's spouse left Mexico to claim asylum in France in September 2022. The Principal Applicant submitted a copy of her spouse's claim for asylum as further evidence in support of the PRRA application. She said that her husband will no longer be able to provide protection should she and her children return to Mexico. She provided an article discussing violence against women in Mexico.

[14] The Applicants also claimed that no matter where they reside in Mexico, their information would be registered in several private and governmental institutions. This information could then be acquired by the CJNG through cybercrime or bribes. The Applicants provided an article stating that cybercrime is on the rise in Mexico in support of this view.

## III. The Decision

[15] Pursuant to section 113(c) of the Act, the Officer decided the Applicants' PRRA application under sections 96 and 97 of the Act. No oral hearing was held.

[16] The Officer found that the Applicants repeated the same allegations first made before the RPD and the RAD. That said, the Officer took note of the Principal Applicant's new allegation that her spouse has received recent threats against both him and the Applicants, and that he is now in France seeking asylum. However, the Officer was still not satisfied that the Applicants were persons of interest to the CJNG, nor that the spouse's asylum application amounted to proof of the alleged risk.

[17] The Officer ultimately concluded that the threats against the Applicants are "incidents of random violence", not a series of attacks by the CJNG or any other organized group. The Officer also found that the articles submitted by the Applicants did not provide objective evidence of risks that are personal to the Applicants and that arose after the IRB's decisions.

[18] The Applicants argue that the Decision is unreasonable because the Officer (1) misapplied the legal test under section 97, (2) failed to conduct independent research on Mexico's conditions, and (3) misapprehended the evidence. The Applicants further argue that the Officer breached procedural fairness by making veiled credibility findings without the benefit of an oral hearing.

## IV. Issues

[19] Was the Officer's decision finding the Applicants were not Convention refugees or persons in need of protection unreasonable?

[20] Did the Officer breach the duty of procedural fairness?

## V. Analysis

### A. *Standard of Review*

[21] The standard of review with respect to the Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). The standard of review with respect to the Applicants' procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

### B. *The Officer's Section 97 Analysis*

[22] The Applicants argue that the Officer misapplied section 97 of the Act. They say that the Officer erroneously focused on whether the party who threatened the Applicants was part of the CJNG or another criminal organization. In the Applicants' view, that consideration is irrelevant for the purposes of section 97. The only question is whether the Applicants are at risk.

[23] Contrary to the Applicants' submission, the Officer did not misapply section 97. Whether or not the threats against the Applicants could be ascribed to a criminal organization is relevant to

determine whether the alleged risk that they would experience is present in all of Mexico. The Applicants themselves argued that the threats against them were made by the CJNG and that they would be at risk no matter where they are in Mexico. It was therefore reasonable for the Officer to evaluate the Applicants' assertions against that evidence.

[24] Moreover, both of the IRB decisions disposed of the Applicants' initial claim by rejecting the Applicants' contention that the CJNG was targeting them. The RPD also held that the Applicants had a viable internal flight alternative. The Officer's comments regarding the CJNG and other criminal organizations must be situated in that context. The Officer was in essence examining the new evidence provided by the Applicants to ascertain whether the reasoning of the IRB decisions with respect to the CJNG and the availability of a viable internal flight alternative holds.

[25] The Officer's application of section 97 was reasonable.

C. *Failure to Conduct Independent Research*

[26] The Applicants also allege that the Decision was unreasonable because the Officer failed to engage in independent research into the conditions in Mexico. The Applicants note in particular that the Officer only cited the IRB decisions and the Applicants' PRRA application material as the "Sources Consulted". The Applicants argue that this shows that the Officer failed to conduct any research, referring to *Cho v Canada (Citizenship and Immigration)*, 2010 FC 1299 [*Cho*]. I disagree.

[27] Firstly, the Applicants fail to point to any document or resource that the Officer should have considered. The only documents that the Applicants presented to the Officer were two articles regarding cybercrime and violence against women in Mexico. The Officer considered both.

[28] Secondly, the Applicants' argument disregards the fact that their claim under sections 96 and 97 of the Act had already been adjudicated by the IRB, including extensive review of credibility of the material evidence and country conditions. Both the RPD and the RAD examined the relevant evidence in the National Documentation Package for Mexico, and both denied the claim. This is distinguishable from *Cho*, where the applicant's claim was not heard by the IRB prior to the PRRA application.

[29] The Applicants effectively suggest that the Officer should have reconsidered evidence that was before the IRB. However, doing so would run contrary to section 113(a) of the Act:

> 113 Consideration of an application for protection shall be as follows:
>
> > (a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

[30] As the Federal Court of Appeal held in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paragraphs 12-13, section 113(a) stands for the view that a PRRA application is not an appeal from the IRB, nor is it an opportunity to argue or reconsider the evidence that was before it. The IRB's findings must be respected, absent new material evidence:

> [12] A PRRA application by a failed refugee claimant is not an appeal or reconsideration of the decision of the RPD to reject a claim for refugee protection. Nevertheless, it may require consideration of some or all of the same factual and legal issues as a claim for refugee protection. In such cases there is an obvious risk of wasteful and potentially abusive relitigation. The IRPA mitigates that risk by limiting the evidence that may be presented to the PRRA officer.
>
> […]
>
> [13] As I read paragraph 113(a), it is based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD. […]

[31] The Officer found that much of the Applicants' submissions on the PRRA application repeated the same allegations as the ones made before the IRB. Pursuant to section 113(a), it was open to the Officer to respond to those submissions summarily by reference to the IRB decisions. Notwithstanding the Officer's list of "Sources Consulted", it is evident that the Officer considered the new evidence presented by the Applicants. The Officer took note of the events that occurred in September 2022, of the asylum claim made by the Principal Applicant's spouse in France, and of the articles discussing cybercrime and violence against women in Mexico.

D. *Misapprehension of the Evidence*

[32] The Applicants further argue that the Officer misapprehended the evidence by concluding that the events of September 2022 were "incidents of random violence". The Applicants focus on the Officer's use of the word "random".

[33] I agree with the Applicants that it is difficult to infer from the evidence that the events of September 2022 are "random". However, the Applicants place too much emphasis on that specific word, and miss the broader point that the Officer was making – namely, that there is no objective evidence to support the view that the CJNG, or any other criminal organization for that matter, were behind these incidents. To focus narrowly on the Officer's use of the word "random" and not on the broader point they were making would amount to a "line-by-line treasure hunt for error", which lies beyond the scope of a reasonableness review (*Vavilov* at para 102).

[34] The Officer's appreciation of the evidence, and their conclusions therefrom, are reasonable.

E. *Veiled Credibility Finding*

[35] The Applicants also argue that the Officer made a veiled credibility finding without an oral hearing, in breach of the Officer's duty of procedural fairness, again citing *Cho*, where the Court held that the PRRA officer made a veiled credibility finding by rejecting that certain events occurred, contrary to the applicant's assertion.

[36] The Officer did not reject the Principal Applicant's submission that her spouse was threatened. The Officer accepted that the spouse had found a severed pig's head with a note threatening the Applicants, and that the spouse was later threatened and robbed. However, the Officer rejected the Applicants' assertion that the incidents were attributable to the CJNG or to another criminal organization. It was reasonably open for the Officer to do so.

[37] The Officer also acknowledged the Applicants' submissions regarding violence against women and the prevalence of cybercrime in Mexico. The Officer did not deny the veracity of those claims. Rather, the Officer held that those allegations were not sufficient to show personalized risks arising after the IRB decisions. That decision is based on the lack of probative value and weight to be attributed to the evidence. It is not a veiled credibility finding.

[38] The Applicants' other submissions on the PRRA application repeated the same allegations made before the RPD and the RAD. The Officer's duty of procedural fairness did not require the Officer to re-examine the conclusions of the RPD and the RAD, all of which were settled in a procedurally fair manner.

## VI. Conclusion

[39] The application is dismissed.

**JUDGMENT in IMM-2284-23**

**THIS COURT'S JUDGMENT is that**:

1. The application is dismissed.

2. There is no question for certification.

"Michael D. Manson"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2284-23 |
| **STYLE OF CAUSE:** | MONICA PAOLA DE JESUS FACUNDO, AURA VIVEKA OROZCO DE JESUS, SOPHIA DUBHE OROZCO DE JESUS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JANUARY 8, 2024 |
| **JUDGMENT AND REASONS:** | MANSON J. |
| **DATED:** | FEBRUARY 7, 2024 |

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