Federal Court Cour fédérale

Date: 20240229

Docket: IMM-1093-23

Citation: 2024 FC 340

[ENGLISH TRANSLATION]

Montréal, Quebec, February 29, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

JULIO CESAR GUILLEN GOMEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Julio Cesar Guillen Gomez, is a citizen of Mexico. He is seeking judicial review of a decision dated January 10, 2023 [Decision], of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. In the Decision, the RAD rejected Mr. Gomez's claim for refugee protection on the grounds that he was not a Convention refugee

or person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because he had a viable internal flight alternative [IFA] in La Paz, a city in the Mexican state of Baja California Sur. The RAD therefore confirmed the decision that the Refugee Protection Division [RPD] had made to the same effect.

[2] Mr. Gomez submits that the Decision is unreasonable because the RAD erred in its IFA analysis. He is asking the Court to set aside the Decision and refer the matter back to the RAD for a new hearing before a differently constituted panel. The sole issue is whether the RAD's IFA findings are reasonable.

[3] For the reasons that follow, Mr. Gomez's application for judicial review will be dismissed. Having examined the reasons and the conclusions of the RAD, the evidence before it, and the applicable law, I see no reason to set aside the Decision, since it contains no serious shortcomings that would require the Court's intervention.

II. Background

A. *Facts*

[4] Mr. Gomez alleges that he fears a high-ranking member of a criminal group, the Cártel de Los Flores—his agent of persecution—as a result of a romantic relationship he had with the member's girlfriend.

[5] On October 22, 2017, Mr. Gomez was assaulted and threatened while at his female friend's house in his hometown. The next day, the agent of persecution called him and repeated his threats. That evening, the Mr. Gomez filed a report with the local police and received

protective measures against his agent of persecution. The agent of persecution failed to show up following multiple summonses before various proceedings. After Mr. Gomez followed up with the authorities, the danger he faced was confirmed to him.

[6] The agent of persecution called Mr. Gomez, criticizing him for his carelessness in taking the matter to the police. Not long afterwards, numerous vehicles with tinted windows drove by Mr. Gomez's home. In December 2017, Mr. Gomez decided to leave his state of Chiapas for the state of Veracruz because he feared the Cártel de Los Flores.

[7] On January 11, 2018, the agent of persecution called Mr. Gomez and threatened him again, saying that he knew Mr. Gomez had left Chiapas. Two days later, Mr. Gomez returned to his hometown to prepare for his departure and take steps to obtain his passport. He then returned to Veracruz and stayed there before leaving Mexico for Canada on February 4, 2018. On arrival in Canada, he filed a claim for refugee protection.

[8] Mr. Gomez states that, since he left Mexico, other cars with tinted windows have been driving by his home. Moreover, his mother was allegedly hit by a van in 2020 as she was walking on the sidewalk.

B. *RPD and RAD decisions*

[9] In July 2022, the RPD rejected Mr. Gomez's claim for refugee protection, finding that he had a viable IFA in La Paz, Baja California Sur. La Paz is approximately 2 500 km from Mr. Gomez's home.

[10] Mr. Gomez appealed this decision to the RAD. The RAD, in its decision, also concluded that Mr. Gomez had a viable IFA in La Paz. The RAD determined that, although Mr. Gomez's agent of persecution was a member of a criminal group with ties to other organizations that could enable him to locate Mr. Gomez in the IFA, the lack of motivation demonstrated with regard to a situation that was essentially personal in nature led to the conclusion that Mr. Gomez would not be subjected to a risk to his life, to a risk of cruel and unusual treatment or punishment or to a danger of torture in the IFA. Moreover, the RAD was of the opinion that the lack of communication with his agent of persecution since his arrival in Canada, combined with the passage of time, showed that the agent of persecution had no interest in Mr. Gomez. Lastly, the RAD concluded that it would be objectively reasonable for Mr. Gomez to relocate to the IFA, given his personal experience and circumstances.

C. *Standard of review*

[11] It is well established that the RAD's findings as to the existence of a viable IFA are reviewable on a standard of reasonableness (*Belhedi v Canada (Citizenship and Immigration)*, 2023 FC 1449 at para 18; *Rodriguez Sanchez v Canada (Citizenship and Immigration)*, 2023 FC 426 at para 14; *Djeddi v Canada (Citizenship and Immigration)*, 2022 FC 1580 at para 16; *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at para 19; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 14; *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 at para 6; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 17 [*Singh*]; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11).

[12] Moreover, the framework for a judicial review of the merits of an administrative decision is now the one established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]). The analysis begins with a presumption that reasonableness is now the applicable standard in all cases.

[13] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Mason* at para 64; *Vavilov* at para 85). To make this determination, the reviewing court asks "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74).

[14] It is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision "must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" [emphasis in original] (*Vavilov* at para 86). Thus, a court conducting a reasonableness review considers both the outcome of the decision and the reasoning process (*Vavilov* at para 87). Reasonableness review must entail a robust evaluation of administrative decisions. However, a reviewing court must begin its inquiry into the reasonableness of a decision by taking a "reasons first" approach, examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an appropriate posture of restraint, intervening only "where it is truly

necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). The reasonableness standard always finds its starting point in the principle of judicial restraint and deference and requires reviewing courts to show respect for the distinct role that the legislature has chosen to confer on administrative decision makers rather than on the courts (*Mason* at para 57; *Vavilov* at paras 13, 46, 75).

[15] The burden is on the party challenging the decision to show that it is unreasonable. To set aside an administrative decision, a reviewing court must be satisfied that there are sufficiently serious shortcomings to render the decision unreasonable (*Vavilov* at para 100).

III. Analysis

[16] In his submissions, Mr. Gomez begins by arguing that the RAD should have admitted all his new evidence and should have considered it in the Decision. Moreover, Mr. Gomez is of the opinion that the Decision is unreasonable because the RAD erred in its IFA analysis. Specifically, Mr. Gomez submits that it was unreasonable for the RAD to conclude that his agent of persecution would not have the motivation to find him, given the evidence on the characteristics of the culture of organized crime in Mexico. In addition, Mr. Gomez submits that the identified IFA is a location with a serious risk of persecution, which also renders the Decision unreasonable.

[17] I disagree with Mr. Gomez.

A. *New evidence*

[18] With respect, Mr. Gomez’s arguments regarding the new evidence cannot be accepted. As correctly noted by the respondent, the Minister of Citizenship and Immigration [Minister], the RAD must analyze the new material through the lens of subsection 110(4) of the IRPA. This provision states that, on appeal to the RAD, an appellant may present only evidence that arose after the rejection of the claim by the RPD or that was not reasonably available at the time of the rejection. In Mr. Gomez’s case, the additional evidence that was not accepted by the RAD clearly arose before the RPD’s negative decision and consisted entirely of public documents reasonably available to Mr. Gomez at that stage of the proceedings. The RAD had no choice but to reject it.

[19] The case law of the Federal Court of Appeal is clear in this regard: it is reasonable for the RAD to reject evidence that does not meet the requirements of subsection 110(4) of the IRPA (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 69; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 13–16). That is what the RAD has done in this case. Although the onus was on him, Mr. Gomez failed to show how the new evidence met the requirements of the IRPA. He also failed to provide any explanation as to why the documents in question had not been submitted to the RPD or had not been available to him.

[20] Given the findings of the RAD, the evidence before it and the applicable law, I do not see in the RAD’s rejection of some of the evidence any serious shortcomings that would require the Court’s intervention.

B. *RAD’s decision reasonable*

[21] Regarding the merits of the Decision, the test for a viable IFA is well established. It is based on *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*], where the Federal Court of Appeal identified the two criteria that must be met to conclude that an IFA is reasonable: (1) on a balance of probabilities, there is no serious possibility of the claimant being persecuted in the part of the country where the IFA exists; and (2) in all the circumstances including circumstances particular to the claimant, it would not be unreasonable for the claimant to seek refuge in the IFA.

[22] In *Singh*, this Court noted that "the analysis of an IFA is based on the principle that international protection can only be offered to refugee protection claimants in cases where the country of origin is unable to provide to the person requesting refugee protection adequate protection everywhere within their territory" (*Singh* at para 26).

[23] If an IFA is identified, the onus is on the refugee protection claimant to show that the IFA is inadequate and that it is unreasonable to settle there (*Thirunavukkarasu* at para 12; *Salaudeen v Canada (Citizenship and Immigration)*, 2022 FC 39 at para 26; *Manzoor-Ul-Haq v Canada (Citizenship and Immigration)*, 2020 FC 1077 at para 24; *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43–44). In addition, case law teaches that an IFA finding is determinative and is sufficient to reject a refugee protection claim (*Ojeda Escobar v Canada (Citizenship and Immigration)*, 2022 FC 1453 at para 6).

[24] Mr. Gomez considers the Decision to be unreasonable because, in his opinion, the RAD erred in its IFA analysis. In particular, Mr. Gomez claims that the RAD, having examined the evidence on the characteristics of the culture of organized crime in Mexico, could not reasonably

conclude that his agent of persecution would have no motivation to find him, given that various alliances exist between criminal groups in Mexico. Mr. Gomez also submits that the IFA identified in La Paz is a location with a serious risk of persecution.

[25] Mr. Gomez's arguments do not withstand scrutiny.

(1) *Agent of persecution's lack of motivation*

[26] There are two problems with Mr. Gomez's argument regarding his agent of persecution's lack of motivation.

[27] First, procedurally, the RPD had concluded that the agent of persecution would not have the motivation to find Mr. Gomez in La Paz, and Mr. Gomez did not challenge this conclusion in his RAD appeal memorandum. However, under paragraph 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257 [Rules], a claimant wishing to challenge an RPD decision must identify each finding that is considered erroneous. If an issue is not raised on appeal to the RAD, an applicant cannot then raise it on judicial review before the Court (*Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at paras 26–28 [*Dahal*]). In *Dahal*, Mr. Chief Justice Crampton continued his analysis as follows, at paragraph 37:

> [37] By simply satisfying itself that no such additional errors were made, the RAD's decision should not become vulnerable to being set aside on judicial review, based solely on its general concurrence with findings made by the RPD in respect of matters that were not raised on appeal by the Applicants. In my view, this would largely vitiate the purpose of Rule 3(3)(g) of the *Rules*, which requires an appellant to identify (i) the errors that are the grounds of the appeal, and (ii) where those errors are located in the RPD's decision, or in the transcript recording of its hearing.

[28] Moreover, the Federal Court of Appeal has stated that "the reasonableness of the Appeal Division's decision cannot normally be impugned on the basis of an issue not put to it" (*Canada (Citizenship and Immigration) v RK*, 2016 FCA 272 at para 6, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 23–25). In this case, Mr. Gomez did not challenge the RPD's conclusion regarding his agent of persecution's lack of motivation, and this is sufficient to dispose of Mr. Gomez's claims regarding this issue.

[29] In any event, I am of the opinion that the RAD reasonably determined that the IFA is viable and that there was in fact no evidence that the agent of persecution would have any motivation. I see nothing unreasonable in the analysis that led the RAD to conclude that the agent of persecution would lack the motivation to find Mr. Gomez in La Paz. In reaching this conclusion, the RAD noted that there were only three threatening telephone calls between discovering the affair and Mr. Gomez's departure for Canada, there was no escalation or other direct or indirect threats against Mr. Gomez even though the agent of persecution was in a position to locate him or carry out the threats, and there was a lack of communication since his arrival in Canada which, coupled with the passage of time, showed a lack of interest in locating Mr. Gomez.

[30] In *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 [*Leon*], the Court stated "that there is a difference between a persecutor's *ability* to pursue an individual throughout a country and his *desire* to do so or *interest* in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution" [emphasis in original] (*Leon* at

para 13). This is precisely the case here, and the evidence fully supports the RAD's conclusions to this effect.

[31] Regarding Mr. Gomez's arguments that the RAD failed to consider all the evidence, note that it is settled case law that the RAD is presumed to have reviewed all the evidence before it unless there is evidence to the contrary (*Khelili v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 188 at para 29 [*Khelili*], citing *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36 and *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). In this case, Mr. Gomez has failed to submit anything tangible that would lead the Court to conclude that the RAD failed to consider the evidence.

(2) *IFA reasonable for Mr. Gomez*

[32] In the second prong of the IFA test, it was open to the RAD to conclude that Mr. Gomez would not encounter cultural, religious, linguistic or socio-economic barriers or a danger to his life in La Paz. To that end, the RAD pointed out that Mr. Gomez holds a university degree and has significant work experience in a variety of fields.

[33] In the second prong of the test, claimants are required to provide "actual and concrete" evidence of conditions that would jeopardize their lives in the IFA, which Mr. Gomez clearly failed to do (*Lawal v Canada (Citizenship and Immigration)*, 2021 FC 964 at para 21, citing *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15 [*Ranganathan*]). The burden of proof to show that an IFA is unreasonable is high (*Molina v*

Canada (Citizenship and Immigration), 2016 FC 349 at para 14; *Olivares Sanchez v Canada (Citizenship and Immigration)*, 2012 FC 443 at para 22, citing *Ranganathan* at paras 15–16).

[34] Ultimately, Mr. Gomez's arguments simply express his disagreement with the RAD's assessment of the evidence and suggest that the Court ought to assess it differently. However, it is well established that this is insufficient for the Court to intervene (*Khelili* at para 25). Mr. Gomez has failed to identify any serious shortcomings in the Decision, and the Court must therefore avoid interfering with the RAD's conclusions (*Vavilov* at para 100). In fact, the RAD's expertise in matters of immigration requires the Court to show great deference to its findings of fact in the IFA test (*Singh* at para 32).

[35] Moreover, as the Minister points out in his submissions, Mr. Gomez did not challenge the RPD's conclusions regarding the viability or reasonableness of the IFA in his appeal to the RAD. Again, since Mr. Gomez did not challenge the RPD's reasons in the second prong of the IFA test, his claims that there would be a serious risk of persecution in the IFA identified in La Paz can be disposed of under paragraph 3(3)(g) of the Rules.

IV. Conclusion

[36] For the reasons above, Mr. Gomez's application for judicial review is dismissed. The Decision bears the hallmarks of intelligibility, transparency and justification required by the reasonableness standard, and there is no reason that would justify the Court's substituting its opinion for that of the RAD.

[37] None of the parties has proposed any questions of general importance to be certified, and I agree that there are none.

JUDGMENT in IMM-1093-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.

2. There are no questions of general importance to be certified.

"Denis Gascon"

Judge

Certified true translation
Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

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