Federal Court Cour fédérale

Date: 20240425

Docket: IMM-12059-22

Citation: 2024 FC 637

Toronto, Ontario, April 25, 2024

PRESENT: Madam Justice Go

BETWEEN:

Emma Nairoby QUIROZ RAMIREZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Emma Nairoby Quiroz Ramirez, is a citizen of Mexico. She alleges fear of serious harm from the Jalisco Cartel New Generation [CJNG], who targeted the Applicant for extortion because of her perceived wealth.

[2] The Refugee Protection Division [RPD] rejected the Applicant's claim in May 2022 on the basis of viable Internal Flight Alternatives [IFA]. In a decision dated November 7, 2022, the Refugee Appeal Division [RAD] found that the CJNG will not have the motivation to locate and harm the Applicant in the proposed IFA, and confirmed that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] [Decision].

[3] The Applicant seeks judicial review of the Decision. For the reasons set out below, I find the Decision reasonable and I dismiss the application.

II. Issues and Standard of Review

[4] The Applicant takes issue with the RAD's finding that the CJNG does not have the motivation to locate her in the proposed IFA. In particular, the Applicant submits the RAD erred by:

a. Finding her credible yet failing to accept as a fact that she would not be safe anywhere in Mexico;

b. Misconstruing and misapplying documentary evidence in its analysis of the CJNG's motivation to pursue the Applicant;

c. Overlooking evidence when it concluded that the Applicant does not have a profile that the CJNG is likely to pursue her; and

d. Placing undue emphasis on the level of interest and motivation of the CJNG, and failing to recognize the Applicant's personalized risk.

[5] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[6] 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. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[7] For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep:” *Vavilov* at para 100.

III. Analysis

[8] The two-pronged test for finding a viable IFA is well-established. The decision-maker must be satisfied, on a balance of probabilities, that (1) there is no serious possibility of the claimant being persecuted in the proposed IFA, and (2) the conditions in the proposed IFA are such that it would not be unreasonable, in all the circumstances, for the Applicant to seek refuge in the IFA: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706

(CA) at 711; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at 597.

[9] The first prong will not be met if the Applicant shows that the agents of persecution, the CJNG, would have the means and motivation to search for and locate her: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8, *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 [*Adeleye*] at para 21, and *Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29.

[10] “Means” and “motivation” are distinct, separate elements or “two different sides of the same coin:” *Adeleye* at para 21. This analysis must be prospective and considered from the agents of persecution’s perspective, not the Applicant’s: *Jamal v Canada (Citizenship and Immigration)*, 2023 FC 1633 at para 17, *Adeleye* at para 21.

[11] Overall, I agree with the Respondent’s submission that the Applicant conflates the issue of means and motivation. I also find the Applicant conflates the issue of IFA with the issue of personalized risk under para 97(1)(b) of the *IRPA*.

[12] The Applicant’s first argument has no merit. She argues that since the RAD accepted her testimony and credibility, it ought to have also accepted, as a fact, that she would not be safe in any part of Mexico. As the Respondent submits and I agree, while the Applicant may fear for her safety in Mexico, this subjective fear must align with the objective evidence. As the Court noted in *Jimenez v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1225 [*Jimenez*]: “[a

claimant] may very well have a strong personal belief, but a preponderance of objective evidence may run counter to their sincerely-held, subjective belief," and this is why "claims require both a subjective and an objective basis to succeed:" *Jimenez* at para 20.

[13] The Applicant also takes issue with the RAD's assessment of the National Documentation Packages [NDP] evidence, namely Item 7.8. Item 7.8 is a Response to Information Request [RIR] from September 8, 2021 that outlines the situation of crime in Mexico.

[14] The Applicant submits the RAD conducted a selective review of the RIR by: (1) finding the Applicant's profile did not fit the list of individuals the CJNG would be motivated to harm, although the RIR list is not exhaustive; (2) failing to acknowledge that the CJNG can easily locate persons of interests and that her perceived debt, combined with the fact that the CJNG operates in the proposed IFA, increases the likelihood of motivation; and (3) ignoring the evidence that when a criminal organization in Mexico is interested in harming an individual, there is no safe haven in the country.

[15] I reject all of the Applicant's submissions. To start, contrary to the Applicant's submission, I do not find the Decision implied that the RIR list is non-exhaustive. At para 10, the RAD included a list of individuals that criminal groups are motivated to track. At one point, the RAD described these individuals as "common targets," which implies they are not the only targets of cartels. Additionally, at para 20, the RAD noted: "the documentary evidence also suggests that for an organized criminal group to track you, it really depends on what the

individual did, and generally low-ranking members would not be worth the resources involved to track and kill a person." This finding demonstrates that the RAD recognizes there may be other reasons for a cartel to track someone down, and the use of the term "generally" further confirms the reasons are non-exhaustive.

[16] I also reject the Applicant's argument that the CJNG's ease and capacity to locate a person by definition increases its motivation to track the Applicant down. Indeed, if accepted, the Applicant's argument would make the analysis of motivation nugatory, contrary to well-established jurisprudence.

[17] With regard to the Applicant's argument that when a criminal organization in Mexico is interested in harming an individual, there is no safe haven in the country, this argument presupposes the CJNG is interested in the Applicant, which the RAD rejected. As well, the argument fails to address the reasonableness of the RAD's finding in this regard.

[18] The Applicant also argues the RAD overlooked the evidence before it with respect to the debt she owes and that the CJNG is in search of her. She argues it was speculative of the RAD to find that the accumulated extortion money was not considered a large debt. The Applicant suggests that at this point, over three years since the CJNG first contacted her, her debt has exceeded 900,000 pesos as the CJNG expected her to pay 25,000 pesos monthly. The Applicant submits it was speculative on the RAD's part to find that the accumulated extortion money she did not pay to the CJNG is not perceived as a large debt, while overlooking the evidence about the neighbours advising that the CJNG were looking into the Applicant's residence.

[19] I am not persuaded by this argument. I agree with the Respondent that the Applicant misconstrued the RAD's finding. The RAD acknowledged the Applicant's submission that the cartel considers her as owing them a large sum of debt. At para 11 of the Decision, the RAD stated:

> The [Applicant] argues that the CJNG views her to be in debt to them for a large sum of money because she owed them two payments of twenty-five thousand pesos as of January 2020, and much more today when multiplying the number of months that the [Applicant] has been avoiding the cartel.

[20] The RAD then went on to explain why it rejected the Applicant's submission. The RAD referred to the 50,000 pesos as a way of acknowledging that this is not an insignificant amount of money for the average Mexican, including the Applicant. However, ultimately, the RAD determined that there was no actual evidence to establish that the CJNG, the most powerful cartel in Mexico, perceives the Applicant as owing them a large or significant debt. I see no reviewable errors arising from this finding.

[21] The RAD also considered the evidence the Applicant proffered to establish that the CJNG is likely interested in pursuing her in her hometown, but it noted that her father - who had moved with his family due to the threats the Applicant received - did not say in his letter of support that he or his remaining family members have been threatened since their move.

[22] In addition, the Applicant argues the RAD erred in finding the CJNG was not interested in her because she did not file a police complaint. The Applicant submits the evidence indicates she did go to the police and speak with an officer. The Applicant points to the RIR and submits that a "perceived betrayal" is among the motivators for criminal groups in Mexico to want to

track an individual. The Applicant submits this is especially the case for her, as the CJNG is known to cooperate with Mexican authorities and "the CJNG are likely aware that the Applicant went to the police despite their caution to her." This oversight, the Applicant submits, constitutes a reviewable error.

[23] The Applicant's argument, with respect, misconstrued the RAD's reasoning. The RAD noted the lack of a police complaint in the context of finding the Applicant does not have a profile that the CJNG is likely to pursue, as she is not a person of authority or influence who could interfere with the CJNG's business interests. The Applicant's assertion about the "perceived betrayal" by the CJNG is simply not grounded in the evidence. Further, as the Respondent submits, the evidence and the Applicant's own narrative reveal that she only spoke to the officer on duty, but did not file a formal complaint. Even further, there was no indication that the Applicant mentioned the CJNG to the police.

[24] Finally, the Applicant argues the RAD placed an undue emphasis on the level of interest and motivation and cites the following quote from the Court in *Herrera Chinchilla v Canada (Citizenship and Immigration)*, 2014 FC 546 [*Herrera Chinchilla*] at para 33: "One must not conflate the reason for the risk with the risk itself." The Applicant submits that in her case, the "risk itself" is that the CJNG can locate her in the proposed IFA. The Applicant submits given her fears that the CJNG is motivated to locate her, she will have to remain in hiding in the proposed IFA.

[25] With respect, *Herrera Chinchilla* has no relevance to the case at hand. The applicants in *Herrera Chinchilla* were victims of crime and had no nexus to the Convention grounds. The RPD also concluded that subsection 97(1) of the *IRPA* did not apply either, since no torture was alleged. The only issue before the Court was whether the Board's conclusion regarding the generalized risk was reasonable. The Court found the RPD failed to properly conduct the required individualized inquiry under a section 97 analysis. It was in that context that the Court cautioned the RPD not to conflate the reason for the risk with the risk itself. Here, the Applicant seems to conflate the test for personalized risk under para 97(1)(b) with the first prong of the IFA test. The former deals with whether a claimant is a person in need of protection, while the latter concerns the viability of an IFA for someone who alleges a personalized risk of harm, taking into account both the means and motivation of the agent of persecution.

[26] At the hearing, the Applicant made a further argument stating that even if she does not meet a specific profile, based on the NDP, of an individual the CJNG would be interested in targeting, the Applicant still has a real and personalized risk. The Applicant submitted the RAD should not speculate about the cartel's motivation.

[27] The Applicant's argument must fail, for two reasons. First, after accepting that the Applicant has a real and personalized risk under section 97, as the RPD did, she must still demonstrate that the proposed IFA is not viable, as the two are separate issues. Second, the onus is on the Applicant to demonstrate that the cartel has both the means and motivation to locate her, based not only on her subjective fear, but also on objective evidence. The RAD's conclusion

that the Applicant has failed to adduce sufficient evidence to prove that the CJNG would consider her a person of interest such that they would be motivated to pursue her was reasonable.

IV. Conclusion

[28] The application for judicial review is dismissed.

[29] There is no question for certification.

JUDGMENT in IMM-12059-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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