

Federal Court



Cour fédérale

Date: 20240508

Docket: IMM-4643-23

Citation: 2024 FC 704

Montréal, Quebec, May 8, 2024

PRESENT: The Honourable Mr. Justice Lafrenière

[ENGLISH TRANSLATION]

BETWEEN:

CARLOS NAMBO ROJAS

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Carlos Nambo Rojas, is a citizen of Mexico. He is seeking judicial review of a decision rendered on March 6, 2023, by the Refugee Appeal Division (“RAD”) confirming the determination of the Refugee Protection Division (“RPD”) that the applicant is neither a Convention refugee nor a person in need of protection, as defined in sections 96 and 97 of the

Immigration and Refugee Protection Act, SC 2001, c 27 (“IRPA”), because there is a viable internal flight alternative (“IFA”) in three locations in Mexico.

[2] For the reasons that follow, I am of the view that the application for judicial review should be dismissed.

[3] The RAD concluded, as did the RPD, that the applicant would not be subjected to a risk to his life or a risk of cruel and unusual treatment or punishment throughout Mexico, and that the applicant did not establish that members of the cartel in question are willing to personally search for him in the proposed IFAs.

[4] Before delving further into this matter, it bears noting that although the applicant argued in his memorandum that the RAD breached its duty of procedural fairness in basing its decision on different grounds than the RPD, he acknowledged at the hearing that no procedural fairness issues arise in this case, given that the RAD conducted its own independent analysis of the evidence.

[5] The RAD conducted the IFA analysis using the two-pronged test that is well established in case law. The first prong requires the RAD to be satisfied, on a balance of probabilities, that there is no serious possibility of a claimant being persecuted in the proposed region. The second prong requires that conditions in the IFA must be such that it would not be unreasonable in all the circumstances, including those specific to the claimant, for him or her to seek refuge there.

[6] In his application for judicial review, the applicant does not challenge the RPD's finding with regard to the second prong. He only challenges the RAD's conclusion that the agent of persecution lacks the motivation to track him down in one of the three locations proposed as IFAs.

[7] The applicant submits that the RAD failed to analyze some of his arguments and the documentary evidence before it. He argues in particular that the RAD erred by analyzing the situation from its own perspective, without taking into account the applicant's situation, notably his vulnerability resulting from his experiences. According to the applicant, the RAD could not reasonably conclude that he would not be found by the cartel in the cities identified as IFAs and at the same time acknowledge that "criminal gangs will use any means to impose their will and punish those who try to defy them." He also criticizes the RAD for rejecting his appeal in only four paragraphs. The applicant's arguments are without merit.

[8] The onus was on the applicant to satisfy the RAD, on a balance of probabilities, that he does not have an IFA.

[9] While it is true that the RAD's reasons are brief, there is sufficient evidence to support its conclusion that the agent of persecution would not be motivated to pursue the applicant. The RAD first pointed out that the applicant's spouse, daughters and other members of his immediate family still live in his home region. The RAD correctly noted that neither the applicant nor any member of his family has been threatened since August 2019, either directly or through an intermediary.

[10] Given the absence of threats since August 2019, it was open to the RAD to conclude that the cartel is not motivated to search for the applicant, particularly in a city more than 1,600 kilometres from his hometown.

[11] I see no error in the RAD's analysis, as the passage of time may, in certain circumstances, allow the RAD to reasonably infer a lack of motivation.

[12] As for the remaining issues raised by the applicant, I am of the opinion that he is essentially asking the Court to reweigh the evidence. It is within the RAD's expertise, and not that of a reviewing court, to assess the evidence on file and draw the necessary conclusions from it.

[13] In view of the foregoing, I find that the RAD's decision bears the hallmarks of reasonableness, namely the requisite transparency, justification and intelligibility.

[14] Neither party raised a question for certification, and I agree that none arise.

JUDGMENT in IMM-4643-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Roger R. Lafrenière”

Judge

Certified true translation
Norah Mulvihill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4643-23

STYLE OF CAUSE: CARLOS NAMBO ROJAS v MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 6, 2024

JUDGMENT AND REASONS: LAFRENIÈRE J

DATED: MAY 8, 2024

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