Federal Court  Cour fédérale

Date: 20240906

Docket: IMM-12488-23

Citation: 2024 FC 1398

Toronto, Ontario, September 6, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

JORGE ARTURO AMEZCUA SANCHEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This judicial review application is brought by Jorge Arturo Amezcua Sanchez [the Applicant], in connection with a decision of the Refugee Appeal Division [RAD] dated September 8, 2023. The RAD Decision confirmed a decision of the Refugee Protection Division [RPD Decision], which found that the Applicant was neither a Convention refugee nor person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [*IRPA*]. The determinative issue for both the RPD and RAD was the availability of a viable Internal Flight Alternative in Mérida, Yucatán [the IFA].

[2] For the reasons that follow, I find that the Applicant has not satisfied his burden of showing that the RAD's decision is unreasonable. Accordingly, this application for judicial review is dismissed.

II. The Legal Framework

[3] The test to determine if an IFA in the claimant's country is viable involves a two-prong analysis. Under the first prong, it must be demonstrated that the claimant will not be subject to a serious possibility of persecution nor to a risk of harm in the proposed IFA location [the First Prong]. Under the second prong of the analysis, it must be shown that it would not be objectively unreasonable for the claimant to seek refuge in the IFA, taking into account all the circumstances [the Second Prong] [collectively, the IFA test] (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 [*Rasaratnam*] at pages710-711).

[4] Once an IFA is proposed, the claimant has the burden of proof to establish on a balance of probabilities that there is a serious possibility of the claimant being persecuted in the IFA and that it is objectively unreasonable or unduly harsh in all circumstances for the claimant to relocate to the proposed IFA (*Rasaratnam* at page 710).

III. Facts

[5] The Applicant lived in Ciudad Juárez, Chihuahua, Mexico and was working in a factory when he befriended a co-worker Francisco Gomez [F.G.]. Starting in March 2018, F.G. visited the Applicant and later disclosed to him that he worked for the Juárez Cartel [the Cartel] and was involved in kidnapping and extortion. F.G. tried to recruit the Applicant as a driver, but the Applicant refused the offer.

[6] F.G. visited the Applicant in person later the same week in his store, this time accompanied by another man. When F.G. asked the Applicant to join the Cartel, he was aggressive and told the Applicant that if he refused to join the Cartel, the Applicant's family would be harmed. F.G. visited the Applicant at work five or six more times over the following two months.

[7] The last time the Applicant saw F.G. was in May 2018. However, in June 2018, the Applicant realized he was being followed, and there were vans and trucks parked in front of his house. There was also an incident where someone tried to break-in to his house.

[8] The Applicant left Mexico in June 2018 and his wife moved to another part of Chihuahua. After leaving the country, he learned that his house had been broken into and his neighbour advised that he has seen vans and trucks around his house. The Applicant believes that the Cartel has continued to search for him and that his refusal to be recruited will remain "inexcusable" in the eyes of the Cartel, including by reason of the information that F.G. shared

with him about the crimes that the Cartel had committed in the city and the way that the Cartel works with authorities.

A. *The RPD Decision*

[9] The RPD found no evidence that the Cartel has the motivation to locate the Applicant in the IFA. It found that any risk of harm to the Applicant is a "localized risk" limited to the city of Juárez and the immediate vicinity.

[10] The RPD found insufficient evidence to establish that F.G. or the Cartel were watching him, seeking to harm him, or were responsible for the break-in. In any event, the RPD found this would not establish a motivation to pursue the Applicant to the IFA based on its finding that he was the victim of a localized crime and given evidence from the National Documentation Package [NDP] of the fragmented structure of the Cartel.

B. *New Evidence*

[11] The Applicant submitted new evidence before the RAD which consisted of letters from the Applicant's wife and former neighbour dated July 3, 2023, which state that people have been inquiring about the Applicant in his old neighbourhood and trucks have been circling and passing the area (collectively, the New Evidence).

C. *The RAD Decision*

[12] The RAD concluded that the RPD was correct in its overall conclusion that the Applicant is not subject to a serious possibility of persecution in the IFA, holding that irrespective of the Cartel's ability to locate the Applicant in the IFA, the absence of a motivation to do so was determinative of the Applicant's claim.

[13] Based on the NDP evidence, the RAD considered the Applicant to have a "low profile" and there was insufficient evidence of the Cartel's interest in the Applicant. Unlike the RPD, the RAD accepted that the Applicant had been threatened and that the Cartel was behind the van surveillance and break-in. However, the RAD did not believe that the Applicant's recruitment refusal or his general knowledge of the Cartel's methods of collusion with authorities rose to a level that would cause the Cartel to invest resources to find him in the IFA.

[14] The RAD accepted the New Evidence on appeal but considered it to be not central to the Applicant's claim given that it reflected continued pursuit at the Applicant's home in Juárez and was not relevant to the Cartel's motivation to pursue the Applicant in the IFA. The fact that the Applicant's family and neighbours were not threatened or harmed also supported the RAD's finding that the Applicant is not a person of interest to the Cartel outside of Juárez since it ran contrary to the Cartel's known practice of torturing relatives to get information about a target's whereabouts.

[15] The RAD determined that the Applicant had failed to show why it was unreasonable in all the circumstances for the Applicant to relocate to the IFA.

IV. Issues and Standard of Review

[16] The only issue raised by the Applicant is whether the RAD erred in determining that the Applicant had a viable IFA.

[17] I agree with the parties that the standard of review that applies to a review of the merits of the RAD Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 and 23-25 [*Vavilov*]).

[18] The role of the Court on a reasonableness review is to holistically and contextually examine the administrative decision maker's reasoning and the outcome 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" (*Vavilov* at paras 97 and 85). In conducting this analysis, the Court must not reweigh or reassess the evidence (*Vavilov* at paras 95 and 125).

[19] The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *Did the RAD err in its assessment of the Cartel's motivation to pursue the Applicant?*

[20] The focus of the Applicant's argument is on the RAD's finding that the Cartel would have attempted to locate the Applicant through his family if they were motivated to pursue him to the IFA.

[21] First, the Applicant points to the continued activity around his home as evidence of continued pursuit and motivation to pursue the Applicant *after* he fled Juárez. The Applicant says that the New Evidence (which the RAD accepted was connected to the Cartel) shows the Cartel's motivation to pursue him continues even 5 years later.

[22] I see no error in the RAD's analysis of this evidence, which was entirely consistent with its finding of a localized interest with no evidence pointing to a motivation to pursue the Applicant in the IFA.

[23] Secondly, the Applicant cites the decision in *Losada Conde v Canada (Citizenship and Immigration)*, 2020 FC 626 [*Losada*] to emphasize that the fact that the Applicant's family had not been threatened did not mean that the Applicant is safe if he were to return nor that you can infer a lack of interest when the claimant was not in the country.

[24] The Applicant raised *Losada* and made this same argument before the RAD who distinguished the decision on the basis that the claimant in that case had a very different profile

than that of the Applicant. The *Losada* claimant was the sole witness to a cartel murder and was primarily responsible for the imprisonment of the assassin. I see no error in the RAD's analysis given the RAD's findings that the Applicant had a "low profile" and only generalized knowledge of the Cartel. As the Respondent points out, this is the same basis on which *Losada* was distinguished in *Kanu v Canada (Minister of Citizenship and Immigration)*, 2022 FC 674 at paras 26-27).

B. *Did the RAD err in its finding that the risk to the Applicant is localized?*

[25] The Applicant submits that the RAD erred in failing to assess the Cartel's reach including in the IFA by overemphasizing the fragmentation of the Cartel and the localized nature of the Applicant's risk of harm.

[26] The Applicant highlights evidence from the NDP that shows the Cartel:

- operates throughout the country and relies on nationwide alliances to run its drug trafficking operation;
- has a presence in nearly 21 states in Mexico including the state where the IFA is located; and
- is known to retaliate and pursue individuals including with the assistance of relevant authorities.

[27] The RAD considered the NDP evidence but distinguished it on the basis of the Applicant's low profile and NDP evidence that "low ranking members are not worth the time or resources for armed groups to track and kill."

[28] The Applicant's argument is merely based on different evidence from the NDP and therefore amounts to a call for the Court to reweigh and reassess the evidence which the Court is not entitled to do (*Vavilov* at para 125).

C. *Did the RAD err in its assessment of the reasonableness of the IFA?*

[29] The Applicant submits that the RAD failed in its assessment of the reasonableness of the IFA in two ways.

[30] First, the Applicant submits that the RAD erred in failing to take into account that he would have to effectively live in hiding in the IFA which has been held to be unreasonable (citing *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586).

[31] I do not agree. The RAD found that the Applicant would not need to go into hiding in the IFA based on its determinative finding that the Cartel lacked the motivation to pursue him in the IFA and its finding that the Applicant has a "low profile." There is no evidence on the record to support the Applicant's contention that he would have to live with "major restraints" in the IFA.

[32] Secondly, the Applicant argued that it was unreasonable for the Applicant to have to make arguments spontaneously at the hearing about the conditions of an IFA he has never been to and was given no prior notice of. The Applicant relies on the decision in *Efere v Canada (Citizenship and Immigration)*, 2022 FC 136 at paragraph 18 for the proposition that while the onus rests with the claimant to show that relocation to the proposed IFA is unreasonable, the claimant does not need to personally test the viability of an IFA.

[33] I see no error in the RAD's analysis on this prong of the IFA Test. It is important to recall the threshold for unreasonable living conditions in an IFA which must be shown to consist of "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant travelling or temporarily relocating to a safe area" (*Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, [2001] 2 FC 164 at para 15). This threshold was set intentionally high. In the leading authority of *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (C.A.), [1994] 1 FC 589, the Federal Court of Appeal gave the example of a claimant being forced to cross battle lines to reach the IFA. In this case, the Applicant's arguments focused on conditions related to employment, housing and access to social services, all of which go to hardship as opposed to jeopardy and therefore do not support a finding of unreasonableness under the Second Prong of the IFA Test.

VI. Conclusion

[34] For these reasons, the Applicant has not shown the RAD's Decision is unreasonable. Accordingly, the application for judicial review is dismissed.

[35] The parties have not argued that any serious questions of general importance for certification exist under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT in IMM-12488-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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