

Federal Court



Cour fédérale

Date: 20240925

Docket: IMM-10709-23

Citation: 2024 FC 1514

Montréal, Quebec, September 25, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MARIO FERNANDO RUANO CASTANEDA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Ruano is seeking judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dismissing his claim for asylum. I am dismissing his application because, contrary to his submissions, the RAD was not required to consider subsection 108(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], the “compelling reasons” provision.

[2] Mr. Ruano is a citizen of Guatemala. In support of his refugee claim, he alleged that he was a victim of extortion by members of a criminal gang. When he stated that he was unable to pay increased amounts, the members of the gang assaulted him. After he left for Canada, his wife and mother-in-law informed him that suspicious vehicles were stopping in front of the houses where the family was residing or had recently resided.

[3] The Refugee Protection Division [RPD] accepted that Mr. Ruano was a victim of extortion, but found that his account of the two events in which the criminal gang allegedly assaulted him or his spouse was not credible. The RPD concluded that Mr. Ruano did not show that he was exposed to a prospective risk.

[4] The RAD dismissed Mr. Ruano's appeal. It did not decide whether Mr. Ruano was credible or not. Rather, it "*a tenu pour avérés les faits allégués*". Even assuming the truth of those facts, it found a lack of prospective risk. In the RAD's view, it was speculative to assert that the suspicious vehicles belonged to the criminal gang responsible for the extortion. Moreover, the RAD noted that the criminal gang did not communicate with Mr. Ruano's family, who still live in the same city.

[5] On judicial review, Mr. Ruano does not challenge the RAD's findings. Rather, he submits that the RAD should have considered the application of subsection 108(4) of the Act.

[6] Mr. Ruano's argument is entirely based on the assertion that the RAD implicitly concluded that he was entitled to refugee protection at some point in the past. The underlying

fear would have disappeared only because of the passage of time. The combination of this past entitlement to refugee protection and the change of circumstances due to the passage of time would have triggered a requirement to consider subsection 108(4).

[7] In my view, the RAD never found that Mr. Ruano was entitled to refugee protection, at any time. The RAD did not reverse the RPD's negative credibility findings. Rather, it identified prospective risk as the determinative issue and proceeded to analyze it on the assumption that all of Mr. Ruano's allegations were true. The RAD found that even the view of the facts most favourable to Mr. Ruano was not enough to justify refugee protection. This does not amount to a positive finding that Mr. Ruano was credible, that the facts he alleged actually took place and that he was entitled to refugee protection at the time of the alleged assaults. As in *Kim v Canada (Citizenship and Immigration)*, 2022 FC 1408 at paragraph 32, deciding the case on another issue does not amount to an implicit finding of past persecution.

[8] Thus, the first condition for applying subsection 108(4), that the claimant was entitled to refugee protection at some point in the past, is not fulfilled: *Gomez Dominguez v Canada (Citizenship and Immigration)*, 2020 FC 1098, at paragraph 40. This is fatal to Mr. Ruano's argument.

[9] It is therefore not necessary to decide whether Mr. Ruano meets the other conditions of the applicable test. I will simply say that I have serious doubts in this regard. For the same reason, I need not decide whether Mr. Ruano was entitled to raise subsection 108(4) of the Act on judicial review despite not having raised it before the RAD.

[10] For these reasons, Mr. Ruano's application for judicial review will be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10709-23

STYLE OF CAUSE: MARIO FERNANDO RUANO CASTANEDA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 24, 2024

JUDGMENT AND REASONS: GRAMMOND J.

DATED: SEPTEMBER 25, 2024

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