Federal Court  Cour fédérale

Date: 20241008

Docket: IMM-10743-23

Citation: 2024 FC 1584

Ottawa, Ontario, October 8, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

GYLMAR ADAME DE LA CRUZ
LEIRVIK KALEB ADAME LUGARDO
EDAHI KALEL ADAME LUGARDO
SUGEY ANAID LUGARDO NAVARRO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants consist of a family of four from Mexico. Under section 72(1) of the Immigration and Refugee Protection Act [IRPA], the Applicants are seeking a Judicial Review of the rejection of their refugee protection appeal by the Refugee Appeal Division [“RAD”] of the Immigration and Refugee Board of Canada [“IRB”].

[2] The Applicants are Mexican citizens. In May 2020, the Principal Applicant became involved in a dispute with a neighbour over the location of the Principal Applicant's workshop near the neighbour's home. The Applicants allege that the neighbour used his links to the municipal government and organized crime, namely the Jalisco New Generation Cartel ("CJNG"), to target the Applicants and to force the closure of the shop.

[3] The Applicants allege they fear the CJNG and the President of the municipal government of the town of Zihautenejo, in the State of Guerrero, where they lived. The Principal Applicant ran a blacksmithing workshop adjacent to his home; his wife ran a cybercafé/stationery shop. His sister ran a small store nearby. The Applicants claim that they are at risk in Mexico because the Principal Applicant had exposed the corruption of municipal government authorities and their collusion with the CJNG in videos he posted on social media. At some point after the Applicants made a refugee claim in Canada, the sister and her family relocated to Lazaro Cardenas, in the State of Michoacán.

[4] The Refugee Protection Division ["RPD"] rejected the Applicants' claims pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* ("IRPA") by written decision in March 2023. It found the determinative issue to be a viable internal flight alternative ["IFA"] to Mérida, Yucatán. The RPD determined that there was no nexus to a Convention ground and assessed the claim pursuant to subsection 97(1) of IRPA. More specifically, the RPD found that that the evidence did not establish motivation for the agents of persecution or harm, to pursue the Applicants from their home state of Guerrero, to Mérida, Yucatán, located over 1500 kilometres from their hometown. It found that the neighbour's demands, to close the Principal Applicant's shop and leave the area, were met. It also found that while the CJNG may have a

presence in Yucatán, the Applicants did not have direct issues with the CJNG, which were instead acting as enforcers for the neighbour. As there was no basis for continued conflict with the neighbour, it was not shown that the CJNG would have an interest in pursuing the Applicants in the IFA. The RPD noted that there was an absence of threats against the Applicant and family, following a single phone call in 2022, and this constituted further evidence that the CJNG and the other actors lacked motivation. The RPD further determined that it would not be objectively unreasonable for the Applicants to relocate to the proposed IFA location as it was not established that their life and safety would be in jeopardy.

[5] The RAD decision, which is the subject of this Judicial Review, dismissed the appeal and confirmed the decision of the RPD in August 2023. It found the determinative factor, pursuant to both sections 96 and 97(1) of the IRPA, to be a viable IFA to Mérida, Yucatán.

[6] The RAD also dealt with the admissibility of eight new documents pursuant to subsection 110(4) of IRPA and only accepted two paragraphs of one letter from the Principal Applicant's sister. At Judicial Review, the Applicants did not take issue with the rejection of the documents but argued that in light of the accepted new evidence; i.e., the two paragraphs of the sister's letter, the RAD's reasons are unreasonable. The admitted paragraphs read as follows:

> Currently I have not been able to sell my house, because If I sell it, I would have to go to the town, and I fear for my life since it is a small town and then they would notice my presence, in the case of the store was easier because I transferred my store and the guy who bought it didn't demanded paperwork from me, it was all in words.
>
> To this day, I have not been able to recover emotionally, psychologically, or financially, I am *aware of* everything that is around me, my youngest son cries that he misses his home and being all the family together, to date we cannot go out alone since everything scares us. And With the fear of being attacked and

> without knowing why so much hate against us, since we are hard-working people, dedicated to commerce.

II. Decision

[7] I dismiss the Applicant's judicial review application because I find the decision made by the RAD to be reasonable.

III. Standard of Review

[8] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 (CanLII), [2018] 3 FCR 75 [*Vavilov*]).

IV. Analysis

A. *Legal Framework*

[9] The two-prong test for an IFA is well established. An IFA is a place in an applicant's country of nationality where a party seeking protection (i.e., the refugee claimant) would not be at risk and to which it would not be unreasonable for them to relocate. This is viewed in the relevant sense and on the applicable standard, depending on whether the claim is made under sections 96 or 97 of the IRPA. –When there is a viable IFA, a claimant is not entitled to protection from another country. More specifically, to determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that:

a. the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "balance of probabilities" standard) in the proposed IFA; and

b. in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[10] Once IFA is raised as an issue, the onus is on the refugee claimant to prove that they do not have a viable IFA. This means that to counter the proposition that they have a viable IFA, the refugee claimant has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in light of the circumstances for them to relocate there. The burden for this second prong (reasonableness of IFA) is quite high as the Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*] has held that it requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); *Ranganathan*; and *Rivero Marin v Canada (Citizenship and Immigration)*, 2023 FC 1504 at para 8.

B. *1st Prong: Was the RAD's analysis in finding that the Applicants did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA in the IFA reasonable?*

[11] The Applicants argued that the RAD's finding of the IFA in Merida was largely based on a finding that CJNC lacked an ongoing interest or motivation to locate the Applicants. The

Applicants contend that the admitted parts of the sister's letter contradict this and establish that the Cartel remains motivated to locate the Applicants. The Applicants argue that in not fully engaging with the Sister's concerns, the RAD rendered an unintelligible decision. The Applicants rely on *Ambroise v Canada (Minister of Citizenship and Immigration)* 2021 FC 62 at para 6 and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) to conclude that while the RAD was not obligated to specifically deal with every argument, it needed to engage with contrary evidence to its conclusion to show a clear chain of reasoning.

[12] I disagree with the Applicant's characterization of the evidence, and I find that their reliance on the above jurisprudence is misplaced. In effect, they argue that the sister's statement that the family "cannot go out alone [in their new town in Michoacán] since everything scares us" should be taken as sufficient evidence of the CJNC's motivation to harm the Applicants in Merida. I agree with the Respondent that the sister's subjective state of mind, as credible as it might be, does not sufficiently establish that the CJNC remains motivated to pursue the Applicants in Merida. In fact, the RAD acknowledged that the sister did not feel safe in Zihautenejo, and that she felt the residual trauma of threats made against her (at para 26 of the RAD reasons). However, it was reasonable for the RAD to view this as insufficient evidence that the IFA in Merida is unsafe for the Applicants. I find that the Applicant has based its arguments on inferences unsupported by the evidence rather than the facts of this case.

[13] In effect, the Applicants are arguing that it was unreasonable for the RAD not to have linked the sister's subjective state of mind with an objective basis of whether the CJNC remained motivated to pursue the Applicants in a new city. I find that it was entirely reasonable for the

RAD to not have speculated and to have based its decision on assessing the evidence before it. It is not for this Court to reweigh the evidence differently.

[14] The RPD had found, and the RAD agreed, that the Applicants had provided sufficient evidence to establish that they were threatened by an arm of the CNJC in their hometown, and that the neighbour had corrupt ties to both the local government officials and to the CNJC. The RPD and the RAD also accepted that the Principal Applicant was attacked in his hometown in February 2022. While the sister's statement, that she feared to return to her hometown to sell her house, may have been relevant to ongoing risk in the hometown, it is irrelevant to the unavailability of IFA in Merida for the Applicants. In fact, by raising IFA as the determinative issue, both the RPD and the RAD have assumed that the Applicants' allegation about their fear in their hometown to be credible.

[15] The RAD analysed the relevant evidence and correctly concluded that the burden lies with the Applicants to show why Merida would not be safe, and that they had not discharged the burden. The sister's statement on her state of mind in her new city, or her continued fear in her hometown, would not render the IFA unsafe.

[16] I find that the RAD reasonably engaged with the new evidence it admitted. It engaged in an independent assessment of the complete record and made findings that followed a clear chain of reasoning. It applied the relevant evidence to the IFA test correctly (*Sadiq v Canada (MCI)* 2021 FC 430 at para 43).

[17] I find the RAD's analysis of the first prong of the IFA test to be reasonable.

C. *2nd Prong: Was it reasonable for the RAD to conclude that it would be reasonable for the Applicants, in their particular circumstances, to relocate to Merida?*

[18] The Applicants have not made any submission on the reasonableness of the second prong. I find that the RAD has analysed the evidence reasonably to conclude that it would be reasonable for the Applicants, in their particular circumstances, to relocate to Merida.

[19] The RAD reasons follow a clear chain of reasoning and are reasonable.

V. Conclusion

[20] The Application for Judicial Review is therefore dismissed.

[21] There is no question to be certified.

JUDGMENT IN IMM-10743-23

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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