Federal Court  Cour fédérale

Date: 20241025

Docket: IMM-13955-23

Citation: 2024 FC 1682

Toronto, Ontario, October 25, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ANDREA ESTEFANIA FUENTES HERNANDEZ
BRAYAN AMIR VAZQUEZ GARCIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by the Refugee Appeal Division (the "RAD"). The Decision affirmed the Refugee Protection Division's (the "RPD") finding that the Applicants are neither Convention refugees nor persons in need of

protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "*Act*").

[2] For the reasons set out below, this application for judicial review is dismissed.

II. Background

[3] The Principal Applicant, Andrea Estefania Fuentes Hernandez, and the Associate Applicant, Brayan Amir Vazquez Garcia, (together, the "Applicants") are common law spouses and citizens of Mexico. The Applicants came to Canada advancing a claim for protection based on being targeted by two different individuals (GH & GL), one alleged to have links to the 35-Z Cartel, and the other to have links to the Sinaloa Cartel.

[4] The Associate Applicant was tricked and trafficked to Canada for general labour by GH, and subsequently spoke out on social media and to friends about the fraud perpetrated against him and others by GH. The Principal Applicant was sexually assaulted in Canada by GL and was subsequently threatened by GL's family for pressing charges against GL. Criminal proceedings against GL were scheduled to continue on April 4, 2024 and April 8, 2024.

[5] The RPD rejected the claim on internal flight alternative ("IFA") grounds. On appeal, the RAD considered some of the Applicants' new evidence, but upheld the RPD's finding that the Applicants have a viable IFA and dismissed the appeal.

[6] On this application, the Applicants allege that the RAD breached procedural fairness by not allowing an extension of time for further submissions and unreasonably found that the Applicants have a viable IFA in Mexico.

III. The Decision

[7] The RAD dismissed the appeal and upheld the RPD's finding that the Applicants have a viable IFA.

[8] On appeal, the RAD allowed 4 of the 13 new documents submitted and dismissed the Applicants' request for an oral hearing. The RAD also refused to allow an extension of time for further submissions following disposition of GL's criminal charges. The RAD held that further evidence could be advanced under Rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257.

[9] The RAD agreed with the RPD's assessment of the IFA locations. The RAD found that it was reasonable for the Applicants to seek refuge in one of the IFA locations where there was not a serious possibility that the Applicants would be persecuted or face a risk of life. Like the RPD, the determinative finding was that the evidence did not show that the agents of harm had an interest or motivation to locate the Applicants. Without evidence of this interest or motivation, the RAD found that it was unlikely the Applicants faced a risk of harm.

[10] The RAD also found that none of the issues raised by the Applicants indicated that they would face issues that jeopardize their lives or safety in the proposed IFA locations. Specifically, the RAD found the evidence insufficient to meet the high threshold required to refute a viable IFA

with respect to the lack of mental health care available for the Applicants, the lack of childcare available for their daughter in the IFA locations in Mexico, and the gender-related issues and generalized violence in Mexico.

IV. Issues

[11] The two issues are:

A. Did the RAD breach procedural fairness by refusing to allow for an extension of time for further submissions?

B. Was the Decision reasonable?

V. Analysis

[12] The standard of review with respect to the RAD's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). The standard of review with respect to the Applicants' procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

A. *There was no breach of procedural fairness*

[13] The duty of procedural fairness requires that a party have an adequate opportunity to know and meet the case against them, as well as the ability to fully present their evidence and argument (*Vavilov* at para 127).

[14] The Applicants assert that the RAD erred by refusing to allow an extension of time for further submissions following disposition of the Principal Applicant's agent of harm, GL's criminal charges. The RAD noted that no information had been provided to explain how the outcome of GL's court case would have impacted the appeal before the RAD, and informed the Applicants that the new evidence could be submitted by way of a Rule 29 submission (*Refugee Appeal Division Rules* (SOR/2012-257)). The Applicants chose not to submit evidence by way of Rule 29, despite having more than three months to do so.

[15] The Applicants further submit that because the issue of motive is dependent on a large part on the outcome of the criminal proceedings against GL, the proper remedy is to wait until the conclusion of the criminal proceedings against GL. The Applicants say that motive is relevant because GL would want to seek revenge for being put through a criminal proceeding, and if convicted, for the consequences of those convictions. However, the Applicants also state in their memorandum that "the actual results are not required to make a determination that GL would be highly motivated to seek revenge for putting him through a criminal process".

[16] On review of the Applicants submissions, summarized above, I note that the Applicants still have not rectified the issue raised by the RAD, namely that "no information has been provided

to explain how the outcome of the GL's court case would have an impact on the RPD decision under appeal." While the Applicants refer to the issue of motive, the RPD acknowledged the issue of motive in its decision when it stated, "it is clear that [GL] has a strong motivation to harm you as [the Principal Applicant] is pursuing criminal charges against [GL]." Accordingly, I find that the RAD did not err in refusing the extension of time on the basis of a lack of supporting evidence and their speculative nature.

[17] The Applicants have not shown how this refusal was unfair or how they were unable to know and meet the case against them. The RAD provided the Applicants with an opportunity to present their evidence, and they chose not to.

[18] There was no procedural unfairness.

B. *The Decision was reasonable*

[19] The Applicants argue that the RAD made several unreasonable findings in coming to the conclusion that the Applicants had a viable IFA in Mexico. To support this argument, the Applicants reiterate the evidence before the RPD and the RAD, and point to the new evidence submitted to the RAD, which speaks to the general circumstances ongoing in Mexico.

[20] There is a two-stage test for determining whether a claim for protection under either section 96 or 97 of the *Act* should be rejected because the claimant has a viable IFA: (1) is there somewhere in the country of nationality where the claimant would not be at risk of persecution, a risk to life, torture, cruel and unusual treatment or punishment?; and (2) if so, would it be reasonable, upon a

consideration of all the circumstances, for the claimant to relocate there? (*Aigbe v Canada (Citizenship and Immigration)*, 2020 FC 895 at para 9; *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, at 710). The Applicants assert that the RAD erred in assessing both prongs.

[21] On the first prong, the RAD found that the Applicants did not face a serious possibility of persecution or likelihood of harm in Matamoros, Santiago de Queretaro, and Merida. The RAD concluded that the agents of harm are not motivated to locate the Applicants based on the following:

A. the evidence demonstrated that the agents of harm had not tried to contact or threaten the Applicants or their family in over a year, despite both agents of harm and the Applicants living in Canada;

B. there was insufficient evidence linking either agent of harm, GH and GL, to the alleged cartels, 35-Z Cartel and the Sinaloa Cartel, respectively, such that they would have influence with cartels to locate the Applicants;

C. the Applicants' assertions of a break-in at the Principal Applicant's mother's house was speculative and insufficient to conclude the individuals were connected to GL or the Sinaloa Cartel; and

D. the sexual assault conviction increasing the risk was speculative and the evidence was insufficient to assess the outcome of the proceeding.

[22] The Applicants submit that the agents of harm know where the Applicants are and so there is no motivation to locate them. Even if it is true that the agents of harm know where the Applicants are, the issue is not the *ability* to locate an individual but the *desire* to find, pursue and/or persecute the Applicants. As this Court has held, "if the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution" (*Leon v Canada (Citizenship and Immigration),* 2020 FC 428 [*Leon*] at para 13).

[23] Additionally, the Applicants assert that the RAD erred by dismissing the alleged connection between each agent of harm and the respective cartel as being based on hearsay. The only evidence provided to demonstrate a connection was in the Principal Applicant's affidavit reciting statements that were made by GL and third parties alleging familial relations linking GL to the Sinaloa Cartel and GH to the 35-Z Cartel, respectively. While it is presumed that the Principle Applicant's statements are true, she does not have any direct knowledge of any actual association or the level of influence either GH or GL would have in the cartels. Absent any corroborative evidence associating GH or GL to their respective alleged cartel, the conclusion was open to the RAD to find this evidence was insufficient to establish a connection between GL and the Sinaloa Cartel and GH and the 35-Z Cartel (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at pars 25-26).

[24] Based on the evidence before it, the RAD's finding of a lack of motivation was reasonable. The Applicants assert that a no-contact order prevents GL from contacting the Applicants. However, I do not find this sufficient to overcome the absence of any contact or interest since

December 2019 from GL, his family, or alleged cartel associates, given that the only threats made were from GL's wife and sister, not GL himself, a few days after GL was charged with sexual assault. This conclusion is consistent with this Court's jurisprudence which has held that the absence of evidence of threats or contact is an element that can reasonably support a finding of a lack of ongoing interest in pursuing the applicant and therefore a finding of an IFA (*Leon* at paras 13, 16; *Ortiz Ortiz v Canada (Citizenship and Immigration),* 2022 FC 1066 at para 26).

[25] I do not find the Applicants' explanations and evidence sufficient to overcome the RAD's findings on the first prong of the test. The Applicants simply assert that the RAD's reasoning is illogical, but fail to show how it is illogical based on the evidence. The Applicants' arguments amount to a disagreement with the RAD's weighing and assessment of the evidence. This is not the function of a Court on judicial review (*Photskhverashvili v Canada (Citizenship and Immigration)*, 2019 FC 415 at para 30, citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[26] On the second prong, the RAD concluded that it would not be objectively unreasonable for the Applicants to relocate to one of the IFAs. The RAD found that the circumstances outlined by the Applicants, including the mental health challenges faced by the Principal Applicant, the lack of childcare for their daughter, and the generalized gender violence in Mexico was insufficient to meet the high threshold required in the second prong.

[27] To counter the proposition that they have a viable IFA at the second prong, a party seeking protection has a high 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 all the circumstances for them to relocate there (*Bashir v Canada (Citizenship and Immigration)*, 2022 FC 1441 at para 13). The Court of Appeal has described this threshold burden as "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" (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] FCR 164 at para 15).

[28] The RAD's assessment of each of the circumstances raised was reasonable. While the RAD accepted that that Principal Applicant would face mental health challenges, absent a mental health assessment record, the RAD was unable to determine how the challenges would render the IFA unreasonable, particularly since mental health services were found to be available in the IFA locations. On the issue of childcare, the RAD found that the Applicants' daughter resides with the Principal Applicant's mother and sister in one of the IFA locations, and found that the Applicants would be able to financially support themselves and their daughter upon return to Mexico. Lastly, on the gender-related issues and the generalized violence in Mexico, the RAD found the arguments involved generalized risk and not risk based on the Applicants' particular circumstances. Thus, the Applicants failed to distinguish themselves as being more likely than not to be the victims of generalized violence and render the proposed IFA locations unreasonable.

[29] In reaching my decision, I acknowledge and sympathize with the Applicants and the terrible events they have endured. However, this Court is not to substitute its view of the evidence or reweigh the evidence, but rather show deference to the RAD's assessment of the issues and its

determination. The conclusion that the identified IFAs were reasonable was open to the RAD and it was reached on reasonable grounds.

VI. Conclusion

[30] For the reasons stated above, the Decision is both reasonable and procedurally fair and this application for judicial review is dismissed.

JUDGMENT in IMM-13955-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-13955-23
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