Federal Court  Cour fédérale

Date: 20241024

Docket: IMM-11655-23

Citation: 2024 FC 1688

Ottawa, Ontario, October 24, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Mario Francisco MARTINEZ GUZMAN
Melissa JAIME GARCIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant Mario Francisco Martinez Guzman, and his common-law partner, the Associate Applicant Melissa Jaime Garcia, are citizens of Mexico. Melissa also is a citizen of the United States of America.

[2] The Applicants fled from Mexico to Canada where they later claimed refugee protection. They fear the Cartel Jalisco Nueva Generacion [CJNG] based on their interactions with a former neighbour in Mexico who, they assert, was a corrupt police officer in league with the CJNG. Melissa also claims discrimination amounting to persecution in the United States because of her Mexican heritage, and fear based on the risk of being located in the United States by the CJNG.

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected their claims, determining that the Principal Applicant has an internal flight alternative in Mérida, Yucatán. The RPD also found that the Associate Applicant was excluded from protection by reason of article 1E of the *United Nations Convention on the Status of Refugees* and that she failed to establish an objective basis for harm in the United States.

[4] Finding the RPD analysis confusing and article 1E inapplicable, the Refugee Appeal Division [RAD] of the IRB nonetheless determined the RPD was correct to find that the Associate Applicant lacks an objective basis for her fear in the United States, and that the Principal Applicant has a valid internal flight alternative [IFA] in Mérida. The RAD thus dismissed their appeal accordingly [Decision].

[5] The Applicants seek to have the Decision set aside. They argue that the RAD's findings were unreasonable in two respects – first, that the Associate Applicant failed to establish an objective basis of harm in the United States and, second, that the Principal Applicant has a viable IFA in Mérida.

[6] The Respondent argues to the contrary that the RAD's findings were reasonable.

[7] The RAD's reasons, in my view, permit the Court to understand the RAD's rationale for its determinations. In other words, the Decision is justified, transparent and intelligible. For the more detailed reasons below, the judicial review application will be dismissed.

II. Analysis

A. *The RAD's finding of no objective basis of harm in the United States is not unreasonable*

[8] In my view, the Applicants have not met their burden of showing that the Decision is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*] at para 100.

[9] The parties agree, as do I, that the presumptive review standard of reasonableness applies to the matter presently before the Court. A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Vavilov,* above at paras 10, 25, 99.

[10] The established test for a fear of persecution has two parts – a subjective fear of return to a claimant's home country, and a fear that is well-founded in the objective sense: *Canada (Attorney General) v Ward,* 1993 CanLII 105 (SCC).

[11] The Applicants argue that the RAD did not consider the Associate Applicant's specific circumstances to the extent required in assessing her fear of persecution. The Applicants say that subjective fear shapes an objective basis of the fear of persecution: *Chan v Canada (Minister of Employment and Immigration)*, 1995 CanLII 71 (SCC) [*Chan*] at para 128.

[12] The Supreme Court of Canada guides, however, that a refugee claimant bears the evidentiary burden of establishing "not only that the fear existed in the mind of the claimant but also that is was objectively well-founded." What shapes the objective component of the test is "an examination of the 'objective situation' …, in the applicant's country of origin and the laws in that country together with the manner in which they are applied": *Chan*, above at paras 133-134.

[13] I am not persuaded that the RAD misapprehended the evidence before it. As the Applicants acknowledge (at paragraph 21 of their Further Memorandum of Argument), the RAD member accepted that inequality exists in the United States and Hispanic women experience increased barriers to reproductive healthcare access, interactions with law enforcement, discrimination in employment with increased wage gaps, and increased poverty.

[14] The Applicants take issue with the RAD member's statement that the Associate Applicant could live and work freely in the United States which the NDP evidence strongly supports. I note the RAD also found, after consulting the sources in the NDP outlining human rights problems in the United States, that none suggests people of the Associate Applicant's profile face cumulative risks that would amount to the seriousness of persecution.

[15] The RAD next considered the Applicants' evidence about CJNG involvement in the Associate Applicant's asserted risk, including in the United States, and found the evidence "extremely thin" (which also bears on the IFA issue). In particular, the RAD observed that the country condition information for the United States shows that the CJNG has connections there related to the drug trade, but that there is no evidence that the risk extends to searches for people outside the drug trade. In my view, the RAD cogently and reasonably explained why it concluded there is no objective risk of harm to the Associate Applicant in the United States. That the RAD could have drawn other inferences from the evidence does not make the inferences the RAD drew unreasonable: *Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at para 43.

[16] I find that, on a holistic reading, the Decision is transparent, intelligible and justified regarding the RAD's reasoning and conclusion that there is no objective basis for the Associate Applicant's fear of persecution in the United States. The Applicants' submissions on this issue are essentially a request to reweigh the evidence considered by the RAD. This is not the role of a reviewing court on judicial review: *Vavilov*, above at para 125.

B. *The RAD's finding of a viable IFA in Mérida is not unreasonable*

[17] The Applicants also have not persuaded me that the RAD's IFA finding is unreasonable.

[18] The test for a viable IFA is two-pronged. First, the RAD must be satisfied on a balance of probabilities that there is no serious risk of the claimant being persecuted, or subjected personally to a risk to life or cruel or unusual treatment or punishment or danger, in the IFA.

Second, the conditions in the IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claimant, to seek refuge there.

[19] It is the Applicants' burden to demonstrate both parts of the IFA test from *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), namely, that there was a serious possibility of persecution in the proposed IFA location, and that it would be objectively unreasonable for them to seek refuge there.

[20] Further, an IFA assessment requires that "[a]n applicant must provide actual and concrete evidence of conditions that would jeopardize his or her life or safety in the location proposed": *Ma v Canada (Citizenship and Immigration)*, 2023 FC 1340 at para 25. This Court has noted, in the context of an IFA analysis, that the IRB is not required to accept every assertion made by an applicant simply because it finds them to be generally credible: *Jimenez v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1225 at para 15.

[21] Bearing these principles in mind, I find that the Applicants' submission about the first prong of the test (i.e. the CJNG's motivation), that the RAD placed too much emphasis on the words of the threat made by their former neighbour (whom they assert is a corrupt police officer in league with the CJNG) to be, in effect, a request to reweigh the evidence.

[22] The Applicants state that the neighbour threatened they would face consequences if they were found lying about someone who stayed with them and is accused of stealing merchandise belonging to the neighbour. The Applicants submit there was no indication from their neighbour

that this would be the only circumstance that the agents of harm would seek out the Applicants. I find these submissions not only speculative but also an example of an alternative inference the Applicants submit the RAD could have drawn from their evidence. As I found above, however, this does not make the IFA analysis unreasonable.

[23] In my view, the RAD also reasonably found that the absence of any contact between the CJNG and the Applicants' family grounded a lack of motivation to locate them elsewhere in Mexico. While absence of contact is not always in itself determinative, as held in *Canifru Candia v Canada (Citizenship and Immigration)*, 2024 FC 917 at paras 20-21, the RAD here explained cogently why the constellation of evidence does not point to a likelihood of risk, on a balance of probabilities. This included a very long passage of time, the contingent nature of the threat, and a rumour from an unknown source as the basis for the theory of the CJNG's involvement.

[24] Regarding the Applicants' submissions about the second prong of the IFA test, the Applicants similarly have not persuaded me that the RAD's findings about Mérida as an objectively reasonable IFA for the Principal Applicant are unreasonable. As the Federal Court of Appeal teaches, "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to" the area where a potential IFA has been identified will make that IFA objectively unreasonable: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA) at para 15.

[25] In my view, the RAD reasonably considered the Applicants' age, work history, adaptability, and linguistic compatibility with the proposed IFA. It found that because the CJNG was not motivated to find the Applicants, they would not have to live under constant threat of being discovered, contrary to the Applicants' submissions.

[26] Justice Tsimberis recently canvassed reasons why an IFA could fail at the second prong of the IFA test. These include a mismatch between a claimant's religion or language, and the majority of the proposed IFA, as well as personal factors such as education, language, employment, housing, medical and mental health care, and indigeneship: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1758 [*Singh*] at para 36. Justice Tsimberis also considered the argument that the applicants in *Singh* (at para 38) would have to live in hiding and isolation, and found that absent "concrete evidence of such unreasonable conditions, it was open for the RAD to conclude that the Applicants had not met their burden with respect to the second prong of the IFA test."

[27] Applying these principles, it was open to the RAD here, in my view, to make the findings it did.

[28] The Applicants argued at the judicial review hearing that the RAD did not assess the risk of harm in respect of their unborn child. While I do not disagree, I note that the issue was not raised before the RAD nor, for that matter, in the Applicants' Further Memorandum of Argument before this Court. It is inappropriate and prejudicial to the Respondent to raise the issue for the first time in oral submissions at the judicial review hearing. (The same can be said about the

Applicants' submissions regarding a support letter from a cousin.) The Court does not countenance "litigation by ambush."

[29] Leaving the above determination aside for the moment, and looking at what transpired on this issue before the RPD as disclosed by the transcript, I observe that the RPD member asked the Associate Applicant an open-ended question about whether she had anything to add to her husband's testimony. She answered that she always has been afraid of the CJNG and now they fear for their lives, including the child on the way. She stated that is why she is never out alone by herself.

[30] In my view, the Applicants' submission at the judicial review hearing to the effect that the Associate Applicant's testimony means she cannot work in Mérida is an unsupported inference the Applicants urge the Court to make. More significantly, the Applicants have not pointed to any evidence before the RPD or the RAD that the unborn child itself would be at risk of harm in Mérida or the United States: *Hamzai v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1108 at para 33.

[31] I am not convinced, contrary to the Applicants' oral submissions, that the member needed to ask anything else. The Applicants' counsel had the opportunity at the end of the RPD hearing to ask questions of the Applicants (before making submissions after the recess) and only asked questions of the Principal Applicant, none of them on this issue.

[32] The Applicants have not provided any persuasive reasons about whether this Court can or should consider the issue further.

III. Conclusion

[33] For the above reasons, the judicial review application will be dismissed.

[34] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-11655-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11655-23
STYLE OF CAUSE:	MARIO FRANCISCO MARTINEZ GUZMAN, MELISSA JAIME GARCIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 9, 2024
JUDGMENT AND REASONS:	FUHRER J.
DATED:	OCTOBER 24, 2024

APPEARANCES:

Vaishalei Manoharan	FOR THE APPLICANTS
Zofia Rogowska	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Anwari Law Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT