

Federal Court



Cour fédérale

**Date: 20180928**

**Docket: IMM-500-18**

**Citation: 2018 FC 967**

**Ottawa, Ontario, September 28, 2018**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**JUAN CARLOS MADRIGAL RAMIREZ,  
JIHAN CAMPILLO BARRIOS, AND  
CARLOS MADRIGAL CAMPILLO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This application to review and set aside the decision of the Refugee Appeal Division [RAD] is allowed for the following reasons.

[2] Mr. Madrigal Ramirez [Juan] is a Mexican citizen who lived in Veracruz State, Mexico, prior to coming to Canada. In January 2017, he was kidnapped from his mechanic shop by

members of the criminal organization Los Zetas. During the kidnapping the police intervened, killing one kidnapper and arresting two others. Juan made a statement to police. Shortly after this he and his family received threatening phone calls and texts from persons they believe to be members of Los Zetas. The Police have since released the kidnappers, apparently as a result of a bribe from Los Zetas.

[3] Juan and his family applied for refugee protection in Canada, The Refugee Protection Division [RPD] rejected their claims finding that they were not persons in need of protection because state protection has been and would be available to them and they had a viable internal flight alternative in Cancun, Mexico.

[4] With respect to the availability of state protection, the RPD relied on its finding that the agents of persecution were "thugs" and not Los Zetas. On appeal, the RAD, based on new evidence, accepted that the agents of persecution were Los Zetas and directed its inquiry to whether there was an internal flight alternative [IFA] for this family in Cancun, Mexico.

[5] The finding of the RAD at paragraph 31 of its reasons upholding the RPD decision is the following: "As the Zetas are not in Cancun, there is no issue with state protection against the Zetas."

[6] In reaching this conclusion the RAD canvassed the National Documentation Package and it relied heavily on Report 7.7: Mexico, Organized Crime and Drug Trafficking Organizations prepared by the Congressional Research Service [the Report].

[7] From the Report, the RAD summarized that Los Zetas has its base of operations in Veracruz State, and that while it had once been very powerful, it is now less so. The RAD then noted that Cancun is in the state of Quintana Roo and Los Zetas are not known to be operating there. Further, it found that Quintana Roo is the "home base" of the Gulf Cartel and stated that these two are in violent conflict for control over the North-Eastern Mexican states:

This bitter rivalry between the Zetas and the Gulf DTO [drug trafficking organization] tells me that there is less than a mere possibility that the Zetas would venture into Gulf territory for no other reason than to hunt down or harm these Appellants. It would certainly be unlikely that the Gulf DTO would co-operate with the Zetas in any way to expose the Appellants to any danger from the Zetas.

[8] The sole issue in this application is the reasonableness of the RAD finding that Cancun offered a viable IFA from Los Zetas for this family.

[9] I agree with the Applicants that the RAD decision regarding an IFA is based on the following four suspect premises:

1. Los Zetas are based in Veracruz;
2. Cancun is the home base of the Gulf Cartel;
3. The Gulf Cartel and Los Zetas are struggling for control over North Eastern Mexico; and
4. Neither will cross over into the other's territory.

[10] As to the first premise, pages 17 to 19 of the Report provide a summary of Los Zetas. There is no reference in that section or elsewhere in the Report to the home base of Los Zetas. In fact, the map provided at page 11 of the Report shows that the Cartel Jalisco Nueva Generación

also holds territory in the State of Veracruz, including the region around the city of Veracruz. I also agree with the Applicants that little turns on this mistake on the part of the RAD.

[11] As to the second premise, the Report does not state that Cancun is the home base of the Gulf Cartel. In fact, at page 16 of the Report it states that it is based in the city of Matamoros, Tamaulipas, which borders on the United States of America. It appears from map in the Report to be more than 2000 kilometers from Cancun. More importantly, while that map shows that the Gulf Cartel has a dominant presence in the state of Quintana Roo, wherein lies Cancun, it shows that Cancun itself has a significant or increasing presence of the Sinaloa Cartel, not the Gulf Cartel. It appears that the RAD simply misread the map.

[12] As to the third premise, the Report at page 16 does indicate that the Gulf and Los Zetas are battling for control of areas of Mexico in the north-east.

[13] As to the fourth premise, I can find no support in the Report that members of the Gulf Cartel and Los Zetas will not cross into the other's territory. Read as a whole, the Report illustrates the fluidity of these criminal organizations and their intense, often fatal, rivalry. As such, the finding that Los Zetas would not cross Gulf territory to reach Cancun is unsupported. It appears to be speculation on the part of the RAD member, and it is thus unreasonable.

[14] I agree with the Applicants that there is ample evidence in the record of the collusion of police and criminal organizations, including Los Zetas, and of the strength of Los Zetas. While

Los Zetas may be weakened from prior years, it cannot be said to be a weak organization that would be unable to track down and engaged with the Applicants if it wished to do so.

[15] The Respondent would have the Court do its own analysis of whether Cancun offers an IFA to this family based on the record and relies on the decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. With respect, the judgment of Justice Abella at paragraph 15 makes it clear that "courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome. Here, the Respondent is asking the Court to substitute its own reasons to support the conclusion reached by the RAD. That is not this Court's role.

[16] Neither party proposed that a question be certified.

**JUDGMENT IN IMM-500-18**

**THIS COURT'S JUDGMENT is that** the application is allowed, the matter is remitted back to the Refugee Appeal Division for determination by a different member, and no question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-500-18

**STYLE OF CAUSE:** JUAN CARLOS MADRIGAL RAMIREZ ET AL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 28, 2018

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** SEPTEMBER 28, 2018

**APPEARANCES:**

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