

Federal Court



Cour fédérale

**Date: 20200320**

**Docket: IMM-1969-19**

**Citation: 2020 FC 396**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, March 20, 2020**

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

**BETWEEN:**

**JORGE LUIS ANAYA MORENO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] The applicant seeks judicial review of a decision by the Refugee Appeal Division (RAD) confirming the decision of the Refugee Protection Division (RPD), according to which the applicant is not a Convention refugee or a person in need of protection under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act). That decision was based on

the finding that the applicant had a viable internal flight alternative (IFA) in his country of citizenship.

[2] The applicant alleges that the RAD's decision ignores several pieces of documentary evidence in the record. The respondent maintains that the RAD considered all of the evidence and made a reasonable decision with regard to the IFA.

[3] I agree with the respondent. The application is dismissed.

## II. Facts

[4] The applicant is a citizen of Mexico. He is a mechanic and owns a garage in Isla in the state of Veracruz, Mexico.

[5] The applicant claims that as a result of a series of threats, he is afraid to return to his country because he would be the target of extortion by the Los Zetas cartel (the Zetas).

[6] In April 2009, members of the Zetas approached the applicant to demand a weekly payment of 5,000 pesos (approximately \$310) as protection insurance. They threatened to kidnap the applicant's wife and to seize a truck belonging to one of his clients. Since he could not afford to pay this amount, the applicant decided to close his business and leave Isla.

[7] The applicant then moved to Coatzacoalcos and found employment in the construction industry with the ASMA company. In 2012, individuals representing the Zetas showed up at his workplace, but they were looking for the applicant's boss, not the applicant.

[8] In April 2016, the applicant received a threatening phone call, again demanding payment of 5,000 pesos. The applicant did not make any payment. After this call, he changed his telephone number and filed a complaint with the police. No action was taken on the complaint.

[9] In May 2017, the applicant received a threatening phone call from a member of the Zetas telling him to meet at a nearby shop. The applicant hung up and decided not to go to the meeting.

[10] The applicant and his family moved out of Coatzacoalcos to his wife's family farm in the Veracruz area.

[11] Eventually, the applicant decided to leave Mexico on June 11, 2017, to claim refugee protection in Canada. In the statement attached to his refugee protection claim form, he recounted the series of threatening incidents (from April 2009 to May 2017) and stated that he was afraid of being found by the Zetas if he returned to Mexico.

[12] The RPD stated that the determinative issue before it was the existence of a viable IFA, and proposed the cities of Cancun and Guadalajara as possibilities. Given the documents submitted by the applicant regarding the recent presence of the Zetas in the area around Cancun in January 2017, the RPD focused its analysis solely on Guadalajara as a potential IFA.

[13] With respect to the documents submitted by the applicant showing Zetas activity in the area around Guadalajara, the RPD noted that these were from 2011 and 2012, and that more recent documents in the National Documentation Package (NDP) regarding the presence and activity of the Zetas indicated that they were no longer seriously active in Guadalajara.

[14] On August 27, 2017, the RPD rejected the applicant's refugee protection claim. It found that:

- i. there was no nexus between the applicant's allegations of risk and a Convention ground. In fact, no submissions were made with respect to an application under section 96 of the IRPA. Therefore, the applicant's claim was analyzed only under subsection 97(1) of the IRPA;
- ii. the applicant's accounts of extortion by the Zetas were credible;
- iii. the applicant had an IFA in Mexico in the city of Guadalajara;
- iv. the applicant's profile would not lead the Zetas to seek him out in Guadalajara;
- v. the fact that the Zetas have not contacted his family since he left Mexico demonstrates that they would not try to locate or attack the applicant in Guadalajara.

[15] The RPD noted that the documents and reports submitted by the applicant to show Zetas activity in Guadalajara had occurred in 2011 and 2012. Based on the evidence and testimony on

file, the RPD found that the documents did not show a current or relatively recent presence of the Zetas in Guadalajara, and that the more recent NDP documents indicated that the Zetas are not, on a balance of probabilities, currently present in Guadalajara. The RPD found that the documents provided with respect to the Zetas in Guadalajara were outdated in terms of the evolving drug cartel situation in Mexico, and as such do not indicate a prospective risk under subsection 97(1) of the IRPA.

[16] The applicant appealed this decision to the RAD, where he argued that the RPD erred in its assessment of the IFA and failed to consider all the evidence in the record.

### III. Decision

[17] In a decision dated February 11, 2019, the RAD upheld the decision of the RPD. The analysis of the IFA was the only determinative issue.

[18] In essence, the RAD found that the Zetas had no interest in pursuing the applicant given that he was a simple wage earner and that the Zetas had never questioned his wife, who still lives in Mexico.

[19] The RAD found that if the applicant were truly wanted by the Zetas, the first persons targeted would be his wife, his children and his in-laws, who still lived in Isla, Veracruz. The applicant stated, however, that his family had not had any problems or difficulties with the Zetas since his departure from Mexico in 2017.

[20] Moreover, the RAD accepted the applicant's testimony that there was nothing to prevent him from settling in Guadalajara.

#### IV. Issues

[21] The applicant claims that this case raises constitutional issues in that his removal to Mexico to face certain death is a violation of his constitutional rights. As far as I can tell, this constitutional argument is premature. My decision, one way or the other, will not involve an order for the applicant's removal to Mexico. That issue is for another day (*Celestin v Canada (Citizenship and Immigration)*, 2020 FC 97 at paras 127–128). My role is simply to determine whether there are grounds to believe that the RAD's decision was unreasonable.

[22] There is no issue of credibility in this case. The sole issue is whether the RAD made a reviewable error in its analysis pertaining to the IFA.

#### V. Standard of review

[23] The parties agree that the RAD decision is subject to the standard of reasonableness. I agree. In this case, none of the situations justifying derogation from the presumption of reasonableness apply (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 17, 23 [*Vavilov*]).

## VI. Analysis

[24] The IFA has been defined as “a fact situation in which a person may be in danger of persecution in one part of a country but not in another” (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at paras 592–593, 109 DLR (4th) 682 at para 2 [*Thirunavukkarasu* with referenced to DLR]). Since the existence of an IFA in another part of the same country is a determinative factor in the decision on refugee status, the burden is on the refugee claimant to establish that he faces a serious risk of persecution anywhere in the country (*Thirunavukkarasu* at paras 2 and 6; *Hamid v Canada (Citizenship and Immigration)*, 2020 FC 145 at para 46).

[25] The applicant challenges the RAD’s finding that a viable IFA is available in Mexico. He contends that the RAD ignored the evidence in the record, relying instead on speculation. In particular, he believes that the evidence in the NDP demonstrates that Mexico does not provide state protection against cartels and that the Zetas are fighting for control of Guadalajara. He relies on three documents in particular.

[26] In addition, the applicant points out that the Zetas remain a significant risk for him, pointing out that his family was threatened in Mexico.

[27] As noted by Justice Boswell in *Castillo Garcia v Canada (Citizenship and Immigration)*, 2019 FC 347 at para 26 [*Castillo Garcia*]:

To find an IFA, the RAD must be satisfied, on a balance of probabilities, that: (1) there is no serious possibility of an appellant being persecuted in the

IFA; and (2) in all the circumstances – including circumstances particular to an appellant – conditions in the IFA are such that it would not be unreasonable to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, at para 13, 140 NR 138).

[28] In this case, the RAD found that the RPD had not erred in its analysis of the IFA.

[29] The RAD referred in its analysis to the two-pronged test for determining an IFA in accordance with *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 [*Rasaratnam*] and *Thirunavukkarasu*.

[30] For the first prong, the RAD must be satisfied, on a balance of probabilities, that there is no serious risk of the refugee claimant being persecuted in the part of the country to which an internal flight alternative exists. For the second prong, the RAD must establish that conditions in the part of the country where there is an internal flight alternative are such that it would not be objectively unreasonable, in all of the circumstances, for the claimant to seek refuge there.

[31] With respect to the first part of the analysis, the RAD came to the same conclusion as the RPD— i.e. that the evidence shows that the applicant was the victim of attempted financial extortion in Coatzacoalcos, but that the Zetas have no interest in hunting him down in a city like Guadalajara. The RAD noted that the applicant testified that his wife, who lives in Mexico, has not been questioned or threatened since his departure in 2017.



[32] Like the RPD, the RAD found that the evidence as a whole does not demonstrate that the Zetas are interested in locating the applicant or that they are active in Guadalajara. It notes that in its analysis, the RPD cited three documents in the NDP in addition to six documents submitted by the applicant, including a map showing the area controlled by the Zetas. The RAD therefore did indeed rely on documentary evidence.

[33] The applicant submits that the documentary evidence was filled with articles and reports regarding the strength, activities and areas of operation of the various cartels, all of which were ignored by the RPD and the RAD.

[34] I do not agree with the applicant.

[35] Neither the RPD nor the RAD denied the danger posed by the cartels in Mexico, particularly the Zetas. However, the issue was whether the risks posed by the Zetas were specific to the applicant, as opposed to a generalized risk of criminality, and whether the city of Guadalajara was a safe and reasonable IFA.

[36] The applicant asserts that the documentary evidence confirmed that Guadalajara was not a viable IFA and that to say otherwise is pure conjecture. However, from what I see, while it is clear that the Zetas remain a significant source of criminality in Mexico, the evidence in the record is not sufficient to render the RAD's decision unreasonable.

[37] The first document is a U.S. government report entitled *Mexico: Organized Crime and Drug Trafficking Organizations*. It contains a map indicating that Guadalajara is within the region of influence of the Tierra Caliente cartel, but not that of the Tamaulipas cartel (which includes the Zetas). The map shows that the Tamaulipas cartel's territory is a few kilometres from Guadalajara.

[38] The document does not precisely indicate the region of influence of the Zetas, however, and makes no mention of their activities in Guadalajara. Furthermore, the document states that the Zetas are no longer a dominant force in Mexico and that they are less powerful than they were in 2011.

[39] I believe it is reasonable to conclude that this evidence does not establish that the Zetas pose a risk in the city of Guadalajara.

[40] The second NDP document is a response to requests for information and is entitled "Mexico: The use of government databases by third parties to locate persons; privacy issues; security of information about witnesses in the witness protection program (2008-September 2011)." This document details existing privacy protections in Mexico.

[41] I fail to understand how this document calls into question the reasonableness of the RAD's decision.

[42] The third document is not found in the NDP version (the one dated March 31, 2017) that was before the RPD. Indeed, the document entitled “Mexico: Criminality, including organized crime; state response, including effectiveness; protection available to victims, including witness protection (2015–July 2017)” (dated August 21, 2017) was published in a version of the NDP subsequent to the one that was before the RPD, and is not part of the Certified Tribunal Record.

[43] This is problematic, given that the applicant is attempting to bring to the court’s attention facts that were not presented to the RPD and the RAD (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19). In any event, this document does not assist the applicant’s case, given that it describes the general situation of organized crime in Mexico and makes no mention of Guadalajara or Zetas activity in the region of Guadalajara (the state of Jalisco). Rather, this evidence focuses on general criminality in that country, which is insufficient to establish a risk associated with a cartel in a specific region of the country (*Homaira v Canada (Citizenship and Immigration)*, 2019 FC 1197 at paras 37–39).

[44] The applicant submitted a more recent map to me indicating that the Zetas were indeed present in Guadalajara. This map does not predate the review conducted by the RPD or the RAD. That said, even if the Zetas do have some presence in Guadalajara, it does not necessarily follow that the applicant remains a target of the Zetas today, after so many years, or that the conclusions of the RPD and the RAD regarding the viability of Guadalajara as an IFA are unreasonable.

[45] In short, the applicant has failed to convince me that this evidence calls into question the reasonableness of the decision. This court's role is not one of "reweighing and reassessing the evidence considered" by the RAD (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 64). It appears that the RAD considered the evidence and made a reasonable decision (*Vavilov* at para 126).

[46] With respect to the second prong of the test set out in *Rasaratnam and Thirunavukkarasu*, the applicant's written submission did not challenge this aspect of the RAD analysis. That said, counsel for the applicant indicated before me that the applicant is challenging both parts of the *Rasaratnam and Thirunavukkarasu* test for IFAs.

[47] However, no argument was made with respect to the second part of the test. In fact, the applicant confirmed before the RPD that nothing prevented him from settling in Guadalajara other than the risk associated with his fear of persecution by the cartel. Accordingly, I find that the RAD's conclusion on the second part of the *Rasaratnam and Thirunavukkarasu* test is reasonable.

[48] The applicant relies on *Vigueras Avila v Canada (Citizenship and Immigration)*, 2006 FC 359, to argue that a decision is unreasonable if the decision maker did not analyze the specific aspects of the applicant's situation. I agree with the conclusions of that decision, but I believe that in this case there is no evidence that the RPD and the RAD failed to do so.

[49] The applicant relies on a series of decisions, including *Lopez Villicana v Canada (Citizenship and Immigration)*, 2009 FC 1205, on the issue of how far the presumption of state protection can be extended.

[50] However, the existence or absence of state protection is not an issue in this case, given the RAD's findings as to the viability of Guadalajara as an IFA and the fact that the evidence shows, on a balance of probabilities, that there is no future risk to the claimant should he return to Mexico.

[51] The applicant invokes *Romero Quiroz v Canada (Citizenship and Immigration)*, 2011 FC 864. That decision supports the proposition that it is often difficult to have a viable IFA where the agents of persecution not only show a continuing interest in pursuing the claimant, but also have family members in the justice system who can locate a claimant in any city in the country. However, such is not the case here.

[52] Here, the evidence shows that the applicant never paid any money as a result of the extortion threats and that whenever he was approached or received calls demanding that he pay a particular amount, he moved away. Things would calm down until the unfortunate Mexican reality asserted itself and he was again threatened by a group trying to extort money from him.

[53] I see nothing unreasonable in the conclusion that such a pattern is more consistent with a risk associated with general criminality than with the targeted and personalized danger of torture

or risk to life, or risk of cruel and unusual treatment or punishment referred to in subsection 97(1) of the IRPA.

[54] The applicant cites *Castillo Garcia* in support of the proposition that it is unreasonable to conclude that a city is a safe and viable IFA without considering the evidence to the contrary. As stated by Justice Boswell in that decision:

[28] It is, of course, well-established that a decision maker such as the RAD is presumed to have weighed and considered all the evidence presented unless the contrary is shown (*Boulos v Public Service Alliance of Canada*), 2012 FCA 193, at para 11, [2012] FCJ No 832, citing *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598, at para1). A failure to refer to some relevant evidence will typically not justify a finding that the decision was made without regard to the evidence, prompting the Court to grant relief as contemplated by para 18.1(4) (d) of the *Federal Courts Act*, RSC 1985, c F-7.

[29] This is not always the case though, since "... the more important the evidence that is not mentioned specifically and analyzed in the reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact 'without regard to the evidence'" (*Hinzman v Canada (Citizenship and Immigration)*), 2010 FCA 177, at para 38, [2012] 1 FCR 257, citing *Cepeda - Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425, at para 17, 157 FTR 35).

[55] I accept this principle, but I find that the RPD properly reviewed the documents in the file. As previously mentioned, the map that the applicant asks me to consider, which indicates that the Zetas are also present and active in Guadalajara, was not before the RPD or the RAD.

[56] Finally, the applicant cites the Office of the United Nations High Commissioner for Refugees [UNHCR], *Guidelines on International Protection: "Internal Flight or Relocation*

*Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003 (UNHCR Guidelines on International Protection), notably paragraphs 18 to 21:

**Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation?**

18. It is not sufficient simply to find that the original agent of persecution has not yet established a presence in the proposed area. Rather, there must be reason to believe that the reach of the agent of persecution is likely to remain localised and outside the designated place of internal relocation.

19. Claimants are not expected or required to suppress their political or religious views or other protected characteristics to avoid persecution in the internal flight or relocation area. The relocation alternative must be more than a “safe haven” away from the area of origin.

20. In addition, a person with an established fear of persecution for a 1951 Convention reason in one part of the country cannot be expected to relocate to another area of serious harm. If the claimant would be exposed to a new risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination,<sup>8</sup> an internal flight or relocation alternative does not arise, irrespective of whether or not there is a link to one of the Convention grounds.<sup>9</sup> The assessment of new risks would therefore also need to take into account serious harm generally covered under complementary forms of protection.

21. The proposed area is also not an internal flight or relocation alternative if the conditions there are such that the claimant may be compelled to go back to the original area of persecution, or indeed to another part of the country where persecution or other forms of serious harm may be a possibility.

[References omitted.]

[57] The cited paragraphs of the UNHCR Guidelines on International Protection relate to the risk of persecution on a Convention ground. I accept that individuals are not required to suppress

their political or religious views or other protected characteristics of their person or lifestyle in order to avoid persecution, but that is not the situation faced by the applicant.

[58] The applicant has not met his burden of establishing that he would be personally at risk in Guadalajara. He did not bring to my attention any element of the RAD's decision that I would characterize as unreasonable. He is asking the Court to re-weigh the evidence before the RPD and the RAD, which the Court will not do.

## VII. Conclusion

[59] For these reasons, the RAD's decision is reasonable, and the application for judicial review is dismissed. The parties did not submit any question for certification.



**JUDGMENT in IMM-1969-19**

**THE COURT'S JUDGMENT** is as follows:

1. The application for judicial review is dismissed.
2. There is no question to certify.

“Peter G. Pamel”

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Judge

Certified true translation  
On this 29th day of April 2020

Sebastian Desbarats, Translator

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

**DOCKET:** IMM-1969-19

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