Federal Court  Cour fédérale

Date: 20201110

Docket: IMM-151-20

Citation: 2020 FC 1051

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 10, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

IMELDA LIMONES MUNOZ
CESAR FERNANDO RAMIREZ PERALES
FERNANDA LIZBETH RAMIREZ LIMONES
IMELDA ELIZABETH RAMIREZ LIMONES

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The applicants are a family of Mexican

citizens, and Ms. Limones Munoz is the applicant who was designated as representative of the couple's twin daughters. The decision for which judicial review is being sought is that of the Refugee Appeal Division [RAD]. The RAD rejected the claim for refugee protection after the Refugee Protection Division [RPD] did the same.

I. The facts

[2] The facts are largely drawn from the RPD decision, which described them in detail. In fact, they are not really disputed, given that the issue to be determined was whether the Munoz family had an Internal Flight Alternative [IFA] in Mexico.

[3] The adult applicants claim to be victims of extortion at the hands of Los Zetas, a cartel operating in Mexico, and corrupt government officials with whom the cartel has close ties.

[4] The extortion began in November 2013 when Cesar Fernando Ramirez Perales was visited by a prosecutor from the municipality of Linares, the city where he lived with his family. This government official reportedly told him that three of his former employees had just been arrested for fraud and that if he did not want to be involved in the case, he would have to pay 10,000 pesos. The male applicant paid the amount the next day.

[5] A few months later, in April 2014, Mr. Ramirez Perales was kidnapped by armed men who told him that they were associated with Los Zetas. He was physically and psychologically tortured. The male applicant recognized the voice of one of the men as that of one of his former employees. He ended up in the cells of the Linares ministerial police for the night, and a demand

for 45,000 pesos was made by the commander of the local police. Eight days later, the male applicant reported the incident to an army colonel stationed in Linares, but the colonel told him there was nothing he could do.

[6] Extortion schemes continued in the following years as armed men, often with their faces covered, demanded money by making threats.

[7] Towards the end of February 2017, three men from Los Zetas came to the applicant's office and assaulted him, demanding 15,000 pesos to be delivered in the following two hours. The male applicant paid them the money. The incident triggered a deterioration in the male applicant's mental health, causing him to spiral into depression. He therefore decided to come to Canada to rest, as he says. As a result, on March 14, 2017, Mr. Ramirez Perales left Mexico and came to Canada where he was detained upon arrival. The detention appears to have lasted one month. He would file a claim for refugee protection in Canada on April 6, 2017.

[8] Meanwhile, the principal female applicant was being abused by armed, masked (balaclava-wearing) men who returned to the female applicant's home to demand the payment due on April 1, 2017. An armed man showed up on April 1 to collect the money. He slapped her, put his gun to her head, and threatened reprisals against her and her daughters if the male applicant did not pay the money demanded.

[9] During the month of April, Ms. Munoz noted that she was being watched. Towards the end of the month, she was again intercepted by individuals associated with Los Zetas. The three

men made threats against her and her daughters, demanding 30,000 pesos from the female applicant by May 3, 2017. On that day, the three men returned, raped her and took the 30,000 pesos. Following this incident, the female applicant took steps to obtain passports. At the end of May, on the 26th, some men returned to the female applicant's home to claim money that was not due until June 1st.

[10] Ms. Munoz and her two daughters left Mexico for Canada on May 31, 2017. Their refugee protection claim was made on June 1, 2017.

[11] The husband's and the three other applicants' refugee protection claims were heard on April 17 and May 15, 2018. The June 19, 2018, decision found their testimony to be credible. In addition, the RPD found that there was an internal flight alternative in Cancun, as this location on Mexico's eastern coast, a city of 500,000 inhabitants on the Yucatan Peninsula, was said to be outside the area of influence of Los Zetas and the corrupt police officers associated with the cartel. That decision was appealed to the Refugee Appeal Division on July 11, 2018.

II. The RAD decision

[12] This is the decision of which judicial review is being sought. The RAD dismissed the appeal in a decision dated December 16, 2019. The applicants were found to be neither refugees nor persons in need of protection.

[13] There were two issues before the RAD. First, the applicants sought to introduce new evidence. Second, the determinative issue was that of an internal flight alternative in Mexico, which the RPD argued was possible in Cancun.

[14] As for the new evidence, it was comprised of articles from five different sources, which dated from April 8, 2012, to April 12, 2018. It appears that the applicants were unaware that the RPD was going to determine that Cancun was an internal flight alternative and the new evidence was provided to refute the determination that Cancun was such an internal flight alternative. The RAD rejected this new evidence because it was not new in that it predated the RAD's decision.

[15] As for the determinative issue, the RAD would determine that Cancun could not qualify. Indeed, the RPD had found that at the time of the hearing, the area in which Cancun is located (Quintana Roo) was reputed to be one of the most peaceful in Mexico. According to the 2017 Mexico Peace Index, it ranked 9th among the 32 Mexican states.

[16] However, the situation had since changed; the 2019 Mexico Peace Index considered Quintana Roo to have slipped significantly in its ranking and placed the state in 29th place, which would have made it one of the most dangerous. This led the RAD to determine that the conclusion drawn by the RPD was incorrect (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157).

[17] But the RAD's analysis did not stop there. It went on to consider other internal flight alternatives for Ms. Munoz's family. Given that the agents of persecution were corrupt police

officers working on behalf of Los Zetas as well as members of that organization, the RAD determined that the capital, Mexico City, would be a potential internal flight alternative.

[18] The applicants were notified that the possibility of a flight alternative in the capital would be considered, allowing them to make appropriate representations, which they did. According to the RAD, the power of the various Mexican cartels would be fragmented in Mexico City. Furthermore, the structures of groups like Los Zetas had been decimated by the Mexican state and by wars between the various cartels in the country. For the RAD, "(a)ctivities are generally localized, as fragmented cells do not communicate with each other" (RAD Decision, para 23). The essence of the decision appears to me to be in paragraph 24, which reads as follows:

> [24] Given the number of different factions present in Mexico City, on a balance of probabilities, members of Los Zetas in Linares would not be in a position to communicate with factions in Mexico City. The argument that ties between police forces and Los Zetas support the conclusion that they have the ability to track down the Perales family in Mexico City is speculation [the principal applicant's husband is called Cesar Fernando Ramirez Perales]. As mentioned earlier and addressed in the submissions requested, Los Zetas controls a specific region and the balance of the evidence does not support the conclusion that they have the means to extend their power outside the region.

[19] As a result, before seeking refuge abroad, the possibility of an internal flight alternative must be considered: on a balance of probabilities, the family would not be exposed to a threat to their life or to a risk of cruel and unusual treatment or punishment in Mexico City.

[20] The second part of the internal flight alternative review highlighted Mr. Perales' current disability and the living conditions for women in Mexico City, which are deplorable given the

high rate of femicide and problem of sexual harassment in the workplace. According to the applicants, this would have the effect of plunging the family into a state of total distress.

[21] Citing the Prospéra program, about which information was provided in the National Documentation Package (NDP) on Mexico, the RAD noted that health services are available in 28 Mexican states, providing 12.4 million people with such services. Support to low-income households, in the form of subsidies, is provided to enable these families to gain access to food, education, health services, and the labour market in order to ensure their participation in productive, financial and social activities. In addition, the NDP addresses the situation of women, highlighting legislation to counter femicide and the implementation of policies to eliminate discrimination against women. For example, penalties for femicide have been increased and time frames for issuing protection orders, reduced. The RAD concluded that:

> [31] Given the introduction of social, medical and educational programs to assist those who are less fortunate and at risk of poverty, the balance of the evidence demonstrates that the state is able, on a balance of probabilities, to provide assistance to the Perales family such that, on a balance of probabilities, it would not be unreasonable for them to take refuge in Mexico City.

III. Issues and standard of review

[22] In my view, three issues arise based on the applicants' arguments. They are:

1. Was it appropriate to reject some of the evidence filed by the applicants?
2. Was the RAD's decision to consider Mexico City as an internal flight alternative reasonable?
3. Was the duty of procedural fairness breached by not allowing the applicants to be heard at a hearing?

[23] It appears to me that the issue of the standard of review for RAD decisions has been the subject of decisions of this Court since *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], which means that the standard of reasonableness, which has been presumed since *Vavilov*, is now upheld by this Court (*Elusme v Canada* (*Citizenship and Immigration*), 2020 FC 225 [*Elusme*]; *Akinkunmi v Canada (Citizenship and Immigration)*, 2020 FC 742; *Onuwavbagbe v Canada (Citizenship and Immigration)*, 2020 FC 758).

[24] The same is true of decisions with respect to the admissibility of new evidence (*Arana Del Angel v Canada (Citizenship and Immigration)*, 2020 FC 253; *Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707). As for internal flight alternatives, the standard continues to be that of reasonableness (*Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 807; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 727). In *Elusme*, above, this Court, citing decisions of the Federal Court of Appeal, summarized the situation as follows at paragraph 25:

> [25] The onus of demonstrating that an IFA is unreasonable in a given case, an onus that rests with the claimant, is quite an exacting one (*Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21 [*Baptiste*]; *Pineda v Canada (Citizenship and Immigration)*, 2019 FC 1446 at para 14; *Molina v Canada (Citizenship and Immigration)*, 2016 FC 349 at para 14; *Aznar Alvarez v Canada (Citizenship and Immigration)*, 2009 FC 1164 at para 10). In fact, it requires nothing less than demonstrating the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area, and it requires actual and concrete evidence of such conditions (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15 [*Ranganathan*]).
>
> [Emphasis added.]

[25] As to issues of procedural fairness, *Vavilov* confirms that the appropriate standard continues to be correctness. It appears to me that *Mission Institution v Khela*, 2014 SCC 24, [2014] 1 SCR 502 [*Khela*], at paragraph 79, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 [*Khosa*], at paragraph 43, dispose of the issue. This Court specifically accepted it in *Shah v Canada (Citizenship and Immigration)*, 2020 FC 448; *Suri v Canada (Citizenship and Immigration)*, 2020 FC 86; *Rendon Segovia v Canada (Citizenship and Immigration)*, 2020 FC 99, *Matharoo v Canada (Citizenship and Immigration)*, 2020 FC 664; and *Chen v Canada (Citizenship and Immigration)*, 2020 FC 111. I note in passing that these last two decisions speak in terms of finding whether there is a breach of procedural fairness on the part of the reviewing court rather than a review on the correctness standard. This is a distinction without a difference in that, in either case, what is important is that the reviewing court must conduct its own analysis, without showing deference or judicial deference to the administrative tribunal's decision.

IV. Arguments and analysis

A. *Did the RAD act unreasonably in rejecting some of the evidence?*

[26] This issue can be dealt with very quickly. What the applicants are complaining about is that the RAD refused to accept their additional documentary evidence.

[27] The male applicant argues that the decision to refuse the filing was unreasonable because the evidence was reportedly credible and relevant. But that is not the issue. The male applicant

had to show that this was new evidence within the meaning of subsection 110(4) of the Act. He did not do so. The RAD's decision seems to be unassailable in this regard. But there is more.

[28] These were five newspaper and CBC articles about the situation in Cancun and the Los Zetas cartel. This evidence was rejected by the RAD because it did not meet the admissibility requirements specifically set out in subsection 110(4) of the *Act*.

[29] This is no longer an issue given that it relates to the existence of an internal flight alternative in Cancun. The only decision before the reviewing court is the decision of the RAD, which determined that the RPD had erred in finding that Cancun was a viable internal flight alternative. As a result, the issue as to whether or not to accept evidence in that regard is academic and there is no need to deal with it further.

[30] Further evidence was presented to the RAD when the male applicant made submissions on the possibility of an internal flight alternative in Mexico City. It is worth noting that the RAD had indicated that it was not satisfied that the city of Cancun was such a flight alternative. It noted Mexico City as an alternative and asked the male applicant to make representations in this regard, which he did on December 2, 2019. Two documents were produced: a letter from the Work Place Safety and Insurance Board, dated July 29, 2019, confirming that there was no longer an expectation of significant improvement with respect to a work-related injury or illness. The male applicant was therefore eligible for review by a "Non-Economic Loss Clinical Specialist in the Permanent Impairment Program". The second document was a BBC News article from October 24, 2019, entitled "Mexico cartels: Which are the biggest and most

powerful?". The article listed four cartels, including the Los Zetas cartel. It indicated that the cartel had reached the peak of its power in 2012 and had been waning since, with the cartel having "splinter[ed]" and having allowed rival groups to assert dominance.

[31] In essence, the male applicant contends that it is unclear whether this documentary evidence was reviewed. He does not say how such a conclusion could be inferred, given that both of these pieces of evidence could only be of weak probative value. Contrary to the applicant's contention, the BBC article did not in any way establish Los Zetas' ability to track down the applicants in Mexico City: quite the opposite. Although still a dangerous force, the cartel has been in decline for several years. As for the letter dated July 29, 2019, it offered very little.

[32] The lack of any direct reference to the two pieces of evidence cannot mean that they were not considered. The respondent is not wrong to point out that an administrative tribunal's reasons do not require that every detail be mentioned (*Vavilov*, para 91). This does not, of course, make it possible to gloss over an important element that could have led to a discordant decision. But the evidence offered by the applicants is not of such a kind. In no way does it advance the applicants' claims about Los Zetas' ability to track them down in Mexico City or about one of the applicants' health issues. *Vavilov* requires serious shortcomings (para 100) and continues to preclude engaging in a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34, [2013] 2 SCR 458, para 54, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and*

Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708, para 14, as held in *Vavilov*, para 102). This is what the male applicant attempted to do in this case.

B. *The applicants were not heard directly*

[33] On this point, the applicants argue that they were never able to make their case in person before the RAD. Without providing any authority in this regard, the applicants apparently wanted to make their arguments orally, which they were not allowed to do. This would be a violation of procedural fairness. Correctness is the applicable standard of review (*Khosa*, para 43; *Khela*, para 79).

[34] Indeed, the applicants find themselves confronted with the Act. There is no breach of common law procedural fairness where the decision maker is simply following what the Act prescribes (*Sturgeon Lake Cree Nation v Hamelin*, 2018 FCA 131, at paras 53–55). A statutory provision takes precedence over the common law.

[35] Subsection 110(6) of the Act is a major impediment in that it sets out the circumstances in which a hearing may be held:

Hearing	**Audience**
(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	**(6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :
(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;	**a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;

(b) that is central to the decision with respect to the refugee protection claim; and	**b)** sont essentiels pour la prise de la décision relative à la demande d'asile;
(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	**c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.
2001, c. 27, s. 110; 2010, c. 8, s. 13; 2012, c. 17, ss. 36, 84.	2001, ch. 27, art. 110; 2010, ch. 8, art. 13; 2012, ch. 17, art. 36 et 84.

As can be seen, there must be a link between the documentary evidence admitted and the three elements listed in paragraphs (a), (b) or (c). Nothing of the sort can be found or has even been alleged or argued in this case. It is therefore the general principle found at subsection 110(3) of the Act that applies, in that the RAD must proceed with its review of the RPD decision without a hearing.

[36] The RAD only availed itself of one of the three options available to it to dispose of the matter (subsection 111(1) of the Act). It should also be noted that referring the matter back to the RPD, one of the three options in subsection 111(1), is itself subject to an additional condition, namely that the RAD cannot either confirm the decision being appealed or substitute a decision that should have been made "without hearing evidence that was presented to the Refugee Protection Division" (paragraph 111(2)(b) of the Act).

[37] Thus, the RAD agreed that the applicants were neither refugees nor persons in need of protection, but disagreed with the possibility of an internal flight alternative in Cancun, and instead concluded that there was a viable IFA in Mexico City. The applicants failed to establish how they would have been entitled to an oral hearing in that regard, either before the RAD or before the RPD on referral.

[38] I believe that it would have been preferable for the RAD to have used the language found in subsection 111(1) of the Act rather than the language it used in paragraph 5 of the RAD decision, which was needlessly confusing. The combination of paragraphs 5 and 17 of the decision suggests that the RAD substituted its own decision on the determinative aspect of the case, the IFA in Cancun, because it considered the RPD's decision to be incorrect. Use of the language of the Act would have been preferable.

C. *Internal flight alternative*

[39] The applicants disputed the IFA in Mexico City. There is no doubt that the applicants are bound by the standard of reasonableness (*Elusme*, above; *Souleyman*, above; *Singh*, above, 2020 FC 807). This has consequences. An applicant obviously has the burden of demonstrating that a decision is unreasonable (*Vavilov*, para 100). More significantly, the reviewing court must show judicial restraint, showing respect for the adjudicative role conferred upon the administrative decision maker by Parliament (*Vavilov*, paras 13 and 75). Thus, a reviewing court does not substitute its opinion for that of the decision maker. It is only after having developed an understanding of the administrative decision maker's decision that a reviewing court will examine whether the decision bears "the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, para 99). This implies that the reviewing court is satisfied that the decision contains serious shortcomings, and not ones that are merely superficial or peripheral (*Vavilov*, para 100).

[40] An applicant who can demonstrate a reasoning process that is internally incoherent because it is not rational and logical, or that an administrative tribunal's decision is untenable in light of the factual and legal constraints that bear on the decision, should succeed. That is why a line-by-line treasure hunt for error will not easily succeed because this is more within the realm of a review on correctness, where the reviewing court forms its own opinion without any need for judicial deference.

[41] The examination of an internal flight alternative is twofold. As has been held repeatedly over the past 25 years, "IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant" (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (C.A.), [1994] 1 F.C. 589 [*Thirunavukkarasu*], at p 597). The onus is on claimants to show, on a balance of probabilities, that they face a serious risk of persecution in that part of the country where an internal flight alternative is reputed to exist. This is the first part (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706). The second part is an examination of the conditions under which the applicants would find themselves if they were to travel to that internal flight alternative. The test in this regard has been described as follows in *Thirunavukkarasu*, above, at page 598:

> Let me elaborate. It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to

> another less hostile part of the country before seeking refugee status abroad?
>
> An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.

[42] This second test was described as being an exacting one in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 [*Ranganathan*], wherein the Federal Court of Appeal described the test as follows:

> [15] We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. 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. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.

[43] Here, the RAD notified the applicants of a possible IFA in Mexico City. The applicants were required to demonstrate a serious risk of persecution in Mexico City. In my view, the applicants did not meet the burden of demonstrating the unreasonableness of the decision of the RAD that it was not satisfied that there was a serious risk.

[44] Whether the agents of persecution are Los Zetas, corrupt police officers from the area the applicants come from, or a combination of the two, the burden is not on the Minister, but rather on the applicants. At issue is whether or not the RAD decision was unreasonable. In essence, the RAD found, on a balance of probabilities, that the applicants did not face a serious risk of persecution in Mexico City. This was due to the splintering of the various cartels and the fact that, according to the evidence, Los Zetas had been decimated both by the Mexican state and by the wars fought among the different groups. In the RAD's opinion, the evidence did not, on a balance of probabilities, establish that "members of Los Zetas in Linares would . . . be in a position to communicate with factions in Mexico City" (RAD decision, para 24). That they would be able to track down the applicants is speculation; Los Zetas operates in a specific region and it cannot be concluded, on the balance of evidence, that they would have had the means to extend their impact when their interests are confined to specific regions.

[45] The applicants have not established how the explanation given is incoherent or untenable in light of the factual and legal constraints. Instead, they have demonstrated that they disagree with the conclusions drawn by the RAD from the evidence. The applicants argue that the RAD engaged in a selective analysis of the evidence. One person's selective analysis is simply a different weight given to the evidence by another. The RAD spoke of decisions made on a

balance of probabilities. A decision maker has to weigh the evidence. It would have taken a demonstration that high-quality evidence had been omitted to establish the lack of a reasonable decision bearing the hallmarks of justification, transparency and intelligibility, whereas the decision was justified in light of the relevant factual and legal constraints. No internal incoherence has been established, nor has it been shown that the decision was untenable.

[46] The same can be said about the second test. As we have seen, the threshold is a high one. The life and safety of the applicants must be at stake. Instead, Mr. Ramirez Perales cited a permanent disability and Ms. Munoz, the living conditions for women in Mexico City. The RAD highlighted the social, medical and educational programs that were available to the less fortunate population; most of the evidence suggests that there are state-provided means of assistance available when needed. This is also true with respect to the means for countering femicide and discrimination against women. I would add that the evidence adduced by the applicants did not have the required quality, namely, that it be actual and concrete evidence of conditions that would jeopardize their life and safety (*Ranganathan*, above, at para 15).

[47] The memorandum presented by the applicants to the RAD was considerably lacking in evidence, being limited to general references. The submissions before this Court were no more precise, and the letter offered as new evidence could not have significant probative value: after all, it merely acknowledged that Mr. Ramirez Perales met “the criteria for a permanent impairment review as a result of [his] injury or illness”. This cannot be sufficient to meet the requirement to adduce actual and concrete evidence. Contrary to what the applicants have

claimed, the RAD did not disregard the respondents' profile. They were simply unable to surmount the high threshold they faced.

D. *Supplementary memorandum*

[48] The applicants appear to have felt entitled to file a supplementary memorandum on October 13, which pursuant to the order allowing the application for judicial review was to replace the male applicant's memorandum and his reply. This was not done.

[49] This memorandum sought to add to the IFA in Mexico City. This time, the applicants returned to the issue of an IFA in Cancun (in the state of Quintana Roo). It appears that the applicants now claim that there is an inconsistency in the RAD's analysis concluding that there is an IFA in Mexico City.

[50] At the time of the RPD's decision, Cancun ranked 9th on the 2017 Mexico Peace Index, a document produced by the Institute for Economics & Peace, an independent, non-partisan, non-profit organization whose mission it is to create a paradigm shift by showing peace as a positive, tangible and achievable measure of human well-being and development. This made Cancun, which is located in the state of Quintana Roo, a less dangerous place to live than the state of Nuevo Leon (the state where Linares, where the applicants lived before coming to Canada, is located), which then ranked 25th out of 32.

[51] In 2019, the same index placed Quintana Roo in 29th place, making Cancun a less attractive internal flight alternative. The RAD stated that Cancun was therefore no longer an

internal flight alternative because Quintana Roo (Cancun) had slipped to 29th place. The applicants were notified that the RAD was instead considering Mexico City as an IFA.

[52] The supplementary memorandum seems to focus exclusively on the numerical ranking of the different states for 2017 and 2019, noting that the state in which Linares is located (Nuevo Leon) rose from 25th, in 2017, to 17th place, in 2019. In fact, it ranked even higher than Mexico City, which had improved its ranking from 22nd in 2017 to 20th in 2019. From this, the applicants argued that it was not clear why Mexico City would be an IFA, given that, according to this index, Nuevo Leon was now [TRANSLATION] “less dangerous” than Mexico City.

[53] That said, with respect, this is a very thin argument for unreasonableness. Indeed, the RAD’s decision was based on the limited presence of Los Zetas in Mexico City, whereas “Los Zetas controls a specific region and the balance of the evidence does not support the conclusion that they have the means to extend their power outside the region” (RAD decision, para 24), and on the decline of this cartel. One might even speculate that this decline resulted in an improvement in the safety of Nuevo Leon; however, this does not make Mexico City somewhere that could no longer be considered as an IFA if the applicants were unable to remain in Linares because of the revenge they feared.

[54] Put another way, it is the potential interest in the applicants by agents of persecution in Nuevo Leon that could create a problem, whereas Mexico City was viewed by the RAD as not posing a risk with respect to the actions of Los Zetas. The fact that Mexico City could be dangerous in other respects is irrelevant: it is the connection between Los Zetas and Mexico City

that matters. In its decision, the RAD explained why Mexico City met the first part of the IFA test, which deals with the serious risk of persecution in Mexico City. There is no internal incoherence resulting from the fact that Nuevo Leon had since improved its ranking in an index.

V. Conclusion

[55] As a result, the application for judicial review must be dismissed. The parties agreed that there is no serious question of general importance to be certified. The Court shares this view.

JUDGMENT in IMM-151-20

THIS COURT'S JUDGMENT is the following:

1. The application for judicial review is dismissed.

2. No serious question of general importance is certified.

"Yvan Roy"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Alfredo Garcia	FOR THE APPLICANTS
Philippe Proulx	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Avocats Semperlex, L.L.P. Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT