Federal Court  Cour fédérale

Date: 20210304

Docket: IMM-1596-20

Citation: 2021 FC 203

Ottawa, Ontario, March 4, 2021

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

ISRAEL SOLIS MENDOZA
KARINA SOLIS SOLIS
HIROMY SOLIS SOLIS
LUNA SOLIS SOLIS
BRISA SOLIS SOLIS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, which upheld the decision of the Refugee Protection Division [RPD]. The RAD determined the Applicants are not persons in need of

protection pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*] [Decision].

[2] Notwithstanding and acknowledging the extremely capable written and oral submissions of counsel for the Applicants, Ms. Jessica Chandrashekar, I have concluded judicial review must be dismissed based on constraining law and the record in this case.

II. Facts

[3] The Applicants, a husband [Father], wife [Mother] and their three minor children [Children] are citizens of Mexico. In 2009, after the birth of the first daughter [Daughter], the Father took a job as a migrant worker in Canada. He worked in Canada for several months of the year and returned to Mexico for the remainder of the year. This arrangement continued through the birth of their two other daughters.

[4] On August 18, 2016, they allege three *hauchicoleros* [Fuel Thieves] attended the Applicants' home and demanded a monthly extortion fee. The Father was in Canada at this time and the Mother told the Fuel Thieves she did not have enough money to pay them. The Fuel Thieves became angry and said they did not believe her because her husband works abroad. They also mentioned they knew she is often home alone with the Children.

[5] The Mother and Children fled to her brother-in-law's home in Mexico City. The next day, the brother-in-law received a phone call from the Fuel Thieves who told him the Applicants

had to return home or would face consequences. The Applicants also alleged there was a suspicious vehicle parked outside the brother-in-law's home for two days.

[6] On September 1, 2016, a neighbour called the Mother stating the Applicants' home was vandalized. The Mother and Father decided they had no option but to return home and pay the monthly extortion fee of 5,000 pesos, which the Father sent via a monthly transfer. Two people began to attend the Applicants home monthly to collect the funds.

[7] The Mother's mother became ill so the Mother used the money meant for the fee for July 2017 to contribute to her mother's medical care. She asked the Fuel Thieves for more time to pay and they became angry. They grabbed the Daughter and threatened to abduct her until they received the fee. The Mother begged them to leave her Daughter alone and promised to pay as soon as possible. The Fuel Thieves agreed after increasing the fee to 8,000 pesos.

[8] They fled to Mexico City and the Mother left her daughters with her mother, who was no longer ill, in another city and travelled to Canada to learn about the refugee process before returning to Mexico.

[9] The Father made arrangements with his employer, was released from his contract early and returned to Mexico to apply for passports for the Children because both parents must be present in Mexico for their children to obtain passports. The Applicants alleged they were in hiding while in Mexico and only exited their home to obtain passports and to file a police report. After receiving passports on August 18, 2017, they travelled to Canada on September 11, 2017.

[10] At the hearing before the RPD, the Applicants testified they believed the Fuel Thieves were members of or associated with an unknown cartel. The Applicants also provided psychiatric reports for the Mother and the Daughter and documents connecting Fuel Thieves to cartels.

[11] The RPD found the Applicants failed to establish the Fuel Thieves were connected to a larger organization with the means to find the Applicants in another part of Mexico. The RPD found the country condition evidence showed fuel thieves could be associated with larger criminal organizations or could be "local hoodlums". The RPD found the Applicants failed to establish any forward-facing risk to them in the potential internal flight alternative [IFA] locations.

[12] The RPD then engaged in an IFA analysis and found the Applicants failed to establish it would be unreasonable for them to relocate within Mexico. The RPD denied their claim and found the Applicants had a viable IFA in five cities within Mexico.

III. Decision under review

[13] Before the RAD, the Applicants argued the RPD erred in finding the Applicants had a viable IFA. The RAD found the determinative issue was the availability of an IFA in Mexico.

[14] The Decision states the Applicants acknowledged their claims have no nexus to any Convention refugee grounds; therefore, the RAD only examined the claims under section 97 of *IRPA*. This is not disputed. The Decision properly notes the onus is on the Applicants to demonstrate they did not have a viable IFA.

[15] The RAD found the evidence did not support the Applicants' allegations that all Fuel Thieves are associated with cartels. The RAD noted even if some fuel thieves are associated with cartels, there was no evidence the persons extorting the Applicants are associated with a cartel, let alone one that has influence in the proposed IFAs. In addition, three of the IFA locations are far away from the primary zones in which fuel theft occurs.

[16] The RAD agreed the RPD erred by not explicitly considering certain psychiatric reports prepared by Dr. Agarwal when assessing the IFAs. The RAD conducted its own assessment of these reports and concluded it would be reasonable for the Applicants to live in the IFAs.

[17] The Decision states the psychiatric reports show the Mother and Daughter have severe chronic Post-Traumatic Stress Disorder and in order for them to heal, they need to feel safe in the long term. The Decision states the reports do not address the anticipated effects if "they were to return to Mexico and relocate to a city where they are not likely to be subjected personally to serious harm at the hands of their agents of persecution." The RAD also said "if Dr. Agarwal meant Mexico as a whole, one would expect that this would be clearly set out and substantiated in her report". The RAD found the Applicants' evidence did not meet the threshold for establishing an IFA is unreasonable.

IV. Issues

[18] The only issue in this application is whether the Decision is reasonable.

V. Standard of Review

[19] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] Justice Rowe said that *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] set out a revised framework for determining the applicable standard of review for administrative decisions. The starting point is a presumption that a standard of reasonableness applies. This presumption can be rebutted in certain situations, none of which apply in this case. Therefore, the Decision is reviewable on a standard of reasonableness.

[20] In *Canada Post*, Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "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*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).

[21] The Supreme Court of Canada in *Vavilov*, at para 86 states "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies." The reviewing court must be satisfied the decision maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
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> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

[22] Furthermore, *Vavilov* directs that the reviewing court is not to reweigh and reassess the evidence unless there are "exceptional circumstances":

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of

> the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

[23] See also *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31 [Gascon J] which *Vavilov* cites at the para 125 just quoted:

> [55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.
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> [Emphasis added]

[24] See also *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [Binnie J]:

> [64] In this case, both the majority and dissenting reasons of the IAD disclose with clarity the considerations in support of both points of view, and the reasons for the disagreement as to outcome. At the factual level, the IAD divided in large part over differing interpretations of Khosa's expression of remorse, as was pointed out by Lutfy C.J. According to the IAD majority:

> It is troublesome to the panel that [*Khosa*] continues to deny that his participation in a "street-race" led to the disastrous consequences. . . . At the same time, I am mindful of [*Khosa's*] show of relative remorse at this hearing for his excessive speed in a public roadway and note the trial judge's finding of this remorse . . . . This show of remorse is a positive factor going to the exercise of special relief. However, I do not see it as a compelling feature of the case in light of the limited nature of [*Khosa's*] admissions at this hearing. [Emphasis added; para. 15.]

According to the IAD dissent on the other hand:

> . . . from early on he [*Khosa*] has accepted responsibility for his actions. He was prepared to plead guilty to dangerous driving causing death . . . .
>
> I find that [*Khosa*] is contrite and remorseful. [*Khosa*] at hearing was regretful, his voice tremulous and filled with emotion. . . .
>
> . . .
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> The majority of this panel have placed great significance on [*Khosa's*] dispute that he was racing, when the criminal court found he was. And while they concluded this was "not fatal" to his appeal, they also determined that his continued denial that he was racing "reflects a lack of insight." The panel concluded that this "is not to his credit." The panel found that [*Khosa*] was remorseful, but concluded it was not a "compelling feature in light of the limited nature of [*Khosa's*] admissions".
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> However I find [*Khosa's*] remorse, even in light of his denial he was racing, is genuine and is evidence that [*Khosa*] will in future be more thoughtful and will avoid such recklessness. [paras. 50-51 and 53-54]

It seems evident that this is the sort of factual dispute which should be resolved by the IAD in the application of immigration policy, and not reweighed in the courts.

[Emphasis added]

VI. Analysis

[25] In *Lawal v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 301, I set out the test for an IFA:

> [8] First, it is settled law that the two-prong test to be applied in determining whether there is an IFA was established in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA), and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA). The test was recently outlined by Justice Pamel in *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 15:
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> > [15] The decisions in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, have established a two-prong test to be applied in determining whether there is an IFA: (i) there must be no serious possibility of the individual being persecuted in the IFA area (on the balance of probabilities); and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15). Both prongs must be satisfied in order to make a finding that the claimant has an IFA. This two-prong test ensures that Canada complies with international norms regarding IFAs (UNHCR Guidelines at paras 7, 24–30).
> >
> > [Emphasis added]

[26] The onus is on the Applicants to negative one or the other of the two prongs. See *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 [Létourneau JA] at paragraph 13.

[27] As noted earlier, this claim is only considered under section 97 of *IRPA* because the Applicants do not assert a claim involving a nexus with the grounds of refugee protection established by section 96.

[28] The Applicants submit the RAD erred in its analysis of both prongs of the IFA analysis. I will analyze both prongs in turn.

A. *Prong 1: No serious possibility of persecution in the IFA*

[29] In its assessment of the first prong of the IFA test, the RAD concludes:

> [9] I do not agree with the Appellants that they would have to live in hiding if they were to relocate to Hermosillo, La Paz, or Cancun. As just noted, there was no evidence that the *hauchicoleros* who extorted the Appellants were associated with any drug cartel, let alone any cartel with a sphere of influence in Hermosillo, La Paz, or Cancun. The objective evidence in this case indicates that, while fuel theft has been spreading throughout Mexico, it is primarily centered in the Red Triangle region of the state of Puebla where several pipelines intersect. In addition, the evidence indicates that fuel theft activities extend along the Gulf of Mexico coast from the border with the United States to Tabasco state in the south. The three internal flight alternative cities of Hermosillo, La Paz or Cancun fall well out of this region.
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> [10] While the Appellants believe that the *hauchicoleros* who were extorting them could track them down anywhere in Mexico, they did not know precisely how they would do so…the evidence does not establish on a balance of probabilities (that is more likely than not) that the *hauchicoleros* who extorted the Appellants would have the means interest, and motivation to track them to any of the three internal flight alternative cities listed above where they have no influence and which lie at a significant distance from the central fuel theft zone in Mexico.

[30] The Applicants submit the RAD erred in finding the evidence does not establish a connection between the Fuel Thieves and cartels. This they say resulted in an incorrect profile of the agent of persecution. They submit this incorrect profile resulted in two additional flawed findings: an incorrect finding the agent of persecution are not present in or do not have access to the proposed IFAs; and gross underestimation of the means and motivation of the agent of persecution.

[31] In my view, the Applicants asked the RAD to infer the people who were extorting them were part of a cartel, but did so without evidence to support this assertion except their belief in what they alleged. In the absence of direct evidence however, either from the Applicants or from country condition documents, the view of the Applicants is their opinion only – they had no direct knowledge, and could not point to any country condition evidence that all Fuel Thieves are part of a cartel, which is what in essence they alleged. Therefore, in this respect, the RAD reasonably weighed the evidence and found it did not support their view; the RAD reasonably found the Applicants were speculating regarding a cartel connection to the Fuel Thieves. I am reminded also, that *Vavilov* instructs this Court not to reweigh or reassess the evidence, which and with respect, is what the Applicants request I do in this respect.

[32] The Applicants further submit the RAD had country condition evidence, which it did, to the effect that fuel theft began in the state of Puebla by local groups and has evolved into a nation-wide billion-dollar industry monopolized by cartels. While there was such evidence there was also evidence cited by the RAD that in some cases fuel theft was the action of local criminals acting on their own such that the Applicants had not shown the Fuel Thieves involved

here were associated with a cartel. While there was evidence one cartel has completely taken over the fuel theft in the state of Puebla, the Applicants are not from that state.

[33] The RAD twice refers to the National Documentation Package [NDP] for Mexico in the Decision. First regarding the meaning of *hauchicoleros* and second regarding the origin of fuel theft. The Applicants submit the RAD should have also referred to the NDP's example of a cartel built primarily on the business of fuel theft. The Applicants submit there were numerous examples in the NDP showing connections between fuel theft and cartels. I do not disagree, but do not find the RAD's conclusions are unreasonable because these documents do not support the assertion that either all fuel thieves or the Fuel Thieves in question are part of a cartel, only that they might be. I cannot reweigh and reassess the evidence – that is the job of the RAD.

[34] The Applicants reiterate the evidence shows a strong relationship between cartels and fuel theft. As a result, they say it is not speculative for the Applicants to believe the group who extorted them are connected to a cartel. They say their beliefs are grounded in the extensive objective documentary evidence before the RAD. As outlined in *Vavilov* at para 126, "a reasonable decision is one that is justified in light of the facts" which include both the evidentiary record and general factual matrix and "reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it".

[35] However, for the reasons above, I am unable to conclude either that the evidence has been fundamentally misapprehended nor unreasonably assessed. It was reasonably open for the RAD to find as it did.

[36] The Applicants also rely on *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] FCJ No. 1425 [Evans J, as he then was] [*Cepeda-Gutierrez*] confirms decision makers are not required to refer to every piece of evidence contrary to their findings; however, the more important the evidence the more willing a court may be to infer silence means the decision maker made a finding without regard to the evidence such that judicial review may be granted:

> 16 On the other hand, the reasons given by administrative agencies are not to be read hypercritically by a court (*Medina v. Canada (Minister of Employment & Immigration*) (1990), 12 Imm. L.R. (2d) 33 (Fed. C.A.)), nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it (see, for example, *Hassan v. Canada (Minister of Employment & Immigration)* (1992), 147 N.R. 317 (Fed. C.A.). That would be far too onerous a burden to impose upon administrative decision-makers who may be struggling with a heavy case-load and inadequate resources. A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its findings of fact.
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> 17 However, the more important the evidence that is not mentioned specifically and analyzed in the agency's 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": *Bains v. Canada (Minister of Employment & Immigration)* (1993), 63 F.T.R. 312 (Fed. T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact.

> Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.
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> [Emphasis added]

[37] It is also well established that a tribunal is presumed to have considered all of the evidence. *Cepeda-Gutierrez* stands for the proposition the contrary may be inferred where evidence was ignored as may be the case where it squarely contradicts a tribunal's conclusion.

[38] This exception does have limits as *Cepeda-Gutierrez* itself states: "nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it (see, for example, *Hassan v. Canada (Minister of Employment & Immigration)* (1992), 147 N.R. 317 (Fed. C.A.)" at para 16.

[39] In addition, this Court recently held in *Simolia v Canada (Citizenship and Immigration)*, 2019 FC 1336 [Bell J] at para 22, the RAD "is not obliged to 'comb through every document listed in the [NDP] in the hope of finding passages that may support the Applicant's claim and specifically address why they do not, in fact, support the Applicant'".

[40] To the same effect, this Court in *Kakurova v Canada (Minister of Citizenship and Immigration)*, 2013 FC 929 [Gleason J, as she then was] found: "[i]t would be overwhelmingly burdensome for the Board to specifically cite every point in the evidence that runs contrary to its determinations. All it was required to do was to review the evidence and reasonably ground its findings in the materials before it (…)", see also: *Tsigehana v Canada (Citizenship and*

Immigration), 2020 FC 426 [Gascon J] at paras 32-33 and *Majlat v Canada (Citizenship and Immigration)*, 2014 FC 965 [Gleason J, as she then was] at para 32. The Respondent submits this was done and the Applicants' disagreement with how the RAD weighted the evidence is not an arguable issue. As indicated, I agree this line of authorities is more applicable to the case at bar.

[41] Further, Justice Gleason (as she then was) states in *Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490:

> [10] Particularly in light of several recent decisions from the Supreme Court of Canada, a reviewing court should be circumspect in inferring that an administrative tribunal had no regard to the evidence before it when it fails to mention contradictory evidence in its decision.
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> [11] In my view, the starting point for the inquiry in respect of an argument regarding the impact of failure to mention key evidence is that the reviewing court must presume that the tribunal considered the entire record (see *Ayala Alvarez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 703 at para 10; *Guevara v Canada (Minister of Citizenship and Immigration)*, 2011 FC 242 at para 41; *Junusmin v Canada (Minister of Citizenship and Immigration)*, 2009 FC 673, 2009 CF 673 at para 38). Thus, those advancing arguments like that made by the applicant in this case bear a high burden of persuasion. Secondly, it must be recalled that the task of the reviewing court is the assessment of the reasonableness of the tribunal's findings of fact. This inquiry involves consideration of both the outcome reached and the reasons offered by the tribunal as the Supreme Court of Canada underlined in, inter alia, *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 and *Newfoundland Nurses* at para 14. Finally, and perhaps most importantly, the reviewing court must afford significant defence to the tribunal's factual findings, particularly where, as here, the impugned determination falls within the core of the tribunal's expertise. Assessments of risk and of the availability of adequate protection for refugee claimants in foreign states lies at the very core of the competence of the RPD and are matters that Parliament has mandated to fall within the RPD's jurisdiction (see *IRPA* at para 95(1)(b); *Pushpanathan v Canada (Minister of Employment and Immigration)*, [1998] 1 SCR 982, [1998] SCJ No 46 at para 47; *Saldana Fajardo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 830 at para 18; *Kellesova v Canada*

> *(Minister of Citizenship and Immigration)*, 2011 FC 769 at para 11).
>
> [12] As mentioned, the decision in Newfoundland Nurses is of central importance in this application. There, the Court adopted a new approach to evaluation of the adequacy of an administrative tribunal's reasons in holding that the provision of inadequate reasons does not amount to a denial of procedural fairness, provided some reasons are given. In so ruling, the Court overturned previous authorities which indicated that failure to provide adequate reasons amounts to a denial of procedural fairness. The Supreme Court also considered the adequacy of a tribunal's reasons with reference to evaluating whether a decision is reasonable and emphasized that that inadequacy of reasons is not a stand-alone basis for finding a decision unreasonable. Rather, the Court held that the reasonableness of a decision must be evaluated with reference to both the outcome reached and the reasons given. The Court also again instructed that reviewing courts must afford significant deference to a tribunal's decisions under the reasonableness standard….

[42] The Respondent submits the RAD did not ignore evidence in its Decision. The RAD specifically noted evidence to the effect that fuel theft is increasingly engaged in by certain cartels, but also found evidence that fuel thieves could simply be local criminals working on their own. The RAD considered the Applicants' own testimony and found there was insufficient evidence to show the particular Fuel Thieves are part of a cartel or part of a cartel with ties to the IFAs. This in my view was open to the RAD on the record before it. Again, this aspect of the debate turns on reassessing and reweighing the evidence which, except in exceptional circumstances, a reviewing court is not to do.

[43] The Respondent also says, correctly on the law, the possibility of alternative inferences being drawn does not render the RAD's inferences unreasonable: see *Thanaratnam v Canada (Minister of Citizenship & Immigration)*, 2005 FCA 122 at para 34 [Evans JA]; *Zhou v Canada*

(Citizenship and Immigration), 2020 FC 676 at para 21 [Fuhrer J]; and *Krishnapillai v Canada (Minister of Citizenship & Immigration)*, 2007 FC 563 at para 11 [Barnes J].

[44] Given the absence of an evidentiary link between the Fuel Thieves threatening the Applicants and a cartel, in my view it was reasonably open to the RAD to conclude as it did, namely that the evidence does not establish the Fuel Thieves in question would have the means, interest or motivation to find the Applicants in the IFAs.

[45] The RAD also said the Applicants' own evidence showed the Fuel Thieves did not look for them and there is no evidence they contacted any family members. While I agree this is a misstatement because there was evidence a brother-in-law was contacted, I do not consider this mistake to be material in the holistic review required on judicial review. In addition, the RPD discussed the evidence regarding the brother-in-law and found "I find that this indicates, on a balance of probabilities, that if the *hauchicoleros* were searching for the Claimants, they have stopped over a year ago".

[46] In my view, the RAD squarely grappled with the Applicants' submissions, and based on its assessment of the record, concluded against them. In my respectful view, it did so in the course of what I respectfully consider a reasonable analysis, that is, one that meets the tests in *Vavilov*. The RAD said:

> [8] I do not agree with the Appellants that the RPD ignored their evidence about the profile of the *huachicoleros* and their ability to locate people throughout Mexico. In fact, the RPD specifically addressed the evidence it had before it on the *huachicoleros* which included news articles submitted by the Appellants and the evidence about *huachicoleros* contained in the National

Documentation Package (NDP) for Mexico. Huachicoleros is the term given to fuel thieves who steal petroleum products and sell them on highways and other locations. I do not agree with the Appellants that the objective evidence supports their testimony that all huachicoleros are associated with dangerous drug cartels. The evidence indicates that fuel thieves may be local criminals acting on their own or in conjunction with drug cartels. In addition, fuel theft is increasingly also engaged in by certain drug cartels themselves, who are moving into muscle out small operators. Even if some huachicoleros may be associated with drug cartels, the Appellants did not know if the huachicoleros who extorted them were associated with any particular gang or cartel. There is simply no evidence, beyond the Appellants' own speculation, that the persons extorting them are connected to any larger drug cartel.

[9] I do not agree with the Appellants that they would have to live in hiding if they were to relocate to Hermosillo, La Paz or Cancún. As just noted, there was no evidence that the *huachicoleros* who extorted the Appellants were associated with any drug cartel, let alone any cartel with a sphere of influence in Hermosillo, La Paz or Cancún. In addition, these three cities lie at a great distance from the primary zones for *huachicolero* fuel theft. The objective evidence in this case indicates that, while fuel theft has been spreading throughout Mexico, it is primarily centered in the Red Triangle region of the state of Puebla where several pipelines intersect. In addition, the evidence indicates that fuel theft activities extend along the Gulf of Mexico coast from the border with the United States to Tabasco state in the south. The three internal flight alternative cities of Hermosillo, La Paz or Cancún fall well out of this region.

[10] While the Appellants believe that the *huachicoleros* who were extorting them could track them down anywhere in Mexico, they did not know precisely how they would do so. Ms. Solis Solis testified that she had heard about a street vendor who refused to pay extortion money who had his family abducted. However, that appeared to be in the town they lived in. I agree with the RPD that the evidence does not establish on a balance of probabilities (that is, that it is more likely than not) that the *huachicoleros* who extorted the Appellants would have the means, interest and motivation to track them to any of the three internal flight alternative cities listed above where they have no influence and which lie at a significant distance from the central fuel theft zone in Mexico. This is especially the case since the Appellants testified that they did not know whether the *huachicoleros* who had extorted them were still looking for them and they had not gone looking for the Appellants at Ms. Solis Solis's mother's place.

> There was also no evidence that they had contacted any other family members or gone back to the house that the Appellants had lived in which belongs to Mr. Solis Mendoza's sister.
>
> [11] I do not agree with the Appellants that the RPD erred in not considering the general evidence relating to the prevalence of cartel violence, criminal activity, serious challenges to the rule of law and human rights violations in Mexico. All of this evidence speaks to the general climate of general criminality in Mexico. The issue under the first prong of the internal flight alternative test is whether the Appellants have established, on a balance of probabilities, that they would be subjected personally to one or more of the types of serious harm that would make them persons in need of protection in the internal flight alternative locations. When individuals are claiming a risk of death or cruel and unusual punishment or treatment, as the Appellants in this case, in order to establish that they are persons in need of protection in an internal flight alternative location, they must show that the risk of serious harm they would face is not faced generally by other individuals in or from their country. Therefore, I do not agree with the Appellants that the general level of criminality in Mexico or the general state of human rights in Mexico makes them either persons in need of protection in any of the internal flight alternative locations listed above. There is also no evidence to support any argument that the Appellants face a serious possibility of persecution on a Convention ground in any of the internal flight alternative locations.
>
> [Emphasis added]

[47] With respect again, I am unable to conclude the RAD dealt with the first prong of test for an IFA in an unreasonable manner. I will therefore move to the Applicants' submissions on the second prong of the IFA test.

B. *Prong 2: Conditions in the IFA are such that it would not be unreasonable to expect the Applicants to seek refuge there*

[48] The Applicants agree the threshold is high and that they must make their case with "actual and concrete evidence" as stated in in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 2118 (CA) [Létourneau JA] [*Ranganathan*]:

> 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.

[49] The Applicants submit since *Ranganathan* "the threshold has remained high, but has expanded to consider factors such as discrimination, mental health, and the availability of medical treatment".

[50] The Applicants submitted two medical reports from a psychiatrist which they say provide important and relevant information that should have been considered by the RAD but were not. In *Karim v Canada (Citizenship and Immigration)*, 2015 FC 279 at para 22, Justice de Montigny found an IFA was unreasonable when the applicant's emotional state regarding the IFA was not considered. And see *Cartagena v Canada (Minister of Citizenship & Immigration)*, 2008 FC 289 [Mosley J], and for another example see Justice Russell in *Olalere v Canada (Minister of Citizenship and Immigration)*, 2017 FC 385 [*Olalere*] who addressed the importance of dealing with a psychological report in an IFA analysis: "[59] In my view, the RAD's failure to deal with this evidence renders the Decision unreasonable."

[51] In this respect, the RAD sided with the Applicants. It found the RPD had not properly assessed the psychiatric reports concerning the Mother and Daughter:

> [12] I agree with the Appellants that the RPD erred in not explicitly considering the medical reports that were admitted into evidence when considering whether it would be unreasonable in all the circumstances to expect the Appellants to relocate to one of the internal flight alternative cities. However, I find that the medical reports do not establish that it would be unreasonable for the Appellants to relocate to Hermosillo, La Paz, or Cancun.

[52] The RAD acknowledged the Mother's diagnosis of Post-Traumatic Stress Disorder [PTSD] and her history of childhood abuse. However as the RAD noted, the two reports did not address what would happen to the Applicants if they were to go to an IFA. In my respectful view, and as a general rule, that is a significant shortcoming when an IFA is the central issue as here. Such evidence should not come from a medical expert, unless he or she is an expert in country conditions.

[53] The two reports on their face are written to refer to the whole of Mexico. The Mother's psychiatric report provides evidence about her emotional state including in the place to which she could be returned. Note the references "to Mexico":

> *Stressors*
>
> …
>
> Fear of being rejected by Canada and having to return <u>to Mexico</u> where she fears that gang members will kidnap and sexually assault her and her daughters and kill them
>
> …
>
> In order for her to continue to heal from her past and to get to a place where she can accept trauma focused individual therapy the first prerequisite is for her to be able to feel safe in the long term,

> not only for herself but her children as well. Her uncertain immigration status in Canada places her and her family at risk of being forced to return to Mexico, where all her index traumas occurred and where all her traumatic memories lie. It is this writer's opinion that Karina will not be able to make full use of any form of psychological treatment until the threat of being sent back to the place of her index trauma is removed on a permanent basis.
>
> [Emphasis added]

[54] In the Daughter's report, the Stressors include "[f]ear of having to return to Mexico where she fears that gang members will kidnap her again." [Emphasis added]

[55] The Applicants say the psychiatrist referred to a return "to Mexico" intentionally, and did not refer to a specific city, adding the reference to Mexico should be taken at face value. In my respectful view, this submission does assist the Applicants. To begin with, the psychiatrist was not qualified to give country condition evidence. Therefore, his or her country condition evidence regarding the criminality situation in Mexico as a whole or even with respect to a part or parts of Mexico from this source would likely be of no probative value. I note as well if the opinions were indeed intended to cover all of Mexico, the physician's implicit country condition assessment effectively precludes the RAD from finding an IFA. If that was the intent or result of the way in which the reports are written, they went beyond the doctor's role and impermissibly trespassed on the jurisdiction of the RAD to make such a finding - it being the ultimate issue in this case.

[56] I conclude the psychiatric evidence applied to the situation in which the Mother and Daughter would return to a part of, or a city in Mexico similar to that from which they fled, i.e.,

somewhere other than the IFAs proposed by the RAD where there would be no serious possibility of the individual being persecuted (on the balance of probabilities).

[57] In this connection, I have concluded the RAD's assessment of the psychiatric reports is reasonable. The RAD held:

> [15] Dr. Agarwal's reports do not address the anticipated effects on Ms. Solis Solis and Hiromy if they were to return to Mexico and relocate to a city where they are not likely to be subjected personally to serious harm at the hands of their agents of harm, the *huachicoleros* who were extorting them in Metepec. Although Dr. Agarwal speaks to the place where Ms. Solis Solis index traumas occurred, it is not clear whether she meant Mexico as a whole or the area where the Appellants experienced the extortion and threats against them. In my view, if Dr. Agarwal meant Mexico as a whole, one would expect that this would be clearly set out and substantiated in her report.
>
> [16] I note in addition that neither Ms. Solis Solis nor Mr. Solis Mendoza spoke of any concern that the PTSD experienced by Ms. Solis Solis and Hiromy would be triggered by a return to any of the internal flight alternative locations identified by the RPD. When the RPD asked Ms. Solis Solis why she would not be safe in the internal flight alternative cities identified by the RPD, Ms. Solis Solis said that the *huachicoleros* who were extorting them could find them anywhere in Mexico. She also said that she and her daughter were very afraid and did not want to go back. When the RPD followed up on this answer to ask whether they could live in the internal flight alternative cities if they did not have any problems with gangs, Ms. Solis Solis said that she could not because nowadays there is too much criminality, too many cartels, and the country itself is no longer safe. When the RPD asked whether there were any other reasons, she said no. When Mr. Solis Mendoza was asked by the Appellants' counsel whether he thought that his daughter would ever feel safe if the Appellants moved back to Mexico but lived elsewhere, he said no and nothing more.
>
> [17] To summarize, the main evidence in support of the Appellants' belief that it would be unreasonable to expect them to relocate to the internal flight alternative locations is Dr. Agarwal's report which does not specifically consider the possibility of the Appellants returning to Mexico to a city outside the region where they experienced the harm described in their asylum claim, Mr.

> Solis Mendoza's statement that he does not believe that his daughter will ever feel safe anywhere in Mexico and Ms. Solis Solis's testimony that she and her daughter are afraid and do not want to go back. In my view, this evidence is insufficient to meet the very high threshold for establishing that an internal flight alternative is unreasonable which requires nothing less than the existence of conditions that would jeopardize the life and safety of a claimant.

[58] The Respondent submits the Applicants are not assisted by referring to the best interests of the child because it is well established this "cannot shoehorn a claimant into section 96 or 97 if the child's claim would otherwise be rejected", see *Douillard v Canada (Citizenship and Immigration)*, 2019 FC 390 [LeBlanc J]:

> [24] While the best interests of the child are an indispensable criterion for decisions made under section 25 of the Act, which are based on humanitarian and compassionate considerations, they are not determinative in granting Convention refugee or person in need of protection status. In the context of a risk assessment prior to removal, the Federal Court of Appeal provided the following explanation:
>
> > Neither the Charter nor the Convention on the Rights of the Child requires that the interests of affected children be considered under every provision of *IRPA*: *de Guzman v. Canada (Minister of Citizenship and Immigration)*, [2006] 3 FCR 655, 2005 FCA 436, at para. 105. If a statutory scheme provides an effective opportunity for considering the interests of any affected children, including those born in Canada, such as is provided by subsection 25(1), they do not also have to be considered before the making of every decision which may adversely affect them. Hence, it was an error for the Applications Judge to read into the statutory provisions defining the scope of the PRRA officer's task a duty also to consider the interests of the adult respondents' Canadian-born children.
>
> (*Varga v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 394 at para 13)

[59] With respect, I agree.

[60] Therefore, the Applicants do not succeed on their attack on the RAD's findings respecting the second prong of the test for an IFA.

VII. Conclusion

[61] In my respectful view, the Applicants have not shown the Decision of the RAD was unreasonable. The RAD analyzed the evidence in relation to the IFA and reasonably determined the Applicants would not be pursued by the Fuel Thieves in the IFA. Contrary to the allegations of the Applicants, the IFA reasonably satisfied both prongs of the IFA analysis established by the jurisprudence. Two specific issues were raised; I have examined both against the applicable law and evidence. In my respectful view, and viewed holistically and not as a treasure hunt for error, the Decision is transparent, intelligible and justified based on the facts and law constraining the decision maker. It adds up and contains no fatal error. Therefore, I must dismiss this judicial review.

[62] That said I do wish to note this judicial review was conducted on the record before Court. From this, the Court finds the reach of cartels had expanded, and may well be still expanding. Therefore this decision is not intended to speak to a future situation in Mexico, which if assessed for example on a Pre-Removal Risk Assessment, may be different from the situation presented to this Court.

VIII. Certified Question

[63] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-1596-20

THIS COURT'S JUDGMENT is that this application is dismissed, no question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1596-20
STYLE OF CAUSE:	ISRAEL SOLIS MENDOZA, KARINA SOLIS SOLIS, HIROMY SOLIS SOLIS, LUNA SOLIS SOLIS, BRISA SOLIS SOLIS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

HEARING HELD BY VIDEOCONFERENCE ON FEBRUARY 23, 2021 FROM OTTAWA, ONTARIO (COURT) AND TORONTO, ONTARIO (PARTIES)

JUDGMENT AND REASONS:	BROWN J.
DATED:	MARCH 4, 2021

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