

Federal Court



Cour fédérale

**Date: 20210325**

**Docket: IMM-3017-20**

**Citation: 2021 FC 265**

**Ottawa, Ontario, March 25, 2021**

**PRESENT: Madam Justice Simpson**

**BETWEEN:**

**HECTOR ARTHURO VILCHIS RAMIREZ  
JANNY SINAI GOMEZ ORTEGA**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**  
**(Delivered orally from the Bench by Videoconference**  
**in Vancouver, British Columbia on February 1, 2021**

[1] This application is for judicial review of a decision of the Refugee Appeal Division [RAD], of the Immigration and Refugee Board [the Board] dated February 26, 2020, dismissing the Applicants' appeal from the denial of their refugee claim by the Refugee Protection Division [RPD] of the Board. The RAD Member dismissed the appeal on the basis that the Applicants have a viable internal flight alternative [IFA] in Mérida, Mexico.

I. **Background**

[2] The Applicants are a husband and wife, both aged 35. They are citizens of Mexico. They have no children.

[3] The husband [the Principal Applicant] holds a university degree in tourism and business administration. He has worked as an administrator. He has also worked in the hospitality industry as a manager at a Starbucks.

[4] The wife is a lawyer. In addition to a law degree, she has a master's degree in human rights. She has worked as a lawyer, a judicial official, a secretary and a marketing agent.

[5] The Principal Applicant is the youngest son in his family. The family lives in the City of Toluca, in Mexico State (near Mexico City). Together the family runs a medical clinic in the community [the Clinic]. It is owned by the Principal Applicant's parents. His father works there as a general practitioner; his brother is a psychologist; his sister is a nutritionist and his mother prepares food and manages the cleaning staff. The Principal Applicant has worked as an administrator at the Clinic.

[6] Before his marriage, the Principal Applicant lived with his family in their home near the Clinic.

[7] The Applicants' underlying claim for refugee protection stems from a series of threats and attacks on the Principal Applicant and his family. The events may be summarized as follows:

- In 2004, the Principal Applicant's brother was kidnapped. After 10 days, the brother was released on payment of a ransom. There was a suggestion that local authorities might have been involved in the kidnapping.
- Thereafter, the family began to receive threatening phone calls at their home, on their personal cellphones as well as at the Clinic. Some callers claimed to be members of the Knight Templar gang.
- In January 2015, an individual came up to the Principal Applicant's car and broke its rear mirror. The Principal Applicant got out of his car and was beaten but managed to escape. There was no suggestion of gang involvement in connection with this attack.
- In February 2015, the Principal Applicant's car was broken into, outside the family home. There was no indication of who was responsible.
- The next month, in March 2015, the Principal Applicant received a phone call telling him that his sister had been kidnapped. However, this turned out to be untrue and his sister was safe.
- The Principal Applicant went to Canada in May 2015 and stayed for 10 months on a student visa. In March 2016, he returned to Mexico.
- In June 2016, three armed men broke into the family home. The Principal Applicant's mother was beaten and the men took with them money and some jewellery. No gang affiliations were asserted by the criminals.
- After this incident, the Principal Applicant experienced significant stress and anxiety. He decided to return to Canada on a visitor's visa.
- While in Vancouver, the Principal Applicant received a call on his cellphone from someone falsely claiming to have kidnapped a member of his family.
- In December 2016, the Principal Applicant returned to Mexico because his Canadian visitor's visa was about to expire and his wedding was imminent.
- In April 2017, the Clinic's accountant was beaten and robbed. He claims that a person who later telephoned the Clinic said he was a member of the Zeta gang.
- Later, in April 2017, the Principal Applicant and his new wife came to Canada and made a refugee claim. They did not identify gangs as the agents of persecution at the point of entry.

II. **The RAD Decision**

[8] The RAD Member found insufficient evidence that gangs were involved in the incidents described above but concluded that, even if they had been, there was no evidence that they would be able to or motivated to find the Applicants in the City of Mérida in Yucatan State. The RAD found that the evidence showed a lack of motivation to target the Applicants. It concluded that the attackers “had allegedly spent the 16 or so years since the kidnapping of the appellant’s brother threatening his family by telephone without taking any real action against them”.

[9] The RAD Member also noted that after their marriage the Applicants lived away from the family home for several months prior to leaving for Canada without facing threats.

[10] The RAD Member also observed that once the Principal Applicant changed his phone number to one that was not on record at the Clinic or associated with the Clinic, he received no further threatening calls.

[11] The RAD Member concluded that the evidence indicated that ordinary criminals had been targeting the Applicants’ family and its employees because of their association with the Clinic.

[12] Taken together, the RAD Member found that these facts suggested that there is not likely a risk to the Applicants if they were to return to Mérida and disassociate themselves from the Clinic.

[13] The RAD Member upheld the RPD's finding that nothing in the evidence suggested that the Applicants would have difficulty finding housing or employment, particularly given their high levels of education.

[14] The RAD Member did not accept the Applicants' argument that to live in Mérida without returning to Toluca to see their family would be to live in hiding. Instead, the Member found that they were free to communicate with family members and family members could visit them in Mérida.

[15] Regarding the Principal Applicant's psychological issues, the RAD Member found that the RPD had taken relevant evidence into account and that the Principal Applicant had not sought therapy in Mexico or in Canada. As well, the RAD Member noted that the Principal Applicant had returned to Mexico even when he was under severe stress. The Principal Applicant acknowledged that he would be able to seek therapy in Mérida. The RAD Member therefore found that the IFA was reasonable.

[16] Lastly, the RAD Member refused to accept a 2018 psychological report as new evidence because it did not add a new diagnosis to an earlier report which had been considered.

### III. **Discussion and Conclusions**

[17] In my view, the RAD Member reasonably concluded that the Applicants had failed to establish that they faced a risk in the IFA location. The evidence was clear that the Clinic was the point of interest for criminals.

[18] The Applicants say that the RAD Member should have considered whether counselling in Mérida would be likely to adequately address the Principal Applicant's mental health issues. In my view, such an analysis would have been speculative and well beyond the RAD's expertise.

[19] To conclude, I find that the RAD's decision dealt with the material issues in a reasonable manner. I am therefore not persuaded by the Applicants' submission that the Decision suffers from a lack of analysis.

[20] For these reasons, the application for judicial review will be dismissed.

[21] On the issue of certification for appeal, no question was proposed by either party.

**JUDGMENT IN IMM-3017-20**

**THIS COURT'S JUDGMENT is that** the application for judicial review is hereby dismissed.

"Sandra J. Simpson"

---

Judge

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

**DOCKET:** IMM-3017-20

**STYLE OF CAUSE:** HECTOR ARTHURO VILCHIS RAMIREZ,  
JANNY SINAI GOMEZ ORTEGA v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE FROM  
VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** FEBRUARY 1, 2021

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** MARCH 25, 2021

**APPEARANCES:**

Emma Andrews FOR THE APPLICANT

Il Hoon (Ezra) Park FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Emma Andrews Law Firm FOR THE APPLICANT

Barristers and Solicitors  
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT

Vancouver, British Columbia