

Federal Court



Cour fédérale

Date: 20220125

Docket: IMM-3278-21

Citation: 2022 FC 77

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 25, 2022

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

GERARDO DE JESUS MORALES GARCIA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision made by the Refugee Appeal Division (RAD) on March 12, 2021. The application for judicial review was made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. At the hearing of this application for judicial review, the Court decided on the fate of the application by

advising the parties that the application was dismissed, with reasons to follow. This judgment provides the reasons given.

[2] Both the Refugee Protection Division (RPD) and the RAD concluded that the determinative issue in this case was the internal flight alternative in Mexico for the applicant. That conclusion has not been disputed in this application for judicial review.

[3] The facts of this case are straightforward and are not disputed by the applicant. On March 10, 2019, members of the Zapatista Army of National Liberation (Zapatistas) forcibly seized a two-hectare piece of farmland that was being cultivated by the applicant. He was afraid and went to the nearby mountains, where he hid for the rest of the day. He complained to the local authorities in the Mexican state of Chiapas. A week later, on March 18, 2019, he left Mexico and traveled to Canada where he claimed refugee protection. His wife and the couple's two children remained in Chiapas, the Mexican state where the applicant and his family were residing at the time of the incidents.

[4] The RPD identified two locations as internal flight alternatives. As is well known, once claimants have established a prospective risk at the location they left to seek refugee protection outside their home country, they may have to disprove the possibility of an internal flight alternative instead of obtaining refugee protection in Canada. This is what happened in this case. Claimants carry the burden of proof and must satisfy the administrative tribunal that they face a serious risk of persecution in the part of the country where there is an internal flight alternative.

They can also demonstrate that it would be unreasonable to seek refuge at the identified locations given all the circumstances.

[5] The RAD, whose decision is the subject of the application for judicial review, concluded, partly on the basis of the documentary evidence about Mexico in the National Documentation Package, that there was an internal flight alternative since the applicant had not discharged his burden of proof. I note, in passing, that the applicant testified before the RPD that he had no intention of returning to Chiapas to claim the land he had been using. It is clear that he is not looking for confrontation and that he wants to live in peace. Not only does the applicant's family continue to live in Chiapas, but his 16-year-old son attends the same school where he was studying at the time of the events. It appears that there have been no disputes since March 2019. There has been no trouble for the applicant's family in Chiapas itself for the last two years. It is difficult to see how this would be different in any other state in Mexico where the applicant could find refuge.

[6] The only argument presented by the applicant comes from a paragraph in Tab 13.1 of the National Documentation Package. Under section 1.2 of Tab 13.1 (Response to Information Requests), it is stated that for over 25 years now, thirty thousand people have been living in protracted displacement in Chiapas as a result of the conflict with the Zapatistas in 1994–95. Section 1.2 also states that “SinEmbargo, a digital Mexican newspaper, reports that in cases of dispossession in Chiapas, operators of the state government, with the support of police, force indigenous groups and Zapatista supporters to leave their land, with impunity (4 Feb. 2015)”. If I understand the argument that the applicant attempted to make, this meant that he would be

caught between the Zapatistas who evicted him from his plot of land and the government authorities who might attempt to force Zapatista supporters off of the land so acquired. But that is not the issue in this case given that the applicant is not seeking to take the land back.

[7] Clearly, this speculative argument has no correlation to the internal flight alternative, which would take the applicant several hundred miles from where he was evicted.

[8] Moreover, this argument does not in any way meet either prong of the test applicable to the applicant in this case. As the respondent succinctly wrote in paragraph 32 of its memorandum of fact and law, [TRANSLATION] “the applicant can meet this burden either by showing that he would still be persecuted or subjected to a risk to his life or to a risk of cruel and unusual treatment or punishment, or by showing that it would be unreasonable for him to attempt to relocate there”.

[9] The applicant did not demonstrate this or even attempt to do so. It follows that the application for judicial review must be dismissed. No question of general importance merits certification under section 74 of the Act.

JUDGMENT in IMM-3278-21

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified under section 74 of the Act.

“Yvan Roy”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3278-21

STYLE OF CAUSE: GERARDO DE JESUS MORALES GARCIA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: JANUARY 11, 2022

ORDER AND REASONS: ROY J.

DATED: JANUARY 25, 2022

APPEARANCES:

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