

Federal Court



Cour fédérale

Date: 20220505

Docket: IMM-4784-21

Citation: 2022 FC 658

Ottawa, Ontario, May 5, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**MA DE LOURDES CASTELLANOS AVINA
MAYRA ALEJANDRA HERNANDEZ CASTELLANOS
ROCIO LIZETTE HERNANDEZ CASTELLANOS
FERNANDO JONATHAN GUTIERREZ RODRIGUEZ
GABRIELA MONTSERRAT AVALOS HERNANDEZ
JUAN PABLO AVALOS HERNANDEZ
FATIMA AVALOS HERNANDEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a June 28, 2021, decision [the RAD Decision] of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada

upholding a January 13, 2021, decision of the Refugee Protection Division [the RPD] finding that the Applicants are not refugees or persons in need of protection.

Background

[2] The Applicants made a refugee claim alleging that they fear harm at the hands of members of the *Cártel de Jalisco Nueva Generación* [the CJNG]. The principal claimant was the Applicant, Ma De Lourdes Castellanos Avina [the Principal Applicant]. The remaining Applicants are the co-claimants in her refugee claim: her two adult daughters, her son-in-law, and her three minor grandchildren. All of the Applicants are citizens of Mexico.

[3] In 2010, the Principal Applicant's husband went missing. She filed a missing persons report and filed a police complaint claiming that the CJNG were responsible for his disappearance. The Principal Applicant conceded that she had no evidence to reach such conclusion aside from rumors.

[4] Two members of a gang that eventually evolved into the CJNG were arrested in 2011 and imprisoned until 2019. Throughout the detention of the cartel members, the Applicants received threats from the CJNG blaming the Applicants for the imprisonment of its members. One of the Principal Applicant's daughters testified that the CJNG assaulted her ex-husband and told him to stop looking for his father-in-law. She also testified that her brother-in-law was shot to death by members of the CJNG, which she believes was done to pressure the Applicants to stop searching for her missing father.

[5] In 2019, after the cartel members were released, the Applicants' family restaurant was broken into and equipment was stolen. The Applicants believe that the CJNG was responsible. The Applicants also believe that the CJNG is behind the disappearances in 2019 of the Principal Applicant's nephew and a family acquaintance who hosted the Principal Applicant's son in her home for a time. The Applicants believe that these acts were done in retaliation for searching for the Principal Applicant's missing husband.

[6] The Applicants fled Mexico in December 2019 and applied for protection. On January 13, 2021, the RPD found that the Applicants were not refugees or persons in need of protection. It accepted the Applicants were credible but found that they had a viable internal flight alternative [IFA] in La Paz, Baja California Sur. The RPD found that there was no indication in the evidence that the CJNG had any presence in Baja California Sur. While the RPD was satisfied that the CJNG has the capacity to locate the Applicants in La Paz, it was not persuaded that the CJNG would be sufficiently motivated to locate and harm them in La Paz, 22 hours from their home.

[7] The Applicants appealed to the RAD. On June 28, 2021, the RAD dismissed their appeal.

[8] The RAD indicated that it agreed with the RPD assessment that the Applicants were credible. The RAD agreed with the Applicants that the RPD erred in finding that the CJNG was not currently active in La Paz. However, the RAD found that notwithstanding this fact, the

Applicants had failed to establish that they face a personal risk that is not generally faced by the citizens of La Paz.

[9] The RAD found that, based on an “independent analysis” of the record before the RPD, the Applicants had not established that they would face a personal risk from criminal organizations in La Paz. The RAD agreed with the RPD that the Applicants had not shown that relocation to La Paz was unreasonable.

[10] The RAD therefore found that the Applicants had a viable IFA in La Paz. As a result, the RAD found that the Applicants were not persons in need of protection.

Issue

[11] The sole issue in this application is whether the RAD Decision is reasonable.

Analysis

[12] Although the Applicants raise several grounds of attack on the reasonableness of the decision, in my view, this application may be disposed of on the basis that there is no line of analysis within the reasons of the RAD that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived.

[13] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paragraph 102, the Supreme Court of Canada affirms the requirement that, for a decision to be reasonable, one must be able to follow a decision maker's reasoning:

[T]he reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": *Ryan*, at para.55; *Southam*, at para. 56. Reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgment": R. A. Macdonald and D. Lametti, "Reasons for Decision in Administrative Law" (1990), 3 *C.J.A.L.P.* 123, at p. 139; see also *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 750, 27 *Imm. L.R.* (4th) 151, at paras. 57-59.

[14] In many paragraphs of its reasons, the RAD states that it performed an "independent" analysis, assessment, or review of the record. It does so at paragraph 31 and then states its conclusion that the Applicants "have not established, on a balance of probabilities, that they would face a personal risk to their lives from criminal organizations, including the CJNG, in La Paz that would not be faced by others in La Paz."

[15] How did it arrive at that conclusion?

[16] At paragraphs 32-33, the RAD summarizes the evidence that was before the RPD. However, the RAD does not engage in any analysis of this evidence.

[17] At paragraphs 34-35, the RAD considers the evidence of country conditions and the new evidence filed by the Applicants before the RAD. The RAD engages with this evidence, explaining that it describes a general risk, but not a personal risk to the Applicants.

[18] As noted above, there is no analysis by the RAD of the evidence that was before the RPD. It cannot be suggested that the RAD implicitly accepted the RPD's analysis because the RAD indicated at paragraph 31 and elsewhere that it was engaging in its own "independent analysis." The RAD simply states the facts and then arrives at a conclusion, without explaining how the two are connected. This is a perfect illustration of the kind of reasons that the Supreme Court warns against at paragraph 102 of *Vavilov*. These reasons do not engage in analysis, inference, and judgment.

[19] Given the lack of justification, the RAD's conclusion that La Paz was a viable IFA is unreasonable.

[20] Neither party proposed a question to be certified. None arises on this record.

JUDGMENT IN IMM-4784-21

THIS COURT'S JUDGMENT is that the application is granted, the decision under review is set aside, the appeal is referred back to a different member of the Refugee Appeal Division for redetermination, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4784-21

STYLE OF CAUSE: MA DE LOURDES CASTELLANOS AVINA ET AL v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 14, 2022

JUDGMENT AND REASONS: ZINN J.

DATED: MAY 5, 2022

APPEARANCES:

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