

Federal Court



Cour fédérale

Date: 20220613

Docket: IMM-5576-21

Citation: 2022 FC 876

Toronto, Ontario, June 13, 2022

PRESENT: Madam Justice Go

BETWEEN:

JAY DALIC SOSA RONQUILLO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Jay Dalic Sosa Ronquillo, is a citizen of Mexico. After losing his job due to downsizing in 2018, the Applicant saw an advertisement through Facebook for employment opportunities in Canada with an agency called the Gonsa Company [Gonsa]. Gonsa advertised itself as a certified agency of the Government of Canada. The Applicant went through the steps of getting a work permit with the assistance of Gonsa, taking out a loan to pay their

fees. Gonsa told the Applicant they had found employment for him. At first, they also said they would pay for his flight and his accommodation, before changing their position.

[2] While the Applicant was waiting to board his flight at the airport in Mexico, a stranger informed him that his work permit was not legitimate as it did not authorize him to work. When the Applicant called Gonsa to say he would not board the plane but would instead report them, Gonsa told him that they would kill his mother if he did not board the flight and that they would be waiting for him if he came back.

[3] The Applicant warned his mother and got on the flight. He arrived in Toronto in October 2018. A man from Gonsa placed him in a small room with several other men. The Applicant had to pay \$600 per month in rent and buy his own mattress and blanket. After doing several days of work, he was told he was too slow and that he would have to search for his own work so that he could pay his rent.

[4] Two months later, the Applicant escaped from the house where he was staying. With the help of a woman he met from Facebook, he made his way to Leamington. That night, the Applicant received a call threatening his mother. His mother later went to Gonsa and threatened to report them, but the man at the office said they would kill the Applicant if she tried anything. She later noticed that she was being watched.

[5] A lawyer informed the Applicant that he could apply for refugee protection, which he did on April 10, 2019 under ss. 96 and 97 of the *Immigration and Refugee Protection Act*, SC

2001, c 27, on the grounds that he fears the company which recruited him into forced labour in Canada.

[6] The Refugee Protection Division [RPD] found that the Applicant did not have a nexus to a Convention ground under s. 96 and assessed his claim under s. 97 only. The RPD also had concerns about the Applicant's credibility, but concluded that the determinative issue was that he had an internal flight alternative [IFA] within Mexico. The Refugee Appeal Division [RAD] upheld the RPD's finding on IFA without addressing the credibility issue [the Decision].

[7] The Applicant argues that the RAD ignored evidence that Gonsa was linked to a cartel and would have the means and motivation to pursue him in the proposed IFA locations. I dismiss the application as the Decision was reasonable.

II. Issues and Standard of Review

[8] The Applicant argues there are two issues: (1) the standard of review, and (2) whether the decision is reasonable.

[9] Both parties agree that the reasonableness standard applies, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[10] 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. Whether a decision is reasonable depends on the relevant

administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[11] For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep”: *Vavilov*, at para 100.

III. Analysis

[12] The Applicant argues that the RAD misapprehended the evidence, contrary to *Vavilov*, at paras 126, 128, and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC).

[13] In the Applicant’s view, the RAD’s conclusion that there was a viable IFA was heavily influenced by its finding that Gonsa was not connected to the Los Zetas cartel. The Applicant testified that he knew Gonsa was connected to Los Zetas because a neighbour told him that the people outside his mother’s house were the same people who had killed a neighbour over money. The Applicant argues that the RAD misapprehended this testimony, and that the Member instead provided their own interpretation.

[14] I find the RAD did not commit such an error.

[15] To start, the Applicant's evidence with respect to the connection between Gonsa and the cartel was tentative to say the least. Relevant portions of the Applicant's testimony before the RPD were reproduced in the Decision. After describing that a neighbour of his mother saw a strange person on the street and claiming that they were the same people from Gonsa, who were "hitmen" from one of the cartels, Los Zetas, the Applicant continued his testimony under examination by his counsel and by the RPD member:

COUNSEL: How do you know the cartel group are the Los Zetas?

APPELLANT [INT]: because before I came to Canada, maybe about 4-5 months before, my neighbour was murdered for some money and it was the same people.

COUNSEL: What was that?

INTERPRETER: My neighbour was murdered for some money and it was the same people.

[...]

RPD MEMBER: you also told counsel that the people who continue to come to your mothers home are members of the las sitas cartel *translates* do you know they're members of the cartel or you know they're members of the cartel

APPELLANT [INT]: well there was a lot of talk in the [Canada] home and they mention a lot that the cartel sitas is in lascalas and in fact one of my neighbours was murdered by one of the sitas members

RPD MEMBER: Do you know if the people who are continued to come to your mother house are members of that cartel or are you speculating?

INTERPRETER: I the interpreter am having difficulty hearing the claimant.

APPELLANT [INT]: well we know it's them because they always showed up in trucks with dark tinted windows. This is something that is prohibited in Mexico but they still showed up like that and many times people like that are the people that do that

RPD MEMBER: Do you know for sure it's members of the cartel or are you speculating sir? Third time I asked.

APPELLANT [INT]: Yes I'm not quite sure but its people who are going to harm me.

[16] The RAD found as follows:

[36] The Appellant's testimony referenced above must be read as a whole. When the Appellant testified that the men outside his mother's house were the same people that killed his neighbour, I do not interpret that he was speaking literally. In other words, I do not interpret that the Appellant was testifying that the exact same person that killed his neighbour, who he knew was a Los Zetas cartel member, was the exact same person that was outside his mother's house. If the Appellant had actual knowledge that the exact same man who killed his neighbour was the exact same man outside his mother's house, that would, of course, be extremely important and specific information.

[37] When read as a whole, in the excerpt above the Appellant does not convey the information that the exact same person is a Los Zetas cartel member. Instead, he responds, "It's the same people from Gonza [*sic*]." Upon further questioning, he attempts to draw the connection between the men who murdered his neighbour and the men outside his mother's house, but this information is very tenuous....

[Emphasis in original]

[17] I find the RAD's analysis was reasonable in view of the Applicant's testimony. Indeed, the RAD gave the Applicant's testimony a favourable interpretation by finding that the Applicant was not suggesting the person who killed his neighbour was the exact same person outside his mother's house. Doing so allowed the Applicant to make the connection between Gonsa and the cartel without having to prove that the threat against him came from a particular hitman, but the information from the Applicant was simply too tenuous for the connection to be drawn.

[18] At the hearing, the Applicant submitted that although he was not 100% sure that the man who killed his neighbour was the same man who was outside his mother's home, this was not the same as speculation, and to use this to dismiss his testimony was unreasonable.

[19] With respect, the RAD did no such thing. As already noted, the RAD did not expect the Applicant to prove that the hitman and the stranger were one and the same. Besides, the Applicant's testimony about the alleged connection with the cartel was that he was "not quite sure", which was far from definitive.

[20] The Applicant also argues that the RAD engaged in circular reasoning when it dismissed his testimony about his mother, simply because he was not sure about the identity of the person who was outside his home. This argument has no merit. As the RAD noted in the Decision, the Applicant was not even relying upon direct information from his mother, but instead information that has apparently been passed along from the neighbour. The RAD also noted that the statutory declaration of the Applicant's mother "does not make any reference to the men outside her house being associated with the Los Zetas cartel. Instead she indicates that the men were from the Gonsa Company, and that she cannot return to her house because she knows the Gonsa Company is looking for the [Applicant]." The Applicant does not point to any errors with these findings, nor can I find any.

[21] The Applicant also points out that he gave an additional reason for believing the person watching his mother was part of the Los Zetas cartel, which was that they had the same trucks with tinted windows, which are prohibited in Mexico. The RAD dismissed this reason, finding as follows:

[39] I do not accept the Appellant's argument that the tinted windows of the cars outside his mother's house are sufficient evidence to show that they are members of the Los Zetas cartel. I do not have sufficient objective evidence that only cartel members, and specifically Los Zetas cartel members, have illegally tinted windows. The presence of tinted windows is insufficient to draw any

conclusions on the identity of the men outside the Appellant's mother's house.

[22] I fail to see any error with the RAD's reasoning in this respect, which is both justified and logical.

[23] The Applicant argues the RAD's acknowledgement that "if the exact same man who killed his neighbour was the exact same man outside his mother's house, that would, of course, be extremely important and specific information." The Applicant submits this is an acknowledgement that this information affected the outcome of the IFA analysis.

[24] The Applicant's argument ignores the fact that the onus was on him to establish the connection between the Los Zetas and Gonsa in order to rebut the IFA finding by the RAD. That the Applicant was not able to do so, has led the RAD to reasonably conclude that Gonsa, on its own, would not have the means or motivation to track the Applicant down in the proposed IFA. The RAD's conclusion was completely justified, transparent and intelligible, in light of the totality of the evidence.

[25] As a final note, it is worth repeating that the RAD focused only on the determinative issue of IFA, and did not consider the RPD's various findings on credibility. By confirming the Decision, I too have not considered the RPD's credibility findings and my decision should not be regarded as an endorsement of those findings.

IV. Conclusion

[26] The application for judicial review is dismissed.

[27] There is no question for certification.

JUDGMENT in IMM-5576-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5576-21

STYLE OF CAUSE: JAY DALIC SOSA RONQUILLO v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

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