

Federal Court



Cour fédérale

**Date: 20220719**

**Docket: IMM-5989-21**

**Citation: 2022 FC 1071**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, July 19, 2022**

**The Honourable Mr. Justice Pamel**

**BETWEEN:**

**MARCO ANTONIO TORRES ZAMORA  
DULCE KARINA ASTUDILLO ALCAZAR  
KALEB GAEL TORRES ASTUDILLO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicants, Marco Antonio Torres Zamora, his spouse, Dulce Karina Astudillo Alcazar, and their two sons aged 19 and 6 years, are Mexican citizens, and they made a claim for refugee protection based on their fear of persecution by members of the Jalisco Nueva

Generación Cartel (CJNG). The Refugee Protection Division [RPD] rejected the applicants' claim, concluding that the applicants' behaviour was inconsistent with that of persons fearing for their lives and that viable internal flight alternatives [IFAs] were available to them in the cities of Mérida, Mexico City and Campeche. The sole issue before the Refugee Appeal Division [RAD] was whether there existed a viable IFA, and the RAD upheld the RPD's decision on this point.

[2] For the reasons that follow, I am of the view that the application for judicial review should be dismissed.

## II. Background

[3] The applicants had been living in the city of Mendoza, in the State of Veracruz, since 2002 when members of the CJNG began to target them. On June 11, 2019, Ms. Alcazar and her youngest son witnessed the kidnapping of her neighbour by masked and heavily armed men. One of the men noticed that Ms. Alcazar and her son were standing there and threatened to kill them if they told anybody. The next day, after finishing work, Ms. Alcazar saw the same man who had threatened her the day before; she recognized him by the tattoo on his right arm. He was staring at her. The following day, June 13, 2019, she again saw the man outside of her workplace, holding his telephone with the camera pointed toward her. Following these incidents, Ms. Alcazar decided to quit her job.

[4] On June 13, 2019, Mr. Zamora was intercepted by a van as he was leaving work and beaten by three armed men. The three men identified themselves as members of the CJNG and threatened Mr. Zamora, telling him that they would go after him, his wife and his youngest son if

they reported to the authorities the kidnapping Ms. Alcazar had witnessed. Mr. Zamora did not complain to the authorities following the assault, fearing that the corrupt authorities would tell the CJNG where he and his family were located. Accordingly, Mr. Zamora did not return to work until July 17, 2019.

[5] On June 16, 2019, Ms. Alcazar and her youngest son left the city of Mendoza to hide in the home of Ms. Alcazar's aunt in Coatzacoalcos, fearing that members of the CJNG would come after them. Mr. Zamora remained in Mendoza because he did not wish to lose his job; he states that he took measures to protect his safety. Ms. Alcazar and her son remained with her aunt for one month and returned to Mendoza on July 18, 2019, after witnessing a fire and a homicide in the bar belonging to the aunt, allegedly committed by members of the CJNG. The applicants fled Mexico for Canada on February 27, 2020.

[6] In a decision dated March 22, 2021, the RPD found that the applicants had testified in a straightforward manner, though it did raise some contradictions in their allegations and behaviour inconsistent with the alleged fear. Nevertheless, the RPD found that the applicants had a viable IFA in the cities of Mérida, Mexico City and Campeche. The RPD applied the two-pronged test for an IFA set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) [*Rasaratnam*]. In applying the first prong of the test, the RPD was not persuaded, on a balance of probabilities, that there was a serious possibility that members of the CJNG would be motivated to seek out the applicants in the proposed IFAs. The RPD took into consideration the fact that the applicants had not seen the men from the CJNG since June 13, 2019, or received calls from them, and that their

family members had not received visits or calls from them either. As for the second prong of the test, the RPD found, on a balance of probabilities, that it was not unreasonable for the applicants to move to one of the proposed IFAs and that, given their education and work experience, it would not be unreasonable for Mr. Zamora and Ms. Alcazar to find employment in the proposed IFAs.

[7] The RAD, in a decision dated August 6, 2021, considered only the issue of whether the applicants had a viable IFA in Mexico, and it agreed with the RPD's finding on that point. The applicants argued that the incidents they experienced were sufficient to establish that members of the CJNG would find them anywhere they might settle in Mexico, because the CJNG is spread throughout the country. The RAD held that the applicants had not presented any tangible evidence to establish that members of the CJNG were motivated to seek them out and that this was a sufficient basis for a finding that they had a viable IFA. Though the applicants did not challenge the RPD's findings regarding the second prong of the *Rasaratnam* test, the RAD conducted its own analysis and concluded that the applicants had failed to establish that it was unreasonable for them to settle in Mérida, Mexico City or Campeche.

### III. Issue and standard of review

[8] This application for judicial review raises only one issue: was the RAD's decision reasonable?

[9] The parties are of the view, and I agree, that the standard of review applicable to a RAD decision regarding an IFA is reasonableness (*Canada (Minister of Citizenship and Immigration)*)

*v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]; *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11). The Court’s role is to determine whether the decision is reasonable overall, that is, whether it is based on “an internally coherent and rational chain of analysis” and whether the decision as a whole is transparent, intelligible and justified (*Vavilov* at paras 83–87).

IV. The Refugee Appeal Division’s decision is not unreasonable

[10] According to the two-pronged test established by the Federal Court of Appeal in *Rasaratnam*, to determine that an IFA is viable for the applicant, the RAD must be satisfied, on a balance of probabilities, that (1) there is no serious possibility of the claimant being persecuted in the part of the country in which it finds an IFA, and (2) it is not unreasonable, in all the circumstances, including the claimant’s personal circumstances, for the claimant to relocate to that location (*Rasaratnam* at pp 709–11).

[11] In their Memorandum of Fact and Law, the applicants only challenge the RAD’s findings regarding the first prong of the test and raise essentially the same argument they raised before the RAD. They submit that the incidents they experienced show that members of the CJNG are sufficiently interested in seeking them out. Before me, the applicants argued that the mere fact that agents of persecution threatened them in 2019 to silence Ms. Alcazar and prevent her from reporting the incident she witnessed sufficed to prove, on a balance of probabilities, that the cartel continued to be motivated to track them down or interested in tracking them down in the IFA if the family were to return to Mexico.

[12] I am not persuaded by the applicants' argument. The RAD correctly raised the various burdens of proof applicable to a persecutor's ability to pursue individuals on the one hand and their motivation to do so on the other:

[23] Although I understand your argument, in my opinion, it does not reflect the case law as it exists today. The case law establishes that there is a difference between a persecutor's *ability* to pursue an individual or family throughout a country and their *desire* to do so or *interest* in doing so. The fact that a persecutor is able to pursue an individual or family is not decisive evidence that the said persecutor is motivated to pursue, persecute, or threaten them. Furthermore, it is well established in law that if the persecutor has no desire to find, pursue or persecute an individual or family, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution in the future or risk to the lives of the persons concerned.

[Italics emphasis in original; underlining emphasis added.]

[13] The RAD concluded that the applicants had not produced tangible evidence demonstrating the interest of the CJNG members to pursue them:

[24] According to my own analysis of your record, you did not present any tangible evidence of the motivation, interest, or desire of the cartel members to pursue you, your wife and your minor children, when you continued to live in your home during the months preceding your departure, or since your departure from Mexico given that no members of your family who still live there have been bothered by them. This lack of evidence is sufficient to conclude that there is an IFA in your own country, if you settle in Mérida, Mexico City or Campeche.

[14] I cannot expect the RAD to make decisions in a vacuum. As the RAD had no evidence of the cartel's motivation to pursue the applicants, how can I criticize it for drawing the conclusion it did? I am of the view that the RAD's decision is reasonable because there is no evidence in the file demonstrating the motivation of the CJNG members to locate the applicants. There is indeed

a difference between a persecutor's ability to pursue an individual and their desire to do so and interest in doing so (*Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13 [*Leon*]). It is reasonable for the RAD to have taken into consideration the fact that the applicants were not bothered during the months prior to their departure for Canada despite the fact that they were not in hiding and also the fact that their family members did not receive any visits or telephone calls from members of the cartel (*Leon* at para 23). The onus is on the applicants to demonstrate that the decision under review is unreasonable, and I am of the view that they have failed to establish that the RAD's decision has sufficiently serious shortcomings such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100).

#### V. Conclusion

[15] I would dismiss the application for judicial review.

**JUDGMENT in IMM-5989-21**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. No question is certified.

“Peter G. Pamel”

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Judge

Certified true translation  
Francie Gow



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

**DOCKET:** IMM-5989-21

**STYLE OF CAUSE:** MARCO ANTONIO TORRES ZAMORA, DULCE  
KARINA ASTUDILLO ALCAZAR, KALEB GAEL  
TORRES ASTUDILLO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD VIA VIDEOCONFERENCE

**DATE OF HEARING:** MAY 18, 2022

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** JULY 19, 2022

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