

Federal Court



Cour fédérale

Date: 20221025

Docket: IMM-8924-21

Citation: 2022 FC 1453

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 25, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

JOSE ANTONIO OJEDA ESCOBAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Facts and underlying decisions

[1] This is an application for leave and judicial review of a decision by the Refugee Appeal Division [RAD] rendered on November 10, 2021, dismissing the appeal by the applicant, Jose Antonio Ojeda Escobar, a citizen of Mexico, of a decision by the Refugee Protection Division

[RPD] that rejected his refugee protection claim. The RAD's analysis is based primarily on the applicant's internal flight alternative in his home country.

[2] In short, Mr. Ojeda was living with his parents in the Tepito neighbourhood in Mexico City. He alleges in his Basis of Claim Form [BOC Form] that he was first extorted by young offenders in 2008 and went to live with his grandparents in Nezahuacoyotl, a suburb of Mexico City, to escape the problem. In 2015, he and two colleagues became co-owners of an Internet cafe that offered computer services in the San Juan de Aragon neighbourhood of Mexico City. In December 2018, Mr. Ojeda was approached by two individuals who introduced themselves as members of the criminal group La Union Tepito and demanded 5,000 pesos per week as protection money. Following this incident, Mr. Ojeda again sought refuge with his grandparents, in Nezahuacoyotl, from where he went to work each day. Mr. Ojeda's father, a plainclothes police officer, was able to determine that the two individuals who had approached his son were known as "el Lunares" and "el Pezunia" and were members of the criminal gang La Union. In February 2019, on his way to work, he encountered the same individuals, who hit him and demanded that he pay 200,000 pesos. Mr. Ojeda was able to escape because the assailants were distracted by bystanders. He stayed with his grandparents until he left for Canada on June 3, 2019.

[3] The RPD found that Mr. Ojeda failed to establish that he faced a serious possibility of persecution or would, on a balance of probabilities, be subjected to one of the risks listed in section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27, in every part of Mexico. Nor did he establish that it would be unreasonable for him to move to Tlaxcala or

Merida, cities proposed as internal flight alternatives [IFAs]. For its part, after conducting an independent review of the evidence, the RAD found that the RPD determination that the applicant had an IFA in the cities of Merida and Tlaxcala was correct.

II. Issue and standard of review

[4] The standard of review applicable to this case is that of reasonableness, as defined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 (*Vavilov*). This application for judicial review raises the issue of whether the RAD decision was substantively unreasonable. The Court’s role is to consider the administrative decision maker’s rationale for the decision and the outcome to which it led to determine whether the decision is “based on an internally coherent and rational chain of analysis” and “is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). In addition, the burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100).

III. Analysis

[5] Mr. Ojeda submits that, in agreeing with the RPD’s findings, the RAD did not discharge its obligation to conduct an independent, thorough and consistent analysis. I do not agree. In contrast to *Osah v Canada (Citizenship and Immigration)*, 2021 FC 492, in this case, the RAD set out its reasons for considering the RPD decision to be correct in a clear and precise manner. In keeping with the principles set out in *Mohamed v Canada*, 2019 FC 1071 at paragraph 26, the

RAD addressed each of Mr. Ojeda's grounds of appeal in detail and clearly conducted an independent analysis of his evidence and his testimony. In fact, the RAD states in its decision that it relistened to the recording of the hearing before the RPD. It then drew specific conclusions, similar to those of the RPD, but also explained why those conclusions had a significant impact on Mr. Ojeda's account.

[6] With respect to the existence of an IFA, the case law has established that an individual cannot claim international protection if viable haven is available elsewhere in the home country (*Thabet v Canada (Minister of Citizenship and Immigration) (CA)*, [1998] 4 FC 21). It is also well-established that an IFA finding is determinative and sufficient to reject a refugee protection claim (*Rocha Pena v Canada (Citizenship and Immigration)*, 2009 FC 616; *Guzman Lopez v Canada (Citizenship and Immigration)*, 2010 FC 990).

[7] In *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), the Federal Court of Appeal set out the two-part conjunctive test used to determine whether there is an IFA, namely that, on a balance of probabilities, the claimant would not be subjected to persecution or a danger or risk under section 97 and, second, that, in all the circumstances, including those particular to the claimant, the conditions in the IFA area are such that it would not be unreasonable for a claimant to seek refuge there. The onus of establishing that the proposed locations do not meet either of the two parts of the test therefore falls to the claimant.

[8] Mr. Ojeda is not disputing the RAD's findings in respect of the second part of the test. As for the first part, it is important to note that, to meet the objective test for an IFA, the claimant must show that the persecutor is both able to pursue the claimant in the proposed IFA and motivated to do so in order to establish that the IFA is unreasonable (*Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13). Thus, in addition to having to establish that his persecutor was able to find him anywhere in the country, the claimant also had to prove that the persecutor was still motivated to attack him now in the proposed IFAs, which he did not do.

[9] First, Mr. Ojeda alleges that the RAD seems to have misunderstood his argument that the ability of the agents of persecution was misanalyzed by the RPD. He submits that the reasons it provided in its decision are contradictory and do not consider all the facts, thus making its decision unreasonable. Mr. Ojeda also submits that the panel should have considered the sections of the National Documentation Package that show that criminal groups are able to find people anywhere in the country through private investigators, informants and individuals who have infiltrated Mexican authorities. The RAD considered that evidence, but found that it was not sufficient to show that the persecutor, La Union Tepito, would be able to track down Mr. Ojeda in the proposed IFAs.

[10] In its decision, the RAD referred to other objective evidence that indicates that "La Unión Tepito has been aggressively expanding its criminal operations in 2019, including a sharp increase in extortion. It has shown no hesitation in killing business owners who do not comply, and it has moved into wealthier areas of the city." I accept that the objective evidence confirms that criminal groups in general are able to find the people they are looking for, but La Union

Tepito is not one of the groups with a national presence. According to the objective evidence dealing specifically with this issue, La Union Tepito only has a presence in the capital. As Mr. Ojeda did not provide any other evidence to demonstrate otherwise, the RAD reasonably concluded that that gang would not be able to find him in the proposed IFAs. As a result, simply alleging that La Union Tepito has ties to other criminal groups without concrete evidence to support that allegation, when there is objective evidence stating that it is only present in Mexico City, is what the RAD called conjecture. I agree.

[11] With respect to the persecutors' motivation, the RAD notes that this was the most important aspect of the analysis. In other words, it implies that, without this aspect, the objective test for an IFA cannot be met, even if the persecutor's ability has been demonstrated. It also notes that the mere existence of ties between some corrupt police officers and criminals in Mexico does not affect the aspect of motivation.

[12] First, Mr. Ojeda states that it is contradictory that the RAD found to be credible the attack in February 2019 and the fact that he remained in hiding with his grandparents until he left Mexico, but that it then found that the persecutor had no desire to find him elsewhere because it did not do so when he was still in Mexico. He accuses the RAD of basing the agent of persecution's lack of motivation solely on the fact that his family was not bothered. He claims that that finding does not reflect the evidence on the record or the facts. In fact, Mr. Ojeda alleges that the RAD erred in discrediting his statement that his father had been contacted by informants to tell him that La Union Tepito had been looking for him since he left for Canada. Mr. Ojeda claims that the panel should have taken his testimony as a whole rather than finding

that that statement was not credible, as he tried to explain at the start of his testimony before the RPD why he did not have the letter from his father to support what he said. According to Mr. Ojeda, that error tarnishes the analysis of the agents of persecution's motivation to find him.

[13] I disagree. This important information was not part of Mr. Ojeda's written account, although he could have amended his BOC Form before the hearing. The onus was on Mr. Ojeda to add relevant evidence when asked to do so by the panel, even if he had no documentation to corroborate it. The recording of the hearing before the RPD makes it clear that the member asked Mr. Ojeda at the start of the hearing if he had any changes to make to his BOC Form or any information to add to it, as it had been completed and signed over two years earlier, in 2019. He replied that he had nothing to add. His counsel then stated that Mr. Ojeda did not have the letter from his father and would like to explain the reasons why he had been unable to obtain it. The member did not respond specifically to that question, but again asked Mr. Ojeda if the BOC Form was [TRANSLATION] "complete, true and accurate", to which Mr. Ojeda again replied that it was.

[14] It was only about 90 minutes later that the topic of the father's letter came up again. Mr. Ojeda stated at that time that his father had told him that people had tried to inquire about a person with the same characteristics as him, [TRANSLATION] "in front of [his] parents' house". Mr. Ojeda went on to explain that his father had that information because he was working in the police and knew informants in Tepito. Mr. Ojeda claimed that those individuals had apparently looked for him five or six times in 2019 and 2020, following which the member asked him if

there was a reason that his account did not include that information. Mr. Ojeda replied that it was because he was convinced that his father would send him a letter to corroborate the allegation.

[15] The member then asked Mr. Ojeda, [TRANSLATION] “and when I asked you if your BOC Form was complete, true and accurate, if you had anything to add, why did you not mention that information?” To which Mr. Ojeda replied, [TRANSLATION] “I did not know that you wanted to know that.”

[16] Although the member did not ask Mr. Ojeda for any further explanations about why he could not provide the letter from his father at the start of the hearing following his counsel’s intervention, he never prevented Mr. Ojeda from speaking about the contents of his BOC Form; quite the contrary. Although Mr. Ojeda was unable to provide the letter from his father to corroborate that part of his account, that information should first and foremost have been in his BOC Form. Moreover, Mr. Ojeda could have amended his BOC Form prior to the hearing or, at least, have clarified that information on the two opportunities given to him by the member, which he did not do. The RAD therefore did not err in discrediting Mr. Ojeda’s statement, as he should simply have mentioned that part of his account when he had the opportunity to do so during the hearing before the RPD. This is an omission of a major fact that should have been stated at least at the start of the hearing. The RAD decision in this respect was therefore not unreasonable.

[17] Mr. Ojeda claims that the objective evidence corroborates his argument that the Union Tepito group is motivated to find him out of revenge. He states that his persecutor wants revenge

because he refused to obey their will and claims that the objective evidence confirms that this is enough motivation for members of criminal groups to travel across the country. However, the RAD considered this objective evidence in its analysis. Mr. Ojeda simply disagreed with how it was treated. The RAD states that Mr. Ojeda's fear based on the documentary evidence that his aggressor would want revenge because he did not pay the amount demanded is not sufficient on its own to find that that is the case and that the proposed IFAs would not be safe locations. I see nothing unreasonable in that finding. In *Chavez Perez v Canada (Citizenship and Immigration)*, 2021 FC 1021 at para 12, the Federal Court stated that "it is not sufficient for a refugee protection claimant to merely refer to general evidence about the conditions in the claimant's home country as justification for receiving the protection sought". The RAD states that the last time Mr. Ojeda was approached in 2019 was when he was near his work, in Mexico City. As a result, considering the rest of the evidence, that objective evidence is not sufficient to establish that he would not be safe in the cities of Merida or Tlaxcala.

[18] Finally, Mr. Ojeda alleges that the RAD did not respond to his ground of appeal that it was contradictory for the RPD to deem the attack in February 2019 and the move to his grandparents credible, but then to conclude that, if they had a real interest in finding him, they would have looked for him with his family members. I do not agree. According to *Rodriguez Llanes v Canada (Citizenship and Immigration)*, 2013 FC 492, at para 10, such circumstances are usually a good sign that the agent of persecution probably does not want to pursue Mr. Ojeda anywhere in Mexico.

[19] The RAD's conclusion that Mr. Ojeda did not discharge his burden of proof to show that the agents of persecution are able to find him in the cities of Merida and Tlaxcala and are motivated to do so is therefore not unreasonable. Although the RAD found some of Mr. Ojeda's allegations credible, it was not a contradiction for it to then find that the evidence as a whole did not establish that the persecutor had an interest in pursuing the claimant in the proposed IFAs. Mr. Ojeda therefore did not discharge his burden of establishing on a balance of probabilities that the persecutors would be able to find him anywhere in the country and were motivated to do so, in order to meet the first part of the IFA test developed in *Rasaratnam* and *Thirunavukkarasu*.

[20] I would therefore dismiss the application for judicial review.

JUDGMENT in IMM-8924-21

THIS COURT'S JUDGMENT is as follows:

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

“Peter G. Pamel”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8924-21

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