

Federal Court



Cour fédérale

Date: 20221115

Docket: IMM-3749-22

Citation: 2022 FC 1551

Ottawa, Ontario, November 15, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

PAULO ADRIAN ALBORES ORTA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of Mexico, sought refugee protection in Canada due to a fear of the *Cártel de Jalisco Nueva Generación* [CJNG], a cartel with a national presence in Mexico.

Both the Refugee Protection Division [RPD] and Refugee Appeal Division [RAD] found that the Applicant had an internal flight alternative [IFA] available to him in Yucatan, Mexico, and rejected his refugee claim pursuant to subsection 97(1) of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [IRPA]. The Applicant seeks judicial review of the RAD's decision, which dismissed his appeal and confirmed the RPD's decision.

[2] For the reasons that follow, the application is dismissed.

II. Background

[3] For convenience and not out of disrespect, the Applicant's family members will be referred to in these reasons by their first names.

[4] On August 20, 2019, the CJNG kidnapped the Applicant's youngest brother, Claudio. At the time of the kidnapping, the Applicant and his brother Edgar were already in Canada. Both of them were without status as their travel authorization issued in 2018 had expired.

[5] The CJNG sent a ransom demand to Claudio's recent contacts on his cellphone, which included the Applicant, Edgar, their mother, Martha, her common-law partner, Gerardo, and the Applicant's maternal grandparents.

[6] Martha and Gerardo sought assistance from the police; however, Claudio managed to escape the hotel room where he was being held the following day. The escape was reported to the police and no ransom was paid.

[7] Claudio, Martha and Gerardo moved in with the grandparents, who lived one hour away, and remained there until they fled to Canada on September 26, 2019. Martha claimed refugee

protection on her own behalf and on behalf of Gerardo and her three adult sons based on their fear of the CJNG. Martha received a threatening WhatsApp message approximately one year after fleeing Mexico from an unknown number stating the person knew she was in Vancouver, Canada.

[8] The RPD heard Martha's claim jointly with the claims of her family members. The RPD found that if Martha, Gerardo and Claudio were to return to Mexico, the CJNG would kill them because Claudio escaped from their hold, and Martha and Gerardo not only did not comply with their monetary demands but also reported the CJNG to the police. It further found that there was sufficient evidence to support that the CJNG would be motivated to pursue and harm Martha, Claudio, and Gerardo and that their removal to Mexico would subject them personally to a risk to life and of cruel and unusual treatment or punishment.

[9] The RPD noted that the CJNG had not taken any steps to threaten or harm the grandparents, who it found were similarly situated individuals to the Applicant and Edgar, as none of them had approached the police to report the kidnapping, made a denunciation against the CJNG, or been directly threatened by the CJNG. The RPD found that the Applicant and Edgar failed to adduce sufficient evidence to demonstrate that the agent of harm is motivated to locate and harm them in Yucatan.

[10] The RPD also found no concrete evidence that the conditions in Yucatan would jeopardize the life or safety of the two brothers. The RPD noted that they would be in a position to support themselves in Yucatan given their high school education and prior work experience in

Canada and Mexico. As such, the RPD found that it would be reasonable for the Applicant and Edgar to relocate to Yucatan.

III. RAD Decision

[11] The RAD held that the RPD was correct in finding that the Applicant and Edgar were neither Convention refugees nor persons in need of protection pursuant to section 96 and subsection 97(1) of IRPA. It agreed with the RPD that the allegations as set out in their mother's Basis of Claim form were credible. The determinative issue was whether they had a viable IFA in Yucatan.

[12] The RAD held the RPD correctly examined the factors that tend to prove or disprove the motivation of harm; specifically whether the Applicant and Edgar had a profile that put them at risk under the first prong of the IFA analysis outlined in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) [*Rasaratnam*].

[13] The RAD noted that the Applicant and Edgar were direct recipients of the ransom demands, the random demands were not paid, and country evidence indicates that refusing to pay a debt could motivate a cartel to pursue the person outside the cartel's area of operation. However, unlike the successful claimants, the Applicant and Edgar were not directly threatened by the CJNG, nor did they receive any further threats after Claudio escaped or go to the police themselves. It found that having "close blood relations" does not increase their particular risk profile.

[14] The RAD concluded, “even if I were to find that the cartel likely has the means to find the [Applicant and Edgar] in Yucatan, which is noted to be the most peaceful state in Mexico, they have not discharged their burden to prove, on a balance of probabilities, that the cartel has the motivation to do so.”

[15] The RAD noted that the Applicant and Edgar did not challenge the RPD’s findings under the second prong of the *Rasaratnam* test that it would be reasonable for them to move to Yucatan.

IV. Analysis

[16] The determinative issue is whether the RAD’s determination of the first prong of the *Rasaratnam* test was reasonable.

[17] The review of an IFA analysis is primarily a factual inquiry attracting deference from reviewing courts. The standard of review is one of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[18] In assessing the reasonableness of a decision, *Vavilov* states that a court must consider the outcome of the administrative decision in light of its underlying rationale, in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov* at para 15. Further, the reviewing court must be satisfied that the decision is internally coherent — there is a “line of analysis” in the reasons that could reasonably lead from the evidence to the conclusion: *Vavilov* at para 102.

[19] The Applicant submits that the RAD's decision to distinguish between the successful claimants and the Applicant is not reasonable based on the record available to it. He claims that the evidence before the RPD demonstrates the CJNG threatened the entire family and this is consistent with general country condition evidence which states that "[t]ypically, families could be subjected to threats and violence as an act of retaliation or to exert pressure on other members of the family to succumb to recruitment attempts or extortion demand."

[20] According to the Applicant, because there was a finding that the CJNG would be motivated to pursue and harm the successful claimants, then the harm must necessarily translate to him. I disagree.

[21] Pursuant to section 96 of IRPA, a claimant may show a fear of persecution through evidence of the treatment of members of a group to which the claimant belongs (i.e. "similarly situated" persons) in their country of origin: *Salibian v Canada (Minister of Employment and Immigration)*, 1990 CanLII 7978 (FCA), [1990] 3 FC 250 (CA), at paras 17-19. However, an analysis under section 97 of the IRPA is a personalized one: *Rodriguez v Canada (Citizenship and Immigration)*, 2012 FC 11 at para 75. Applicants bear the onus of showing that they would personally be subject to the alleged dangers and risks.

[22] The RAD found that the general country condition evidence about risks potentially faced by family members who betray a cartel does not assist the Applicant in this case because there was specific evidence about the experience of other family members which suggests the

opposite: the grandparents did not receive any further threats despite having directly received the ransom demand and despite not having paid.

[23] The RAD acknowledged that there was no evidence that the cartel was aware of the blood relations of the grandparents and their “closeness” to the mother or Claudio. In contrast, the cartel’s statement to Gerardo – “what have your other kids told you because they also saw the video” – demonstrated that the cartel was aware of the blood relation of the Applicant and Edgar to the successful claimants. The RAD reasoned, however, that while the closeness of blood relations may be a factor to consider in analyzing a claimant’s risk profile, it was not a determinative factor when looking at the evidence as a whole.

[24] The RAD explained why it agreed with the RPD’s finding that the Applicant is similarly situated to his grandparents in terms of risk profile, noting in particular that: (a) the Applicant’s life was never directly threatened; (b) he did not receive any further threats from the cartel after Claudio was kidnapped or after Martha and Gerardo went to the police; (c) he did not personally make any police complaint against the cartel; and (d) the threat received by Martha after she was in Canada did not name or otherwise engage the Applicant. The RAD concluded that the evidence supported a finding that the Applicant had not been targeted for retaliation. I am not persuaded that the RAD made any error in so finding.

[25] The Applicant’s submissions on the whole involve a request to reweigh and reassess the evidence because of disagreement with the weight attributed and inferences drawn by the RAD.

The Supreme Court of Canada has cautioned reviewing courts against doing so: *Vavilov* at para 125.

[26] In my view, the RAD reasonably considered the evidence, which included both positive and negative risk factors, and was correct in upholding the RPD's finding that the Applicant did not adduce sufficient evidence demonstrating that he was personally at risk in the proposed IFA.

V. Conclusion

[27] For the above reasons, I am satisfied that the RAD's decision bears all the hallmarks of a reasonable decision – justification, transparency and intelligibility – and does not warrant any intervention by this Court.

[28] Therefore, the application for judicial review is dismissed. There are no questions for certification.

JUDGMENT IN IMM-3749-22

THIS COURT'S JUDGMENT is that:

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

“Roger R. Lafrenière”
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3749-22

STYLE OF CAUSE: PAULO ADRIAN ALBORES ORTA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 8, 2022

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