

Federal Court



Cour fédérale

Date: 20230119

Docket: IMM-7188-21

Citation: 2023 FC 82

St. John's, Newfoundland and Labrador, January 19, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**ALDO GARCIA FLORES
MARGARITA SARAHI LUNA SALAZAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Aldo Garcia Flores (the “Principal Applicant”) and his wife Margarita Sarahi Luna Salazar (collectively the “Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In that decision, the RAD dismissed their appeal from the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), denying their application for protection in Canada as Convention refugees

or persons in need or protection, pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act, C. 2001, c. 27* (the “Act”).

[2] The Applicants are citizens of Mexico, residing in Guadalajara. The Principal Applicant advanced a claim based upon a fear of persecution from the Cartel de Jalisco Nueva Generacion (“CJNG”). He alleged that this group murdered his father, a lawyer, and other members of the law firm in 2008. He alleged that in 2014, when he and his brother sought information about the 2008 killings, his brother and uncle were murdered.

[3] In 2015, the Principal Applicant abandoned his law school studies and undertook training as a pilot.

[4] In 2017 and 2018, the Principal Applicant visited Canada. He did not claim protection at that time. He returned to Mexico.

[5] The Principal Applicant married his wife on August 31, 2019, in Mexico. On the day after the wedding, a pig’s head and a funeral wreath addressed to the Principal Applicant were delivered to his wife’s home.

[6] The Principal Applicant reported these incidents to the police who advised him to leave the country. The Applicants left Mexico and arrived in Canada in September 2019. They filed their claim for protection on November 14, 2019.

[7] The RPD dismissed the claim on the grounds that an Internal Flight Alternative (“IFA”) was available to the Applicants in Campeche and Merida, Mexico. The RAD confirmed this conclusion, upon reviewing the record from the RPD and after declining to accept documents tendered by the Applicants as new evidence.

[8] The Applicants now argue that the RAD unreasonably refused to admit new evidence and unreasonably found that an IFA was available to them in Campeche and Merida.

[9] The Minister of Citizenship and Immigration (the “Respondent”) submits that the RAD’s decision was reasonable, both with respect to denying the acceptance of new evidence and on the merits of the Applicants’ claim.

[10] The decision of the RAD is reviewable upon the standard of reasonableness, in light of the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[11] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra* at paragraph 99.

[12] In my opinion, the dispositive issue in this application for judicial review is the RAD’s finding about an IFA.

[13] The test for an IFA, following the decision of the Federal Court of Appeal in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 at 710-711, is two-fold as follows:

- First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA; and
- Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[14] In order to show that an IFA is unreasonable, an applicant must show that conditions in the proposed IFA would jeopardize life and safety in travelling or relocating to that IFA; see *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 at 596-598 (Fed. C.A.).

[15] The Applicants' submissions that the RAD erred in its conclusions under the first prong of the IFA test are persuasive.

[16] The RAD found that the CJNG lacks the means and motivation to locate the Applicants since it had not targeted the Principal Applicant's mother. This finding is unreasonable because, in my opinion, it is not supported by the evidence.

[17] It is not necessary for me to address the RAD's conclusion under the second part of the test. Likewise, it is not necessary for me to address the arguments about the RAD's refusal to accept new evidence.

[18] In my opinion, the RAD's finding as to the first prong of the IFA test is unreasonable. The application for judicial review will be allowed, the decision of the RAD will be set aside and the matter remitted to a differently constituted panel of the RAD for redetermination. There is no question for certification.

JUDGMENT in IMM-7188-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Immigration and Refugee Board, Refugee Appeal Division, is set aside and the matter remitted to a differently constituted panel for redetermination. There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7188-21

STYLE OF CAUSE: ALDO GARCIA FLORES ET AL. v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 22, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JANUARY 19, 2023

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