

Federal Court



Cour fédérale

Date: 20230125

Docket: IMM-5759-21

Citation: 2023 FC 116

St. John's, Newfoundland and Labrador, January 25, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**MIGUEL ANGEL LOPEZ ESCOBEDO
DIANA VANESA ARRIAGA CARDONA
CATHERINE BRIDGETT LOPEZ ARRIAGA
EVELYN SCARLETT LOPEZ ARRIAGA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Miguel Angel Lopez Escobedo (the “Principal Applicant”), his wife Diana Vanesa Arriaga Cardona and their daughters Catherine Bridgett Lopez Arriaga and Evelyn Scarlett Lopez Arriaga (collectively “the Applicants”), seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In its decision, the RAD confirmed the findings of the Immigration and Refugee Board, Refugee Protection

Division (the “RPD”) that an Internal Flight Alternative (“IFA”) was available to the Applicants in Mexico, their country of citizenship.

[2] The Applicants named the “Minister of Immigration, Refugees and Citizenship” as the respondent. However, there is no such Minister and by a Direction issued on November 2, 2022, the name of the respondent was changed to the “Minister of Citizenship and Immigration” (the “Respondent”).

[3] The Applicants made their claims for protection in Canada based upon their fear of persecution from the Los Zetas cartel. The RPD dismissed their claims on credibility grounds and found, as an alternative, that an IFA was available to them in Merida, and Campeche, cities some 1,700 to 2,300 kilometres away from their residence in Zacatecas.

[4] The RAD reviewed the findings of the RPD and purported to make independent findings. It noted that in their appeal, the Applicants did not challenge the negative credibility findings of the RPD. It made certain negative credibility findings of its own.

[5] The RAD gave the Applicants the opportunity to make submissions about the availability of an IFA in Cabo San Lucas. The RAD concluded that an IFA is available to the Applicants in Cabo San Lucas.

[6] The Applicants now argue that the RAD's negative credibility findings are based upon a microscopic view of the evidence. They also submit that the conclusion about the availability of an IFA in Cabo San Lucas is unreasonable.

[7] The Respondent argues that the decision of the RAD is reasonable and that judicial intervention is unwarranted.

[8] The decision of the RAD is subject to review on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[9] 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.

[10] The dispositive issue in this application for judicial review is the RAD's finding about the availability of an IFA in Cabo San Lucas.

[11] The test for a viable IFA is addressed in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 at 710-711 (Fed. C.A.). The test is two pronged and provides 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.

[12] 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.).

[13] The Applicants argue that in assessing the first part of the IFA test, the RAD engaged in speculation when it found that the Los Zetas cartel is not motivated to locate them in Cabo San Lucas. The Applicants refer to paragraph 34 of the RAD's decision which provides as follows:

[34] I note that reports in the NDP indicate that large debts or personal vendettas can motivate *Los Zetas* to track individuals outside of their area of control [*citation omitted*]. However, I find that the Appellants did not engage in any behaviour that would motivate the cartel to track them across Mexico. Even accepting that *Los Zetas* sought a monthly quota from the Appellants, I find that this is insufficient to motivate the cartel to track them across Mexico.

[14] I agree with the Applicants that, without an explanation that the amount of the debt claimed against the Principal Applicant would reduce the motivation of the cartel to pursue the Applicants to Cabo San Lucas, the RAD's conclusion seems to be speculative. If this finding is "speculative", it does not meet the standard of "transparent, intelligible and justified", as required by *Vavilov, supra*.

[15] In view of my conclusion above, it is not necessary for me to address the second prong of the IFA test.

[16] In the result, the application for judicial review will be allowed, the decision of the RAD will be set aside and the matter remitted to a different panel of the RAD for redetermination. There is no question for certification.

JUDGMENT in IMM-5759-21

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

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5759-21

STYLE OF CAUSE: MIGUEL ANGEL LOPEZ ESCOBEDO ET AL. v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 2, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JANUARY 25, 2023

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