

Federal Court



Cour fédérale

**Date: 20230220**

**Docket: IMM-1652-22**

**Citation: 2023 FC 246**

**Ottawa, Ontario, February 20, 2023**

**PRESENT: The Hon Mr. Justice Henry S. Brown**

**BETWEEN:**

**GABRIEL ELIAS FIGAROLA AHUMADA  
LIDIA ACEVEDO NOLASCO  
GABRIEL ELIAS FIGAROLA ACEVADO  
PATRICIA NOLASCO AMADOR**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD], dated January 25, 2022 (“Decision”), dismissing the Applicants’ appeal and confirming the decision of the Refugee Protection Division [RPD], which found the Applicants are not

Convention refugees nor persons in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Facts

[2] The Applicants are a family consisting of the Principal Applicant, her husband, their son, and her relative. The Principal Applicant also has an older son and a daughter who are not parties to the refugee claim. The Applicants are citizens of Mexico who fear persecution from the Principal Applicant's ex-partner, AB [names are anonymized], who is member of Los Zetas cartel ("Los Zetas").

[3] The Principal Applicant met AB when she was a teenager. They began dating and later lived together. After the Principal Applicant became pregnant with her daughter, AB started to abuse her. The Principal Applicant attempted to get police protection but police refused.

[4] In 2004, after her daughter was born, the Principal Applicant left AB and moved to a city in the state of Veracruz. AB found her there, kidnapped and raped her, and held her hostage for several days before she escaped with her daughter. Notably, AB called the Principal Applicant after she met another man, CD — as related in the next paragraph in these Reasons — and threatened her and her daughter: "I will go and get you. I will take my daughter and I will kill you. If you are not for me you will not be for anyone else." [Emphasis added]

[5] In 2006, the Principal Applicant found out she was pregnant by CD and gave birth to her older son. She began a relationship with CD and lived with him in another city. AB found her

and threatened both her and CD. The Principal Applicant moved to a third city to live with a relative.

[6] In 2008, the Principal Applicant returned to live with CD. However, she was still afraid and subsequently returned to Veracruz. Her relationship ended with CD in 2010.

[7] In 2013, the Principal Applicant met her current husband in Veracruz.

[8] In January 2015, the Principal Applicant, her children and her relative moved in with her husband. She and her husband had a son who is one of the Applicants in this claim.

[9] In November 2015, the Principal Applicant began receiving threatening text messages from AB. In June 2016, AB told the Principal Applicant that he knew where she was living and sent photos of her home as proof.

[10] In October 2016, the Applicants moved again. The Principal Applicant's husband started receiving threatening phone calls from AB at his work who informed him he planned to kill him and his son. AB explained he knew where the Principal Applicant's husband worked and told him he would never forgive the Principal Applicant's betrayal. The Principal Applicant and her husband changed their SIM cards in response to these threats.

[11] In January 2019, the Principal Applicant received a threatening call from an unknown man telling her they would not be allowed to make fun of the men of Los Zetas. When the

Principal Applicant's husband learned about the call, he began making arrangements for his family to flee to Canada. The Applicants temporarily relocated to Veracruz.

[12] In February 2019, CD with whom the Applicant had lived, was murdered.

[13] The evidence of the Principal Applicant is that she subsequently received a call from AB confessing to the murder of CD and threatening to kill her husband.

[14] In April 2019, the Principal Applicant's husband left for Canada. The other Applicants came to Canada five months later in January 2020. The Applicants claimed refugee status upon their separate arrivals.

[15] In early 2020, the Principal Applicant's daughter was kidnapped and raped by AB. The Principal Applicant was told about this in March 2020. One day before the hearing the Principal Applicant amended her Basis of Claim (BOC) narrative outlining this incident. The Principal Applicant alleged her daughter attempted suicide to prevent the pregnancy and that AB did this to pressure her to return to Mexico. In July 2021, the Principal Applicant's daughter disappeared. It is the Applicant's belief that AB is responsible for her daughter's disappearance.

[16] The RPD heard the Applicant's claims separately. The Principal Applicant's husband's claim was heard alone in May 2021. The RPD rejected his claim on the basis of credibility and the availability of internal flight alternatives (IFA).

[17] In July 2021, a different RPD Officer heard the Principal Applicant, her son and her relative's claims. Their claims were rejected on the basis of credibility.

III. Decision under review

[18] The Applicants' appeals were heard together by the RAD. It is not clear why they were not heard together by the RPD. The same Counsel represented the Applicants. Counsel did not object to the joinder.

[19] The RAD provided the Applicants with notice of new credibility issues arising from their appeals and asked the Principal Applicant and her husband to provide explanations for inconsistencies in the evidence at their respective RPD hearings ("Statements").

[20] In response the Applicants provided their Statements with a translation of the Principal Applicant's declaration ("Declaration") to the Canada Border Services Agency (CBSA) upon her older son's arrival from Mexico.

[21] On January 25, 2022, the RAD dismissed the Applicants' appeal. It confirmed the RPD decision for the Principal Applicant's husband for different reasons and found the Principal Applicant's husband is neither a Convention refugee nor a person in need of protection. It also confirmed the RPD's decision for the Principal Applicant, her son and her relative and found they are neither Convention refugees nor persons in need of protection.

A. *New Evidence*

[22] The RAD assessed the admissibility of new evidence pursuant to subsection 110(4) of the *IRPA* and subsection 29(4) of the *Refugee Appeal Division Rules*, SOR/2012-257.

[23] The RAD admitted the Principal Applicant and her husband's Statements, which addressed the new credibility issues raised on December 23, 2021. It found the Applicants could not have known about these novel issues at the time of their RPD hearings or when perfecting their appeals. The RAD also determined the Statements contain new relevant and probative evidence. Despite admitting the Statements, the RAD declined to convene an oral hearing as it found the conditions in subsection 110(6) of the *IRPA* were not met.

[24] The RAD declined to admit the Principal Applicant's Declaration to the CBSA officer when her older son arrived in Canada.

B. *Credibility Concerns*

(1) Principal Applicant, her son and her relative

[25] The RAD concluded there was insufficient credible and reliable evidence to establish the Principal Applicant, her son and her relative face a serious possibility of persecution or a risk to their lives because of AB.

(a) *Omission of phone call from AB confessing to CD's murder*

[26] The RAD took issue with the omission of the phone call from AB confessing to CD's murder from the Principal Applicant's BOC narrative and drew a strong negative inference. Although the RAD accepted the Principal Applicant's explanation that this information was supposed to be in her husband's narrative and their claims were supposed to be joined, it found this problematic because this information was also omitted from the Principal Applicant's husband's narrative and there was inconsistent evidence regarding the timing of the call. The Principal Applicant testified the call took place in February 2019. However, despite not leaving Mexico until April 2019, the Principal Applicant's husband testified his wife did not initially tell him about the call because "she was afraid if she told me about this, I would return to Mexico to get her and my child."

[27] The RAD also found that even if it accepted that the call took place in April 2019, it could not find an explanation for why AB would wait several months to inform the Principal Applicant that he murdered CD when he had her phone number. The RAD noted the Principal Applicant's husband did not testify that AB confessed to the murder and made a threat in its aftermath despite mentioning an ex-boyfriend was murdered.

(b) *Insufficient evidence that CD's murder is connected to AB or his pursuit of the Principal Applicant*

[28] The RAD found insufficient evidence to establish CD was murdered by AB and concluded the Principal Applicant's direct evidence on this point was unreliable and speculative.

It questioned the rationale and intended target of CD's murder given the circumstances surrounding it, mainly that the passenger in his car was also murdered and the murder occurred nearly 10 years after CD's relationship with the Principal Applicant ended. The RAD noted that during the Principal Applicant's relationship with CD, AB only issued threats and the only connection between AB and the murder is the phone call from AB, which was omitted from both the Principal Applicant and her husband's narratives.

(c) *The abduction and rape of the Principal Applicant's daughter in 2020*

[29] Although the RAD found the RPD erred by drawing a negative inference regarding the lack of corroborative evidence in the form of the Principal Applicant's daughter's medical report and message history not referring to the kidnapping or rape, the RAD found a number of issues that raised concerns about the credibility of the Principal Applicant's evidence.

[30] After assessing the Principal Applicant's and country condition evidence, the RAD accepted on a balance of probabilities the Principal Applicant's daughter was sexually assaulted and raped, she turned to drugs to cope with her trauma and "she feels immense guilt and remorse for any difficulty she believes to have caused her mother."

[31] However, the RAD found insufficient evidence to establish the Principal Applicant's daughter was kidnapped in 2020 or that the motive behind the kidnapping and rape was to compel the Principal Applicant to return to Mexico. The RAD asserts the only evidence of motive is through the Principal Applicant's testimony. It also found that despite knowing about this incident, the Principal Applicant did not amend her narrative until her daughter disappeared



again in July 2021. Therefore, the RAD drew a negative inference from Principal Applicant's failure to amend her narrative to include details of this incident until one day before the RPD hearing.

[32] The RAD also drew a negative inference from the inconsistency from the Principal Applicant's family's behaviour regarding the kidnapping. Although the Principal Applicant's testimony indicated her daughter was abducted for one week, none of the Principal Applicant's family members informed her of her daughter's disappearance during that week or in the weeks following her return.

(d) *Principal Applicant's daughter's disappearance in 2021*

[33] The RAD agreed with the Principal Applicant the evidence was insufficient to conclude, on a balance of probabilities, her daughter's disappearance was caused exclusively by drug use and homelessness. However, the RAD found the evidence does not establish the Principal Applicant's daughter's disappearance is due to kidnapping by AB. The RAD found the only message has been from the Principal Applicant's daughter asking the family to stop searching for her and did not find on a balance of probabilities she did not write those messages.

(e) *Application of Gender Guidelines and considerations of the psychological report*

[34] The RAD found the RPD did not act insensitively when making assertions about the Principal Applicant's experience of domestic violence and her daughter's disappearance. Rather, it correctly concluded the Principal Applicant's past experience of domestic violence does not

establish a serious possibility of persecution by AB or a risk to the Applicants' lives. The RAD also accepted the fact the Principal Applicant's daughter was raped, not necessarily by AB, is insufficient to establish AB continues to pose a threat to the Principal Applicant, her son and her relative.

[35] The RAD also found no error in the RPD's treatment of the Principal Applicant's psychological report, which speaks to the trauma of her childhood and her abusive relationship with AB. It found the statements in the report cannot corroborate the Principal Applicant's claim that AB continues to try to harm her. After considering the report and its probative value in addressing the issue of forward-facing risk and persecution for the Applicants, the RAD found the RPD did not err in its treatment of this document or the treatment ran contrary *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* ("Gender Guidelines").

(2) The Principal Applicant's husband

[36] The RAD found the Principal Applicant's husband's evidence insufficient to establish a serious possibility of persecution by AB, or a risk to life or of cruel and unusual treatment on a balance of probabilities.

[37] The RAD outlined the determinative issue is the availability of an IFA elsewhere, and credibility as it relates to the IFA.

(a) *Corroborating evidence*

[38] Although the RAD found the RPD did not make clear credibility findings, it determined the RPD should not draw negative credibility inferences from the absence of documents to corroborate the Principal Applicant's attempts to get police protection.

[39] The RAD determined although it was possible that AB was able to use his children to locate the Principal Applicant and her husband, the evidence was insufficient that AB used Los Zetas or other criminal networks to locate them.

[40] Furthermore, the RAD found the Principal Applicant's husband's testimony raises concerns about AB's motivation to harm him and his son and drew negative inferences based on the inconsistencies in the evidence. The Principal Applicant's husband testified that he and the Principal Applicant have met with AB and spent time with him and AB has not done him or his wife any harm because his kids were around. However, when the RAD asked him to provide details of their meeting with AB, the Principal Applicant's husband said he did not recall making such a statement and he never met or saw AB. The RAD determined his testimony undermines his assertion that AB intends to harm him.

(b) *Omissions from the Basis of Claim (BOC)*

[41] The RAD agreed with the Principal Applicant's husband that the omission of his reasons for leaving his wife and son behind in Mexico when fleeing to Canada is a minor issue that does not justify a negative credibility inference. However, the RAD found a number of inconsistencies

in the testimony and narrative evidence, which undermine the credibility of the Applicants. First, the RAD found the omission from the Principal Applicant's husband's narrative about AB calling him at work in January 2019 to be significant noting the inconsistency between the Principal Applicant's narrative that she received the January 2019 call from AB and her husband's testimony that they both received calls from AB in January 2019. Second, the RAD noted the inconsistent evidence between the Principal Applicant's husband's narrative where he described receiving threatening phone calls between October and December 2016 and his failure to mention these calls in his testimony when he was asked about receiving threatening phone calls. The RAD drew negative credibility inferences from the first two inconsistencies. Third, the RAD found the Principal Applicant's husband's testimony stating AB did not know where he worked to be inconsistent with his narrative that AB knew where he worked. Overall, the RAD found these inconsistencies undermine the credibility of the Principal Applicant's assertion that AB is motivated to find and harm the Applicants.

(c) *Credibility issues demonstrate a lack of forward-looking risk*

[42] The RAD found on a balance of probabilities that AB knew where the Principal Applicant's husband was working but never harmed him over the course of three years. The RAD noted that Veracruz, where the Principal Applicant's husband left his wife and son, is a state where the Los Zetas have a lot of influence and despite them living there, AB never approached or harmed the Principal Applicant, her son and her relative. Based on this evidence, the RAD concluded that AB is not motivated to harm the Applicants. The time the Principal Applicant and her husband spent with AB without harm further undermines the Principal Applicant's claim that AB intends to harm him and his son.

IV. Issues

[43] The issue is whether the RAD's decision was reasonable.

V. Standard of Review

[44] The parties agree, as do I, that the applicable standard of review is reasonableness.

In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

[31] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “whether the decision 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” (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov*, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov*, at para. 100).

[Emphasis added]

[45] Moreover, *Vavilov* requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues:

[128] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (*Newfoundland Nurses*, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

[Emphasis added]

## VI. Analysis

### A. *Preliminary Issue*

[46] The Applicants request and the Respondent agrees the Court should amend the style of cause as the Applicant’s name is spelled incorrectly and the proper Respondent should be the

Minister of Citizenship and Immigration. These corrections are made and will take effect immediately.

B. *Whether the RAD's decision was reasonable*

(1) Did the RAD err in its credibility findings?

(a) *Omission of the phone call from AB confessing to CD's murder*

[47] The Applicants submit it was unreasonable for the RAD to disbelieve the Principal Applicant received a phone call informing her of CD's death because it was omitted from both her and her husband's narrative. They rely on *Feradov v Canada (Citizenship and Immigration)*, 2007 FC 101 [*Feradov*] at paragraphs 18-19 for the proposition that omission of peripheral details should not undermine the overall credibility of the Applicants.

[48] I disagree on this point because if AB's confession to the murder is true that would have been an important fact in assessing the Principal Applicant's risk on return and boost the credibility of other assertions. I am not persuaded this confession was simply a peripheral matter.

[49] The Applicants further assert they are entitled to supplement details during their testimony to explain circumstances beyond what is in the BOC (*Turcios v Canada (Citizenship and Immigration)*, 2015 FC 318 [*Turcios*] at para 22). They argue this situation is similar to *Schopova v Canada (Minister of Citizenship and Immigration)*, 2003 FC 904 [*Schopova*] at paragraphs 8 and 12, where Justice O'Reilly stated that "it is natural for a claimant to mention some facts at a hearing that she did not include in her written materials," especially when the

tribunal questioned her on a specific detail. They argue the failure to amend their BOCs to include the phone call should not undermine the credibility of these allegations relying on *Chahal v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8691 (FC) at para 14.

[50] I disagree. The RAD explained its concerns regarding the omission of the phone call from the Applicants' BOC forms and the Principal Applicant's husband's testimony including the inconsistent testimony regarding the timing of the call. It found the RAD reasonably drew an adverse inference from the Applicant's failure to amend the BOC with central allegations. In doing so, the RAD was following constraining law: *Gholami v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1732 per Southcott J, at para 25 and *Ajibua v Canada (Minister of Citizenship and Immigration)*, 2022 FC 903 per Rochester J, at paragraphs 12-13. The latter authority also stands for the proposition that such omissions may also affect the assessment of forward-looking risk.

[51] The Applicants further contend the RAD erred by making a plausibility finding on the basis the phone call did not happen because AB waited several months to inform the Principal Applicant of CD's murder. I agree with the Applicants on this point because this is not the clearest of cases and because it invites the trier of fact to entertain considerations of what motivates an alleged agent or persecution, i.e., to ask what a reasonable agent of persecution would do: *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at para 19; *Boily v Canada*, 2022 FC 1243 at para 120; *Hernandez Cortez v Canada (Citizenship and Immigration)*, 2021 FC 1392 at para 36; *Aboutaleb v Canada (Citizenship and Immigration)*, 2022 FC 810 at para 14.



[52] With respect, it is not the job of the RAD to rationalize why AB waited a few months to inform the Principal Applicant: *Ali v Canada (Citizenship and Immigration)*, 2018 FC 688 at paragraph 21 per Justice Diner citing *Selvarasu v Canada (Citizenship and Immigration)*, 2015 FC 849:

[32] I agree with the applicant's characterization of these statements as implausibility findings. In so finding, the RPD was speculating about what the applicant should have done or what would have been the reasonable course of action. Implausibility findings should only be made in the clearest of cases, where the facts as presented are outside the realm of what could reasonably be expected or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant (*Valtchev v Canada (MCI)*, 2001 FCT 776 at para 7). In the present case, there was no evidence that the applicant's explanation was not the truth, and such explanation cannot be characterized as outside the realm of reasonableness. Therefore, with respect, the RPD's conclusion on this point was itself unreasonable.

[53] The Applicants submit it was unreasonable for the RAD to undermine the motivation of AB based on the inconsistency with respect to the timing of the phone calls because it was expected the Applicants would be confused or omit certain details in light of the many incidents they suffered over the years at the hands of AB.

[54] There is merit in this submission — no one questioned the repeated and violent abuse endured by the Principal Applicant, sexual and otherwise, at the hands of AP. It seems to me the pattern of behaviour and long history of AB's abuse of the Principal Applicant, while of course deemed to have been considered by the RAD, was treated very lightly by the tribunal, which in this respect seems to have lost sight of the bigger picture of long-term vicious and violent spousal abuse.

- (b) *The abduction and rape of the Principal Applicant's daughter in 2020 and the Principal Applicant's daughter's disappearance in 2021*

[55] The Applicants submit the RAD erred by failing to afford the presumption of truthfulness to the Principal Applicant's belief that AB was responsible for the abduction of her daughter in 2020 and the disappearance of her daughter in 2021 (*Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA); *Francois v Canada (Citizenship and Immigration)*, 2018 FC 687 at para 14). They contend the RAD erred in finding insufficient evidence to link AB to the 2020 incidents and 2021 disappearance because it disregarded the Principal Applicant's history of being a victim of domestic violence and AB's harassment of her and her family. The Applicants also assert the RAD disregarded the fact that evidence of domestic violence and sexual trauma is difficult to obtain and therefore the Principal Applicant's testimony should have been afforded weight.

[56] With respect, again I agree with the Applicants. The long, vicious and unchallenged record of sexual abuse by AB of the Principal Applicant, which included holding her hostage (a form of kidnapping) manifests a pattern of behaviour that once again seems to be playing out again this time between AB and his daughter. This was the central and core allegation in the Applicants' narrative, but and with respect, while it is deemed to have been considered with all the evidence, it appears the tribunal lost sight of the larger picture here.

[57] It is also important to note the Principal Applicant in her BOC stated that AB called her after she left him and found CD saying: "I will go and get you. I will take my daughter and I will kill you. If you are not for me you will not be for anyone else." [Emphasis added] This is exactly

what happened: not only is it arguable AB is playing out the same pattern of behaviour as manifested towards his wife, namely, kidnapping and sexual assault, he said he would kidnap and it appears that my have taken place. These concerns must be, but were not addressed by the RAD.

[58] I agree with the Respondent that the RAD was entitled to conduct its own objective assessment of the evidence, but as noted I am not satisfied that was adequate in this case on this issue.

[59] I agree the RAD did not draw an adverse inference solely from the absence of corroborative evidence of her daughter's sexual assault or kidnapping. It explicitly said: it "[drew] no negative inference from the absence of direct corroboration in these messages or from the absence of a medical report for [the Principal Applicant's] daughter."

[60] However, it was not open to the RAD to draw a negative inference from the inconsistency of the Principal Applicant's family's behaviour regarding her daughter's kidnapping and rape in 2020. Again this is not the clearest of cases on which to base a plausibility finding to contradict another aspect of the Principal Applicant's narrative, namely that family were worried about how she would react.

(c) *Forward-looking risk*

[61] The Applicants argue the RAD ignored the other credible evidence that was put forward to corroborate the Applicants' fear of persecution such as the letters of support, and a

psychological report, which is evidence of the persecution she suffered as a result of AB. The Applicants argue that evidence of past persecution is relevant to the assessment of forward-looking risk. They also submit the RAD erred in finding AB is not motivated to harm the Applicants because AB never approached or harmed the family. They assert the RAD erred in stating credibility findings equate to a lack of motivation at the hands of AB citing *Perez Mendoza v Canada (Citizenship and Immigration)*, 2010 FC 119 at para 33; *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paras 12-19; *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 at para 55.

[62] These objections are not sustainable. The Respondent asserts it was reasonable for the RAD to find the Applicants did not demonstrate a forward-looking risk of persecution because the Applicants' testimony indicated AB had ample opportunity to harm the Applicants but failed to do so when they lived nearby. The RAD noted further evidence from the Applicants that AB knew where the Applicants' home was and where the Principal Applicant's husband's worked, yet never approached them. The husband's inconsistent and contradictory evidence weakened this aspect of their case.

[63] Notably, the RAD specifically addressed the psychological report, the threats by AB, and the fact AB knew the location of the Applicants' home and the husband's work but never approached the Applicants. In any event, it is well-established that the RAD is not required to mention all the evidence considered in their decision (*Cepada-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] FCJ No 1425 at paras 16-17).

VII. Conclusion

[64] As noted, I have come to the conclusion that in some respects the RAD decision is reasonable, however, in others it is not. Overall, judicial review is granted because the central and core narrative of longstanding and extreme spousal abuse was not adequately grappled with or factored into the Decision rendering it unreasonable and unsafe. The two cases before the RAD were properly joined and because they are intertwined, both are set aside and will be ordered reconsidered.

VIII. Certified Question

[65] Neither party proposed a question of general importance, and none arises.

**JUDGMENT in IMM-1652-22**

**THIS COURT'S JUDGMENT is that:**

1. The first Applicant's last name is corrected to Ahumada and the Respondent is re-styled Minister of Citizenship and Immigration, both with immediate effect.
2. The Application for judicial review is granted, the Decision respecting all Applicants is set aside, and all these matters are remanded to a differently constituted tribunal for redetermination, no question of general importance is certified and there is no Order as to costs.

"Henry S. Brown"

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Judge

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

**DOCKET:** IMM-1652-22

**STYLE OF CAUSE:** GABRIEL ELIAS FIGAROLA AHUMADA, LIDIA  
ACEVEDO NOLASCO, GABRIEL ELIAS FIGAROLA  
ACEVADO, PATRICIA NOLASCO AMADOR v  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 15, 2023

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**DATED:** FEBRUARY 20, 2023

**APPEARANCES:**

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