

Federal Court



Cour fédérale

**Date: 20230331**

**Docket: IMM-934-22**

**Citation: 2023 FC 463**

**Ottawa, Ontario, March 31, 2023**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**ENRIQUE SANTILLAN PULIDO  
MIRNA DOLORES ALONSO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Enrique Santillan Pulido and his common-law spouse Mirna Dolores Alonso [collectively the Applicants] are citizens of Mexico. They seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed the

determination of the Refugee Protection Division [RPD] of the IRB that the Applicants are neither Convention refugees nor persons in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicants claim to be at risk of harm from the Cartel del Noreste [CDN], a criminal organization in Mexico. The RAD found that the Applicants are not in need of Canada's protection because they have an internal flight alternative [IFA] in Culiacan, Sinaloa State.

[3] The RAD's rationale for its conclusion that the CDN had neither the means nor the motivation to pursue the Applicants in the IFA was transparent and intelligible, and adequately supported by the evidence. The application for judicial review is therefore dismissed.

## II. Background

[4] The Applicants were employed as customs officers in Nuevo Laredo, Mexico. On June 22, 2019, Mr. Pulido was assisting his supervisor at the Juarez-Lincoln International Bridge. After stopping a car for inspection, he discovered funds in the amount of \$1,064,400 USD in the trunk. The driver of the car warned Mr. Pulido: "don't say anything" and "let me go, if you don't, they are going to kill you". Mr. Pulido reported his discovery to his supervisor, and the funds were seized as suspected proceeds of drug smuggling.

[5] On June 24, 2019, Mr. Pulido was assigned to work at the Nuevo-Laredo International Bridge III Customs Office. On August 1, 2019, he was driving his work vehicle back to the main

Nuevo Laredo Customs Office when a black car with no licence plate drove up alongside him. The occupants waved a gun at him and signalled him to stop. Mr. Pulido sped away. He heard two gunshots behind him. The black car followed him until he was close to the Nuevo Laredo Customs Office.

[6] Fearing for his safety, Mr. Pulido stayed at the main Nuevo Laredo Customs Office for the next four days. He refused his supervisor's request to report the incident to the authorities due to his lack of confidence in their ability to protect him.

[7] Mr. Pulido was promised a transfer to another part of Mexico, but no date was set. In the meantime, he was posted at the Nuevo-Laredo International Bridge III Customs Office. He says that "[e]very day I stayed there was a risk for me". Mr. Pulido became concerned that informants may be working inside the Customs Office, and on August 31, 2019, he abandoned his post and travelled to Veracruz.

[8] The Applicants arrived in Canada on September 4, 2019 and subsequently made claims for refugee protection.

[9] The RPD rejected the Applicants' refugee claims on July 8, 2021. The RPD held that the Applicants were not Convention refugees under s 96 of the IRPA, and assessed their claims only under s 97(1). The RPD accepted that Mr. Pulido had been threatened by the CDN. However, the RPD found that the Applicants had a viable IFA in Culiacan, because the CDN had neither the means nor the motivation to pursue them, and it was reasonable for them to relocate there.

[10] The Applicants appealed the RPD's decision to the RAD. On January 11, 2022, the RAD confirmed the RPD's determination that the Applicants have an IFA in Culiacan.

### III. Decision under Review

[11] Based on information contained in the National Documentation Package [NDP] for Mexico, the RAD held that neither the CDN nor its former parent group, Los Zetas, have a presence in the IFA. The proposed IFA was in Sinaloa State, where the Sinaloa Cartel operates. The NDP indicated that Los Zetas have the means to trace individuals, but the RAD found that no similar capacity could be attributed to the CDN, due to the fragmentation and diminishment of Los Zetas' operational power since peaking in 2011 and 2012.

[12] There was no evidence before the RAD that the Sinaloa Cartel operated in conjunction with the CDN. While Mr. Pulido testified that the CDN pays the Sinaloa Cartel to gain access to the border for smuggling purposes, the RAD found he had no expertise regarding cartel operations, and his testimony was uncorroborated by the NDP. There was no evidence that the CDN had any kind of arrangement with the Sinaloa Cartel to "locate an individual for the purposes of retribution".

[13] While the RAD accepted the possibility that public officials may have access to personal information contained within national databases, the Applicants' claim that the CDN also had access to this information was speculative. There was no evidence that the CDN had ever used a database to search for the Applicants. The RAD held that the CDN likely targeted Mr. Pulido on

August 1, 2019 only because he was driving an official vehicle and they knew he was a customs officer.

[14] The RAD therefore concluded, on a balance of probabilities, that the CDN had never pursued any opportunities to “trace and detect” Mr. Pulido for the purposes of retribution between June 23, 2019 and September 2019. Nor was there any evidence that the CDN had ever contacted the Applicants’ families to ascertain their whereabouts.

[15] The RAD reasoned that the “motivation for retribution is highest immediately following an event”, and the CDN would need to be “significantly motivated” to keep pursuing the Applicants in an area outside of their influence after more than 22 months – especially considering the size and population of Mexico and the IFA.

#### IV. Issue

[16] The sole issue raised by this application for judicial review is whether the RAD’s decision was reasonable.

#### V. Analysis

[17] The RAD’s decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where “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).

[18] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[19] The test for a viable IFA is well-established (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) at paras 5-6, 9-10): first, the IRB must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA to exist; and second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there. Both prongs of the test must be satisfied.

[20] The Applicants challenge the RAD’s findings only with respect to the first prong of the IFA assessment: whether they would face a serious risk of harm by the CDN in Culiacan. They say the RAD made unreasonable findings regarding: (1) the CDN’s means of locating them and (2) the CDN’s motivation to locate them.

(1) The CDN's Means of Locating the Applicants

[21] The Applicants argue that the RAD unreasonably found that the fragmentation of Los Zetas and its diminished operational power undermined the CDN's ability to locate their targets. They say that locating a target is possible with the corruption of state officials, which is well-documented.

[22] The Applicants assert that the RAD unreasonably relied in part on a map in NDP item 7.2 titled "Areas of Cartel Influence in Mexico" to conclude that neither the CDN nor Los Zetas were present in Sinaloa State. They argue that the RAD conflated the concepts of "presence" and "influence", because organizations "can have national reach without a physical presence" (citing *Monsalve v Canada (Citizenship and Immigration)*, 2022 FC 4 at para 15).

[23] The RAD's conclusion that neither the CDN, nor its former parent group Los Zetas, have a presence in Sinaloa State was adequately supported by the evidence. The RAD reasonably found, based on the lack of evidence of cooperation between the CDN and the Sinaloa Cartel, that the CDN lacked the means to trace the Applicants in the IFA.

(2) The CDN's Motivation to Locate the Applicants

[24] The Applicants take issue with the RAD's conclusion that the CDN was not "significantly motivated" to trace and detect them because the CDN had not taken advantage of any opportunities to do so. The RAD considered that 22 months had passed since the incident

that occurred in August 2019, and the CDN had pursued Mr. Pulido only in a work setting. The CDN had never contacted the Applicants' family members to ascertain their whereabouts.

[25] The Applicants do not dispute these findings, and acknowledge that the passage of time may be a relevant consideration. However, they say the RAD's conclusion was speculative and unjustified. They note that the RAD did not specify which opportunities the CDN had failed to pursue. The Applicants also argue that the RAD unreasonably elevated the applicable legal test from a lack of motivation to a lack of "significant motivation".

[26] The Applicants note that NDP item 7.15 indicates that the "Los Zetas or associated splinter groups have infiltrated police departments". They therefore say it was unreasonable for the RAD to find that the CDN does not have the ability to track someone when its parent organization clearly does.

[27] The RAD's rationale for its conclusion that the CDN was not motivated to pursue the Applicants in the IFA was transparent and intelligible, and adequately supported by the evidence. This conclusion was based upon a number of considerations, including the passage of time since the incident that occurred in April 2019, the CDN's failure to pursue Mr. Pulido outside of his work setting, the CDN's lack of contact with the Applicants' family members, and the information contained in the NDP.



VI. Conclusion

[28] As the Supreme Court of Canada held in *Vavilov* (at para 125):

It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”. Indeed, many of the same reasons that support an appellate court’s deferring to a lower court’s factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review. [Citations omitted.]

[29] The Applicants are essentially asking this Court to reweigh the evidence, and substitute its view for that of the RAD. However, that is not the role of a court on an application for judicial review.

[30] The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

“Simon Fothergill”

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Judge

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

**DOCKET:** IMM-934-22

**STYLE OF CAUSE:** ENRIQUE SANTILLAN AND MIRNA DOLORES  
ALONSO v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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**JUDGMENT AND REASONS:** FOTHERGILL J.

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