Federal Court  Cour fédérale

Date: 20230620

Docket: IMM-6900-21

Citation: 2023 FC 868

Ottawa, Ontario, June 20, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

GUSTAVO EVIEL RENDON SEGOVIA
MARCELA NALLELY SALAZAR OCHOA
EDWIN EVIEL RENDON SALAZAR
EDSON GABRIEL RENDON SALAZAR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family from Mexico. Gustavo Eviel Rendon Segovia, the Principal Applicant [PA] claims armed people kidnapped and extorted him twice, and continued to

threaten him and his family for money because of his membership in a union that provides financial benefits such as bonuses and referral fees.

[2] This is not the first time the family's situation has been considered by the Court. In *Rendon Segovia v Canada (Citizenship and Immigration)*, 2020 FC 99 [*Rendon Segovia 2020*], the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] confirmed the refusal by the Refugee Protection Division [RPD] of the Applicants' refugee claims on the basis of a viable internal flight alternative [IFA]. On judicial review, Justice Diner found that, in confirming the RPD decision, the RAD treated certain evidence unreasonably. This in turn undermined the RAD's IFA analysis. Justice Diner also determined that the Applicants had been represented incompetently before the RAD by their former representative, thus resulting in a breach of procedural fairness. Consequently, Justice Diner granted the application for judicial review and sent the matter back for redetermination by a different RAD panel.

[3] The differently constituted RAD has redetermined the matter and dismissed the appeal [Decision], finding the RPD was correct in determining that the Applicants are neither Convention refugees nor persons in need of protection. The Applicants come to the Court seeking judicial review of the RAD's redetermination.

[4] For the reasons that follow, I am not persuaded that the Decision is unreasonable. I thus dismiss the Applicants' judicial review application.

II. Issues and Standard of Review

[5] The Applicants dispute the reasonableness of the Decision, asserting that the RAD made the following specific errors:

A. *The RAD erred in concluding the Applicants failed to establish that Los Zetas cartel members were their agents of persecution, particularly with regard to the following more granular issues:*

   (1) The RAD's assessment of new corroborating evidence (specifically, letters from the PA's mother and brother-in-law) was unreasonable;

   (2) The RAD failed to convene an oral hearing to permit the Applicants to address concerns with the new evidence that was accepted;

   (3) The RAD failed to consider that the RPD did not ask the Applicants directly during the hearing about the identity of the cartel.

B. *The RAD erred in concluding the Applicants' agents of persecution did not remain interested in them because of a lack of evidence that further efforts were made to locate the Applicants after 2018.*

[6] There is no dispute that the reasonableness standard of review applies to the merits of the Decision. I find that none of the situations rebutting the presumptive reasonableness standard of review is present here: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 17, 25.

[7] A decision may be unreasonable, that is lacking the requisite justification, transparency and intelligibility, if the decision maker misapprehended the evidence before it or did not meaningfully account for or grapple with central or key issues and arguments raised by the parties: *Vavilov*, at paras 86, 99, 126-127. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100. As explained below, I find the Applicants have not met their onus.

III. Analysis

A. *The RAD did not err in concluding the Applicants failed to establish that Los Zetas cartel members were their agents of persecution*

[8] I am not persuaded that the RAD's rationale for concluding the Applicants failed to establish, on a balance of probabilities, that the Los Zetas were their agents of persecution was unreasonable.

(1) RAD's assessment of letters from PA's mother and brother-in-law

[9] Contrary to the Applicants' submission, I find the RAD reasonably explained that although it assigned some weight to the letters from the PA's mother and brother-in-law, the letters did not overcome, on a balance of probabilities, the lack of specific references by the Applicants to Los Zetas in their Basis of Claim [BOC] narrative and at the RPD hearing. The RAD further explained that the mother's letter contained information that she did not hear first hand. I also note that earlier in the Decision, when considering whether to admit the Applicants' new evidence, the RAD found a substantial portion of the brother-in-law's letter inadmissible (including a single reference to "the cartel of the 'Z'") because it contained information that pre-dated the RPD hearing without a reasonable explanation for not providing the evidence to the RPD. This finding left little substance to the brother-in-law's letter for the RAD to consider in weighing it.

[10] I am satisfied the RAD's reasoning permits the Court to understand why the admitted portions of these letters did not overcome the Applicants' lack of references to Los Zetas in the other evidence and their testimony, notwithstanding several opportunities before and during the

RPD hearing to provide the information regarding the later-claimed identity of the armed men. I find the Applicants' arguments about the letters are tantamount to disagreement with the RAD's assessment and represent a request to reweigh and reassess the evidence, which is not the role of the Court in judicial review: *Vavilov*, above at para 125.

(2) RAD's failure to convene an oral hearing

[11] I also am not convinced that the RAD erred by not holding an oral hearing. The RAD may hold an oral hearing where there is newly admitted documentary evidence that (1) raises a serious issue with respect to the credibility of the claimant; (2) is central to the decision in a refugee claim; and (3) if accepted, would be determinative of the claim: *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] at s 110(6); *Hundal v Canada (Citizenship and Immigration)*, 2021 FC 72 at para 19; *Tchangoue v Canada (Citizenship and Immigration)*, 2016 FC 334 at para 11.

[12] The RAD can admit new evidence on appeal only where the evidence arose after the RPD decision, was not reasonably available at the time of the decision, or the Applicants could not have been reasonably expected to have presented to the RPD in the circumstances: *IRPA*, section 110(4). The RAD must further consider whether the evidence is new, credible, and relevant: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 38 and 49.

[13] See Annex "A" below for these *IRPA* provisions.

[14] The RAD's reasons for excluding part of the mother's letter was that the information was available before the RPD hearing and there was no reasonable explanation why it could not have been provided, in light of other evidence from witnesses and other family members. The RAD accepted the second part of the letter as new and credible. The RAD provided similar reasoning with respect to the brother-in-law's letter.

[15] In deciding to admit some of the new evidence, nowhere does the RAD indicate that the evidence raised a serious issue with respect to the Applicants' credibility. Further, credibility was not in issue before the RPD. The RAD explained that because credibility was not in issue, it would not be convening an oral hearing. As noted by the Respondent, the requirements of section 110(6) of the *IRPA* are conjunctive. In my view, the RAD thus explained reasonably why it did not hold an oral hearing, in a manner that was justified in light of the evidence before it.

(3) RAD's consideration of whether the RPD asked the Applicants directly about the identity of their agents of persecution

[16] Contrary to the Applicants' position, I am not persuaded that the RAD failed to consider whether the RPD asked the Applicants to identify their persecutors at the RPD hearing. Reverse order questioning does not violate inherently the principles of justice; claimants must not be unfairly limited, however, in presenting their case: *Thamotharem v Canada*, 2007 FCA 198 at paras 37-40, 118-119.

[17] The RAD acknowledged the RPD finding that the PA's assertion that those who abducted him were part of a cartel or gang was speculative and determined that the RPD was correct in

doing so. In particular, the RAD reviewed the RPD record, including the Applicants' BOC narrative and the RPD hearing transcripts, and found no reference to Los Zetas.

[18] Having also reviewed the Applicants' BOC narrative and the RPD hearing transcripts, I find that the RAD's conclusion about the Applicants' failure to reference their agents of harm specifically was not unreasonable. There simply is no evidence the RPD's questioning unfairly limited the Applicants' right to present their case.

[19] Although the Applicants may have preferred more specific questioning at the hearing, I am satisfied that the RPD put the issue of the identity of the agents of persecution to the Applicants several times, providing the Applicants with ample opportunity to address this issue: *Sarker v Canada (Citizenship and Immigration),* 2014 FC 1168 at para 19. For example, when the RPD questioned the PA about the first time he was abducted, the RPD asked, "They didn't say anything about who they were?" The PA answered, "No." The PA had the same response when the RPD asked a similar question a few pages later in the transcript about the second group of people who kidnapped him.

[20] I thus determine that the record and the Decision permit the Court to "connect the dots" (*Vavilov,* above at para 97) and understand the RAD's reasons for concluding reasonably, in my view, "that the evidence does not establish, on a balance of probabilities, that Los Zetas are the agents of harm." In other words, I find this aspect of the Decision is justified, intelligible and transparent in the circumstances.

B. *The RAD did not err in concluding the Applicants' agents of persecution did not remain interested in them because of a lack of evidence that further efforts were made to locate the Applicants after 2018.*

[21] I also am not convinced that the RAD erred in finding that the agents of harm are no longer interested in the Applicants. The RAD considered the evidence that the agents of harm were looking for the PA during or prior to April 2018 and found that the evidence does not establish, on a balance of probabilities, that the agents of harm remain interested in the Applicants.

[22] The Applicants argue it is unreasonable to conclude an IFA is viable "only on the basis that there is no objective evidence at the present time": *Abbas v Canada (Citizenship and Immigration)*, 2019 FC 1576 [*Abbas*] at para 30. In my view, *Abbas* is distinguishable, however, because the agents of harm were family members who had ties with the applicants' family in their country of origin. The Court in *Abbas* found that this circumstance increased the risk that the applicants' whereabouts "would eventually become known" to the agents of harm, which is not the case here: *Kanu v Canada (Citizenship and Immigration)*, 2022 FC 674 at para 25.

[23] Other cases on which the Applicants rely, including *Losada Conde v Canada (Citizenship and Immigration)*, 2020 FC 626 at para 91 and *Rivera Benavides v Canada (Citizenship and Immigration)*, 2020 FC 810 at paras 74-75, also are similarly distinguishable from the present matter before me because the persecutors in those cases had reasons to target the applicants personally. In other words, a lack of consistent inquiries did not indicate necessarily a lack of sustained interest.

[24] I find the RAD here reasonably explained that the motivation of the agents of harm was the PA's perceived wealth as a result of his union membership rather than something related specifically to the PA or his family. It thus was more likely than not the agents of harm would move on to another victim to extort instead of pursuing the PA and his family elsewhere in Mexico. The RAD thus concluded that the Applicants' evidence did not establish, on a balance of probabilities, that the agents of harm remained interested in the Applicants.

IV. Conclusion

[25] While I am sympathetic to the Applicants' circumstances, ultimately in my view the RAD's reasons reflect an internally coherent and rational chain of analysis: *Vavilov*, above at para 85. I therefore dismiss the Applicants' judicial review application.

[26] No party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-6900-21

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act* (S.C. 2001, c. 27)**
***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**

Appeal to Refugee Appeal Division	**Appel devant la Section d'appel des réfugiés**
Evidence that may be presented	**Éléments de preuve admissibles**
110 (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	**110 (4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.
Hearing	**Audience**
110 (6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3) **(a)** that raises a serious issue with respect to the credibility of the person who is the subject of the appeal; **(b)** that is central to the decision with respect to the refugee protection claim; and **(c)** that, if accepted, would justify allowing or rejecting the refugee protection claim.	**110 (6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois : **a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause; **b)** sont essentiels pour la prise de la décision relative à la demande d'asile; **c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

FEDERAL COURT

SOLICITORS OF RECORD

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