Federal Court  Cour fédérale

**Date: 20230719**

**Docket: IMM-7612-22**

**Citation: 2023 FC 984**

**Ottawa, Ontario, July 19, 2023**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**LEONARDO DAVID CHAVERO RAMIREZ, TANIA MICHELLE PEREZ LUNA, ARIADNE MICHEL PEREZ LUNA, AND LEONARDO ABRAHAM CHAVERO PEREZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada rejected the applicants' refugee claim on the basis that they had a viable internal flight alternative [IFA] within Mexico and therefore did not qualify as Convention refugees or persons in need of

protection. The applicants argue the RAD did not respect the duty of procedural fairness and that the RAD's decision on the IFA was unreasonable. They ask this Court on judicial review to set the RAD's decision aside.

[2] For the reasons below, I conclude that the applicants have not met their burden to show that the RAD's decision was unreasonable or that it was reached in an unfair manner. The application for judicial review must therefore be dismissed.

## II. Issues and Standard of Review

[3] The applicants raise the following issues on this application:

A. Did the RAD breach the duty of fairness by raising a new issue to which they did not have the opportunity to respond?

B. Was the RAD's conclusion that the applicants have an IFA in Mérida unreasonable?

[4] The first of these issues is a question of procedural fairness. In the context of a judicial review, it has been said that no standard of review is engaged for such questions, though the Court's reviewing exercise is akin to correctness review: *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; but see *Canada v Bowker*, 2023 FCA 133 at para 16, citing *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 28, in the context of a statutory appeal. Regardless of terminology, the

question remains whether the procedure was fair having regard to all of the circumstances: *Canadian Pacific* at paras 54, 56.

[5] The second issue goes to the merits of the RAD's decision. It is to be reviewed on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32. A reasonable decision is one that is based on an internally coherent and rational chain of analysis, that is justified in relation to the facts and law that constrain the decision maker, and that adequately demonstrates the qualities of justification, transparency, and intelligibility: *Vavilov* at paras 15, 85–86, 95, 99–101; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 31–32. Reasonableness review does not permit the Court to simply reach its own conclusions, substitute its own decision for that of the RAD, or reassess the evidence: *Vavilov* at paras 83, 85, 125. Rather, the Court can only interfere if there are sufficiently serious shortcomings in the decision, such as a fundamental misapprehension of the evidence or a failure to account for the evidence: *Vavilov* at paras 100, 126.

## III. Analysis

### A. *There was no breach of procedural fairness*

[6] The applicants assert the RAD raised a new issue to which they did not have an opportunity to respond, relying on jurisprudence that confirms this may amount to a breach of procedural fairness: *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at paras 17–30; *R v Mian*, 2014 SCC 54 at paras 29–42.

[7] However, neither in their written memoranda nor in their oral submissions were the applicants able to identify any new issue raised by the RAD. The applicants cite two concerns under this heading: (i) a purported "failure to consider the Applicants' testimony and evidence"; and (ii) the "new issue of serious risk of persecution." I agree with the Minister that the former is a matter going to the merits of the decision, not to procedural fairness. The latter is in no way a new issue, as the existence of a serious possibility of persecution in the IFA is a fundamental aspect of the determination, which was considered by both the Refugee Protection Division [RPD] and the RAD, and on which the applicants had ample opportunity to present evidence and argument.

[8] I conclude the applicants have not established that the RAD's decision was procedurally unfair.

B. *The RAD's decision was not unreasonable*

(1) The applicants' refugee claim

[9] The applicants' claim for refugee status is based on threats that Leonardo David Chavero Ramirez, the father of the family, received in late 2017 and early 2018 from a member of the *Cártel de Jalisco Nueva Generación* [Jalisco New Generation Cartel, or CJNG]. Mr. Chavero was living in Jalisco State and working for an air conditioning installation company. In December 2017, an individual who identified himself as a CJNG member called Mr. Chavero and asked for information on the company's clients so the gang could offer them extortionate

"security services." This call was followed by further calls and by an interaction with a police officer who told Mr. Chavero he should comply with the CJNG's demands.

[10] Mr. Chavero and his son left for Canada shortly thereafter. His wife, Tania Michelle Perez Luna, and stepdaughter went to stay with Ms. Perez's mother, about 20 to 25 km from the couple's home. In June 2018, Mr. Chavero and his son returned briefly to Mexico, similarly staying with his mother-in-law, before the whole family returned to Canada in late June. In April or May 2019, Mr. Chavero's brother told him that "they" had asked about Mr. Chavero, but did not specify who "they" were.

(2) Rejection of the applicants' claim

[11] The RPD found Mr. Chavero and Ms. Perez to be credible, consistent, sincere, forthright, and heartfelt in their testimony. The RPD therefore accepted the central tenets of the applicants' claim. However, the RPD concluded that Mérida would be a viable IFA. The RPD applied the recognized two-pronged test for an IFA: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 592–597, citing *Rasaratnam v Canada (Minister of Citizenship and Immigration)*, [1992] 1 FC 706 (CA) at pp 710–711. On this test, a viable IFA only exists if (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a danger or risk described in section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu* at pp 595–597; *Sadiq* at paras 38–44.

[12] On the first prong, the RPD found there was no serious possibility the applicants would be persecuted or, on a balance of probabilities, face a section 97 danger or risk. This finding was based on the RPD's assessment that the evidence did not show the CJNG was motivated to pursue Mr. Chavero in Mérida. The RPD noted that (i) the cartel had only displayed interest in him because he had the company's client list, a local matter; (ii) they could obtain this information in other ways if it continued to interest them; (iii) having been away for three years, Mr. Chavero no longer had up-to-date knowledge of the client base; (iv) they had a "lower-key profile" as ordinary, hardworking, honest people, rendering it less likely the cartel would be interested in pursuing them; (v) there was no evidence the CJNG had a "personal vendetta" against Mr. Chavero that might motivate them to pursue him; and (vi) the CJNG had not displayed any interest or motivation in locating Mr. Chavero since he and his family left their home, including not having pursued or tracked them to his mother-in-law's house.

[13] On the second prong, the RPD found it would not be unreasonable for the applicants to move to Mérida. The RPD noted that the only concerns with moving to Mérida Mr. Chavero identified were the lack of family and professional contacts in the area, as well as a generalized fear for their safety. The RPD found that these concerns did not meet the high standard under the second prong of the IFA test: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at paras 15–17.

[14] Since a finding of an IFA is determinative of a refugee claim under either section 96 or section 97 of the *IRPA*, the RPD rejected the applicants' claim.

(3) Appeal and RAD decision

[15] The applicants appealed to the RAD, raising a number of alleged errors. They filed additional country condition evidence regarding the presence and strength of cartels, including the CJNG, in Mexico and in Yucatán in particular. The RAD accepted this new evidence.

[16] The RAD concluded that the RPD had not erred. Applying the same two-pronged test, the RAD agreed that Mérida was a viable IFA and that this was determinative of the applicants' refugee claim.

[17] On the first prong of the IFA test, the RAD accepted that the CJNG had the means to locate Mr. Chavero in Mérida if they were motivated to do so. However, it agreed with the RPD that there was insufficient evidence to support a finding that the CJNG were motivated to find the applicants, either due to a personal vendetta or due to their profile. The RAD rejected the applicants' arguments that the RPD had asked Mr. Chavero to speculate about the CJNG's motivations. Rather, the RAD found that the RPD was correct to draw conclusions based on the reasons the CJNG was originally interested in Mr. Chavero, the passage of time since then, the absence of a particular personal interest in Mr. Chavero, and the applicants' profile. The RAD cited documentary evidence indicating reasons that cartels might be motivated to track individuals (*e.g.*, theft or loss of money, personal rivalry, perceived betrayal, informants), and found the applicants did not meet the descriptions of such people. It also noted the CJNG had not taken steps to track the applicants after their move.

[18] On the second prong, the RAD confirmed the RPD's finding that the evidence presented did not establish it would be unreasonable for the applicants to move to Mérida. It noted Mr. Chavero's frank concession during the hearing that other than the concerns identified, he "could easily go peacefully to Mérida."

(4) The RAD's decision was reasonable

[19] The applicants raise a number of grounds they say render the RAD's decision unreasonable. I am not persuaded that any of these has merit or justifies interfering with the RAD's decision.

[20] The applicants argue the RAD inappropriately focused on the CJNG's interest in the company's client list, rather than considering the other information Mr. Chavero had about the company, and about the CJNG. However, there was no evidence of any other such information, or of the CJNG being interested in such information. Nor was this argument put before either the RPD or the RAD. The only allegation, and the only evidence, in respect of the incidents involving the CJNG is that they were interested in Mr. Chavero because they wanted the company's client list.

[21] The applicants also argue the RAD erred in describing the applicants as having a "lower-key profile." They argue Mr. Chavero's stature within the company, which was sufficiently senior to allow him access to the client list, shows he had a higher profile. This argument amounts to no more than a request that the Court reach a different conclusion on the evidence, which is not the role of the Court on judicial review: *Vavilov* at para 125. In any event, the

RAD's assessment on this point was focused on whether the applicants had the profile of people the objective evidence describes as those the cartel would consider to be worth pursuing. While the applicants contend that they fell within these descriptions, there is no evidence the CJNG had any motive of personal vengeance, that Mr. Chavero had knowledge that could expose CJNG's financial interests, or that he cooperated with authorities as an informant. To the contrary, Mr. Chavero confirmed that he did not go to the police given their involvement in the original incidents and his concern about their connections to organized crime. The RAD's conclusion was reasonably open to it on the record.

[22] Contrary to the applicants' submissions, none of the foregoing either involves speculation as to the motivations of the CJNG, or requires the applicants to engage in such speculation. Rather, it involves assessing what the evidence says about the nature and extent of the motivation of the agents of harm, and drawing conclusions from that evidence about the risk of danger in the IFA. Such assessments are the function of the RPD and the RAD in determining whether a viable IFA exists, and thus whether an applicant meets the definition of a Convention refugee or a person in need of protection.

[23] The applicants underscore that the RPD found them to be credible and accepted their story regarding their interactions with the CJNG. They argue this should "carry over" to the IFA analysis and their subjective fear of returning to Mexico and moving to Mérida. The applicants are quite correct that their credibility was not in issue; both the RPD and the RAD emphasized this point, accepting both their account of past events and their subjective fear. However, being a credible and reliable witness about events that have occurred in the past does not itself establish a

refugee claim, and in particular does not establish that an applicant will be at a prospective risk of harm if they return to an IFA: *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at paras 20–21. A refugee claimant may, as here, be entirely credible in their evidence and may subjectively fear a return yet not meet their burden to establish they would be at risk if they returned to a different part of their country.

[24] The applicants also broadly assert the RAD ignored, failed to consider, or misconstrued relevant evidence. However, counsel was unable to identify any particular piece of evidence that the RAD ignored, failed to consider, or misconstrued. On my review of the evidence and the decision of the RAD, it appears that the RAD thoroughly and reasonably considered the evidence and arguments that were raised by the applicants on appeal, including the new evidence filed, described the evidence on the record fairly, and concluded based on this assessment that the applicants had not established the CJNG was motivated to track them to Mérida such that they would be in danger there. The applicants have not met their onus to show this was an unreasonable finding: *Vavilov* at para 100.

[25] With respect to the second prong of the IFA analysis, the applicants' primary oral submission was that the analysis should not have reached the second prong because the first prong was not met. For the reasons above, I disagree. The applicants' written submissions also contend the RAD emphasized improper considerations in its assessment of the reasonableness of Mérida as an IFA. Again, I disagree. The RAD appropriately referred to the high standard established by the case law to show that an IFA is unreasonable. It then reasonably concluded on

the limited evidence related to this point that the applicants had failed to show it would be unreasonable to move to Mérida. There is no basis for the Court to intervene.

## IV. Conclusion

[26] As the applicants have not established that the RAD's decision was unreasonable or made in a procedurally unfair way, the application for judicial review must be dismissed.

[27] Neither party proposed a question for certification and I agree that none arises in the matter.

**JUDGMENT IN IMM-7612-22**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7612-22 |
| **STYLE OF CAUSE:** | LEONARDO DAVID CHAVERO RAMIREZ ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | JULY 12, 2023 |
| **JUDGMENT AND REASONS:** | MCHAFFIE J. |
| **DATED:** | JULY 19, 2023 |

**APPEARANCES:**

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