

Federal Court



Cour fédérale

**Date: 20230915**

**Docket: IMM-6633-22**

**Citation: 2023 FC 1245**

**Ottawa, Ontario, September 15, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**FANNY CAROL ANDREA AEDO ARANCIBIA,  
YAISHI JEAN KAYANO ORTEGA,  
GRACE KAELYN HADASSA KAYANO AEDO,  
LIAM RAPHAEL ALEXANDER KAYANO AEDO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants are a family: Fanny Aedo Arancibia (“Ms. Aedo”), who is the Principal Applicant, her common-law partner, and their two minor children. The Applicants asked for refugee protection in Canada because they feared that the authorities in Chile would not be able to protect them from the abuse of Ms. Aedo’s father (“Mr. AS”). Ms. Aedo’s mother and two

siblings had recently been accepted as refugees in Canada on the grounds that they could not receive protection in Chile from Mr. AS' abuse.

[2] The Refugee Protection Division [RPD] dismissed the Applicants' refugee claims, finding that Ms. Aedo's father did not have the means and motivation to find her and her family in Santiago and Antofagasta. The Applicants appealed the refusal to the Refugee Appeal Division [RAD]. The RAD also dismissed their claims. Like the RPD, the RAD found the family had viable internal flight alternatives ("IFAs") in Chile.

[3] The Applicants argue the RAD misconstrued the evidence on the nature of Mr. AS's abuse; the RAD's findings on his means and motivation to find them could not logically follow from the evidence before the RAD about his abuse. Further, the RAD did not coherently explain why the conclusion reached in the Principal Applicant's mother and siblings' claim on IFA would not also apply to them. The parties agree, as do I, that I should review the RAD's decision on a reasonableness standard.

[4] I agree with the Applicants that the RAD's evaluation of the means and motivation of their agent of persecution was unreasonable. Based on the reasons below, I grant the application for judicial review.

## II. Refugee Claim Background and Process for the Applicants' Family Members

[5] The Applicants' refugee claims are closely connected to the refugee claims of Ms. Aedo's mother and her two siblings. It is therefore relevant to understand the background of those claims.

[6] After approximately twenty-five years of living in an abusive marriage, Ms. Aedo's mother fled to Canada in 2016. A month after she left, her husband, Mr. AS, came to Canada and without warning, showed up at the home where Ms. Aedo's mother was staying. After a few weeks, he returned to Chile. At this point, Ms. Aedo's mother had raised enough money to have two of her children join her in Canada. Ms. Aedo's mother and these two children (one an adult, the other a minor) made refugee claims together. The following year, Mr. AS again travelled to Canada, without warning. He assaulted and threatened Ms. Aedo's mother while he was there. She reported this assault to the police in Canada. Prior to his criminal trial in Canada, he returned to Chile in September 2018.

[7] In March 2019, the RAD granted refugee protection to Ms. Aedo's mother and two of her siblings.

## III. Refugee Claim Background and Process for the Applicants

[8] The Applicants' claim for refugee protection is based on the abuse of Mr. AS. It is not based on a single incident but instead, like that of her mother and siblings, centred on a long history of violence from her father. Ms. Aedo's refugee narrative set out in detail the various experiences of violence she and her family experienced from her father.

[9] After returning from his second trip to Canada, where he assaulted Ms. Aedo's mother, Mr. AS continued his abuse in Chile. He attacked Ms. Aedo and threatened her and her children with violence. After this attack, Ms. Aedo and her family went to live with her brother-in-law, attempted to file a complaint with the police in Chile, and then fled to Canada in November 2018.

[10] The Applicants' refugee hearing was held before the RPD on December 20, 2021. At that point, Ms. Aedo's mother and siblings' claims had been accepted by the RAD. The RPD dismissed the Applicants' claims on January 24, 2022. The RAD reached the same conclusion as the RPD and dismissed the appeal in June 2022.

#### IV. Failure to Consider Basis of Claim Narratives of the Applicants' Family Members

[11] The RAD incorrectly determined that the narratives of the Applicants' family members, namely Ms. Aedo's mother and siblings, could not be considered. The RAD found that the Applicants had not adequately explained why these documents were not reasonably available at the time of the RPD hearing. I say the RAD was incorrect because these documents were in fact already in the record before the RAD, as they had been before the RPD. The confusion on the RAD's part is somewhat understandable because the Applicants themselves framed these documents as "new evidence" and asked that they be admitted into evidence by the RAD. The Applicants argue that despite this error on their part, the RAD's decision to not admit or consider documents that it already was required to consider demonstrates that it did not understand the record that was before it.

[12] The Respondent pointed out that despite not formally “admitting” the document, the RAD considered the contents of the family’s refugee narratives and found nothing relevant to its determination. The RAD noted that it already had details about the abuse, including Mr. AS’ violence in Canada, in the RAD decision for Ms. Aedo’s mother and siblings. The Applicants argue that there were further details in the narratives about Ms. AS’ recent violence, particularly in her sibling’s narrative.

[13] Ultimately, I do not find the RAD’s error to be determinative on its own. As I will explain below, the larger issue is that the RAD misconstrued the nature of the harm faced by Ms. Aedo and her family by focusing on a few incidents instead of understanding the claim as being related to a longstanding, ongoing pattern of family violence. This issue arises based on Ms. Aedo’s own evidence, which sets out this history of abuse, and does not require me to consider the further evidence in the narratives of her family members.

V. Means and Motivation of the Agent of Persecution

[14] The RAD’s finding that the Applicants could relocate safely in Chile is based on its determination that Mr. AS neither had the means nor the motivation to find them in the cities of Santiago or Antofagasta. The RAD comes to this conclusion based only on the absence of evidence of contact between the Applicants and their abuser since they came to Canada in 2018. There are a number of problems with the RAD’s analysis on this determinative issue.

[15] The RAD’s framing of the harm faced by Ms. Aedo and her family is limited to a few particular incidents and is divorced from the history of abuse she and her family faced. Ms.

Aedo's narrative sets out a detailed account of decades of abuse beginning in her childhood. The RAD decision for Ms. Aedo's mother's and siblings' claims also provides details of this longstanding pattern of abuse. The RAD makes no mention of the history of family violence in its decision.

[16] The Immigration and Refugee Board [IRB]'s *Gender Guidelines (Chairperson Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution)* provide that members evaluating family violence claims "should apply an intersectional approach to assess forward-looking risk, including the individual's history of abuse, [...] and whether any other family members may be at risk". Despite its relevance to evaluating future risk, the RAD failed to engage with the Applicants' experience of family violence resulting in a superficial assessment of the agent of persecution's means and motivation. In other family violence claims, this Court has found it unreasonable for the decision-maker to not sufficiently consider the history and pattern of abuse in evaluating the abuser's motivation to locate the claimants (see for example: *AHA v Canada (Citizenship and Immigration)*, 2020 FC 787 at paras 13-15; *Figarola Ahumada v Canada (Citizenship and Immigration)*, 2023 FC 246 at paras 54, 56, 64).

[17] The Respondent argues that the RAD took this history in account, relying on its statement at the outset of the analysis: "I have a great deal of empathy for Ms. AA's circumstances and those of her mother." I do not find this statement particularly relevant. The issue is whether the RAD considered the history of family violence in assessing the nature of the harm facing Ms. Aedo and her family.

[18] The RAD finds that Mr. AS' absence of contact while the family has been in Canada signifies that there is not a serious possibility that he would seek them out in the IFAs to further abuse them. The RAD failed to explain why they would require such evidence given the long history of family violence, including the attempted attack and threats towards Ms. Aedo as recently as 2018, which precipitated her leaving Chile. The RAD's reasoning lacks coherence when considered against the backdrop of the history of family violence for decades. It is particularly egregious here where Mr. AS followed her mother to Canada, assaulted and threatened her, and returned to Chile prior to his criminal trial in Canada.

[19] Another RAD member found in Ms. Aedo's mother's and siblings' claims that there was no viable IFA:

The agent of harm has proven himself to be committed to harassing his wife and children by traveling over 8,000 kilometres to Toronto to find them. If a man is willing to travel 8,000 kilometres to a foreign country in search of his victims, then there can be no place in Chile where the Appellants would be safe from that man. Ergo, there is no viable IFA in Chile.

[20] The RAD distinguished Ms. Aedo's claim from that of her mother's by finding that Mr. AS had motivation to come to Canada to track down her mother because he believed she had entered a new relationship. As described above, this finding is problematic because Mr. AS' actions are not viewed in the context of a long history of family violence, but rather in relation to a single incident.

[21] The RAD's reasoning also assumes that Mr. AS is a rational actor. This Court has cautioned against decision-makers making unfounded assumptions that agents of persecution

will behave rationally (*Yoosuff v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1116 at para 8; *Senadheerage v Canada (Minister of Citizenship and Immigration)*, 2020 FC 968 at para 19; *Reyad Gad v Canada (Minister of Citizenship and Immigration)*, 2011 FC 303 at para 11). In the family violence context, it can also lead to a problematic line of reasoning that suggests there is something victims can do to not attract their abuser's violence.

[22] Further, the RAD does not explain why Ms. Aedo's situation is different than that of her siblings who, like their mother, were found to not have a viable IFA in Chile. This Court has explained that "it is incumbent on the RPD member when reaching a different result than was previously reached by another Member regarding a claim by a family member under similar circumstances, to explain why a contrary result was reached" (*Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at para 25). The RAD failed to provide any explanation why the determination on IFA, and specifically on the motivation and means of her father to continue his abuse in Chile, reached by another RAD member for her siblings would not also apply to Applicants.

## VI. Disposition

[23] The RAD's errors identified above combine to result in an analysis on IFA that lacks coherence and justification when measured against the evidence and submissions before it. The application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.



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

1. The application for judicial review is allowed;
2. The matter is sent back to be redetermined by a different member at the RAD; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

---

Judge

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

**DOCKET:** IMM-6633-22

**STYLE OF CAUSE:** FANNY CAROL ANDREA AEDO ARANCIBIA ET  
AL. v MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 19, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** SEPTEMBER 15, 2023

**APPEARANCES:**

Michael Keenan FOR THE APPLICANTS

Elijah Lo Re FOR THE RESPONDENT  
John Provart

**SOLICITORS OF RECORD:**

Grice and Associates FOR THE APPLICANTS  
Toronto, Ontario

Department of Justice Canada FOR THE RESPONDENT  
Toronto, Ontario