

Federal Court



Cour fédérale

Date: 20240209

Docket: IMM-827-23

Citation: 2024 FC 214

Toronto, Ontario, February 9, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

AKEEL AHMAD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated December 22, 2022 [Decision], in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection. The Decision turned on the RAD's finding that the Applicant is

excluded under Article 1(F)(b) of the Convention, on the basis that there were serious reasons for considering that he committed a serious non-political crime while in Mexico.

[2] As explained in greater detail below, this application for judicial review is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant is a citizen of Mexico. He was formerly a citizen of Pakistan by birth but married his current wife in 2011 and moved to Mexico where his wife is a citizen. The Applicant also converted from Islam to Christianity. His wife eventually relocated to the United States [US], where she also has citizenship.

[4] The Applicant worked as an Uber driver in Mexico, and in November 2017 members of a cartel (CJNG) began using his services. The Applicant soon realized that he was transporting illegal drugs on behalf of the CJNG and asserts that he was forced to cooperate with the cartel for approximately three months. He relocated to another city in Mexico for one month and then left Mexico for Pakistan in March 2018.

[5] The Applicant was in Pakistan from March 22, 2018 to April 22, 2018, and alleges that he was persecuted there after attempting to visit a church service. On April 23, 2018, the Applicant entered Canada and made a refugee claim. The Minister of Public Safety intervened on the issue of exclusion under Article 1F(b) of the Convention, submitting that there were

serious reasons for considering that the Applicant had committed a serious non-political crime while in Mexico, because he had assisted the CJNG in transporting illegal drugs.

[6] The RPD excluded the Applicant under Article 1F(b) of the Convention, and he appealed to the RAD. In the Decision under review in this application, the RAD agreed with the RPD that the Applicant was excluded and dismissed his appeal.

III. Decision under Review

[7] In considering the factors applicable to an assessment of whether a crime is serious for purposes of Article 1F(b), the RAD noted that the Applicant did not challenge the RPD's finding on the mode of prosecution or the likely penalty that would be prescribed if he was convicted of the relevant offence in Canada. The RAD agreed with the RPD's analysis, supporting a conclusion that the Applicant's actions in transporting illegal substances on behalf of the CJNG constituted a serious non-political crime.

[8] The RAD noted that the RPD found that there were no mitigating factors. The RAD disagreed in part with this analysis, as the fact that the Applicant had no previous criminal record was a mitigating factor. However, based on the aggregating factors (as explained below), the RAD arrived at the same overall conclusion as the RPD.

[9] In considering aggravating factors, the RAD first considered whether the Applicant had a defence of duress. However, it found that he was not in a state of duress when he realized in November 2017 that the CJNG intended to use him to transport illegal substances. While the

CJNG threatened to kill him and also threatened his wife if he did not comply with their requests to transport the substances, the RAD found that he was not in danger of imminent harm. The Applicant had not demonstrated that the cartel constrained his personal mobility or monitored his daily activities in such a way that he had no choice but to remain in Mexico for three months until his departure. His travels leading up to that departure were not characteristic of a person who is in danger of imminent harm.

[10] The RAD also found that the Applicant had a safe avenue of escape available to him before his departure, as he had both a valid Canadian electronic Travel Authorization (eTA) and a valid entry visa for Pakistan since January 2017. He was also an experienced traveler and had the knowledge and resources to leave Mexico earlier if he wished to do so.

[11] The RAD also agreed with the RPD's assessment that, as a further aggravating factor, the Applicant's transportation of illegal substances and cartel members twice a week for three months contributed to the cartel's operations and caused significant harm to communities in Mexico and abroad.

[12] In conclusion, the RAD concluded that there were serious reasons for considering that the Applicant had committed a serious non-political crime and upheld the RPD's decision that he was excluded under Article 1F(b) of the Convention and therefore was neither a Convention refugee nor a person in need of protection.

IV. Issues and Standard of Review

[13] The parties' submissions requires the Court to determine, in accordance with the applicable standard of review, whether the Decision is reasonable?

V. Analysis

[14] The Applicant's submissions in support of his position that the Decision is unreasonable focus principally upon the RAD's duress analysis. The Applicant argues that he was forced by the CJNG to drive their members in the course of their illegal activities. He did not profit from those activities or encourage, support or believe in them. The Applicant emphasizes that the CJNG repeatedly threatened to kill him and his spouse and explains that it took some time for him to develop a plan to escape the CJNG, as the severity of the circumstances with which he was faced escalated.

[15] The Applicant argues that the RAD's duress analysis is unreasonable, because he testified that he feared for the safety of him and his wife and was under duress at all material times, and that testimony was entitled to the presumption of truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at para 5). He notes that the RAD did not make any negative credibility findings against him.

[16] I agree with the Respondent's position that the presumption of truthfulness does not assist the Applicant. The presumption is simply that a sworn witness is telling the truth. The fact that an applicant's evidence is truthful does not bind a tribunal to adopt inferences that the applicant

wishes the tribunal to draw from that evidence (see, e.g., *Ogbanna v Canada (Citizenship and Immigration)*, 2023 FC 234 at para 6) or commit the tribunal to particular findings in connection with a test that relies on objective criteria.

[17] As explained in the Decision, the legal test for the defence of duress includes the perpetrator being in danger of imminent harm and having no safe avenue of escape (*R v Ryan*, 2013 SCC 3). I agree with the Respondent's submission that these are objective elements of the test. I recognize that the test also includes consideration of whether the perpetrator reasonably believed that a threat would be carried out. The Applicant's subjective belief is relevant to that factor. However, the RAD's analysis turned on the objective factors of imminent harm and safe avenue of escape.

[18] The Applicant also argues that the RAD failed in its obligation to conduct independent analysis in considering his appeal of the RPD's decision. He submits that the RAD merely repeated and adopted the RPD's findings. However, as the Respondent points out, the RAD explicitly disagreed with the RPD on an aspect of its analysis, surrounding mitigating factors. Moreover, to the extent the RAD's analysis on aggravating factors, particularly surrounding duress, is consistent with the RPD's analysis, this does not mean that the RAD did not undertake its own analysis.

[19] I agree with the Respondent's characterization of the Applicant's arguments, that he is asking the Court to reweigh the evidence in a manner that is more favourable to him. This is not the Court's role in judicial review. In summary, the RAD found that the Applicant continued to

transport CJNG members and their illegal substances, after becoming aware of their illegal activities, notwithstanding that the CJNG did not restrict his movements and he had means of leaving Mexico to avoid their threats. He thereby contributed to the social harm resulting from the cartel's illegal activities. The RAD's analysis is intelligible and, having considered the Applicant's written and oral submissions, I find no basis to conclude that the Decision is unreasonable.

[20] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-827-23

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

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-827-23

STYLE OF CAUSE: AKEEL AHMAD v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Peter J. Wuebbolt FOR THE APPLICANT

Leila Jawando FOR THE RESPONDENT

SOLICITORS OF RECORD:

Peter J. Wuebbolt FOR THE APPLICANT
Barrister and Solicitor
Toronto, ON

Attorney General of Canada FOR THE RESPONDENT
Toronto, ON