Federal Court Cour fédérale

**Date: 20240502**

**Docket: IMM-4479-23**

**Citation: 2024 FC 677**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, May 2, 2024**

**PRESENT: Mr. Justice Régimbald**

**BETWEEN:**

**ANALITH BETANZOS RAMIREZ**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant is a citizen of Mexico. She seeks judicial review of a decision of the Refugee Appeal Division [RAD], dated March 13, 2023, dismissing her appeal and confirming the decision of the Refugee Protection Division [RPD], dated August 24, 2022, which rejected her refugee protection claim. The RAD determined that the applicant is neither a Convention refugee within the meaning of section 96 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 [IRPA], nor a person in need of protection as defined in subsection 97(1) of the IRPA, as she has an internal flight alternative [IFA] in the city of Mérida, in Yucatan State.

[2] For the reasons that follow, the application for judicial review is dismissed. The RAD's decision is clear, justified, and intelligible in relation to the evidence submitted (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). The applicant has not satisfied the burden of showing that the RAD's decision was unreasonable.

## I. Factual background

[3] Betanzos Ramirez [applicant] is a citizen of Mexico. She is seeking refugee protection in Canada under sections 96 and 97 of the IRPA, alleging that she fears her in-laws in Mexico.

[4] The applicant is married and has three children. She alleges that since she married her husband in 1998, her in-laws, particularly her mother-in-law, have vehemently opposed their marriage. As a result, her relationship with her in-laws has been hostile for years.

[5] The applicant left the family home in late 2018, following an argument with her mother-in-law. She then left Mexico for Canada in March 2019 and made a claim for refugee protection, fearing on the one hand her mother-in-law's threats, and on the other her father-in-law's association with the criminal organization Los Zetas.

[6] In a decision issued on August 24, 2022, the RPD rejected her refugee protection claim, ruling that she had an IFA in the city of Mérida. This decision was appealed to the RAD, which rejected the appeal and confirmed the RPD's decision in a decision issued on March 13, 2023 [Decision].

[7] The Decision by the RAD is the subject of this application for judicial review.

## II. Impugned decision

[8] First, the RAD addressed the issue of new evidence submitted by the applicant. On appeal to the RAD, the applicant submitted the following documents as new evidence:

- A statement dated October 25, 2022, from Sergio Cruz Ventura;
- A statement dated October 25, 2022, from Gerardo Reyes Velasco;
- An undated statement from Marie Angélica Cruz Ramirez; and
- A statement dated October 25, 2022, from Maria Fernanda Reyes Betanzos.

[9] The RAD rejected the new evidence on the grounds that these four statements were available before the refugee protection claim was rejected and, as such, could have reasonably been obtained and presented at that time. Moreover, the content of these statements is similar to the evidence before the RPD, so this evidence is not new.

[10] The RAD then addressed the IFA issue, in particular the arguments raised by the applicant alleging that the RPD did not properly assess the evidence submitted regarding the father-in-law's involvement in the criminal organization Los Zetas, the nature of the agents of

persecution, and the lack of state protection for individuals targeted by criminal organizations in Mexico.

[11] The RAD did not dispute Los Zetas' ability to find the applicant on Mexican territory, but rather questioned the organization's interest in pursuing the applicant in this case. In other words, there is insufficient evidence, according to the RAD, to demonstrate the interest of Los Zetas and the father-in-law in pursuing the applicant in the proposed IFA city. On the contrary, the evidence shows that the family worries involved the applicant and her mother-in-law; the mother-in-law wanted the applicant to leave the family home, which she did in 2018. Moreover, the evidence shows that the applicant's sister-in-law, who was subjected to the same hostile treatment by the mother-in-law, was able to move to another city in Mexico and live there without being persecuted by the in-laws.

## III. Standard of review and issues

[12] The issues before the Court are the following:

A. Is the RAD's Decision to refuse to admit the new evidence submitted by the applicant reasonable?

B. Is the RAD's Decision, concluding that the applicant has an IFA in the city of Mérida, reasonable?

[13] The applicable standard of review is reasonableness (*Vavilov* at paras 10, 25; *Mason* at paras 7, 39–44). A reasonable decision 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"

(*Vavilov* at para 85; *Mason* at para 8) and is justified, transparent and intelligible (*Vavilov* at para 99; *Mason* at para 59). A reasonableness review is not a "rubber-stamping" process; it is a robust form of review (*Vavilov* at para 13; *Mason* au para 63). A decision may be unreasonable where the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Finally, the burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

## IV. Analysis

### A. *The RAD reasonably concluded that the new evidence was inadmissible*

[14] For new evidence to be admissible before the RAD, it must meet the criteria of subsection 110(4) of the IRPA, which are listed as follows:

| **Evidence that may be presented** | **Éléments de preuve admissibles** |
| --- | --- |
| **(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. | **(4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenue depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessible ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet. |

[15] It is important to note that these criteria "would leave no room for discretion on the part of the RAD" (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 35 [*Singh*]).

[16] If the new evidence meets the criteria listed above, it must then meet the criteria identified in the case law, namely credibility, relevance and newness (*Singh* at para 38, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13).

[17] In this case, the RAD's decision on the admission of this evidence is reasonable. As analyzed by the RAD, the new evidence submitted by the applicant consists of four statements from people she knows, presenting evidence that existed at the time of her refugee protection claim and that could reasonably have been presented to the RPD. Moreover, these statements comprise evidence similar to that which was presented before the RPD, and therefore do not meet the newness criterion.

[18] In light of this, and the fact that the RAD has no discretion to ignore the criteria set out in the IRPA and the case law in its assessment of the new evidence (*Singh* at para 35), I am satisfied that the Decision is reasonable in this regard. The applicant has not identified any error warranting this Court's intervention.

B. *The RAD reasonably concluded that the applicant has an IFA*

[19] The test for determining whether there is an IFA is developed in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 1993 CanLII 3011 (FCA). It is a two-prong test: (i) the administrative decision maker must be satisfied, on a balance of probabilities, that there is no possibility of the claimant being

persecuted in the IFA area; and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15). Both prongs must be satisfied in order to make a finding that the claimant has an IFA (*Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 15).

[20] Under the first prong of the test, the claimant may challenge the viability of the proposed IFA city by establishing that the agent of persecution has the interest and ability to find the claimant in the proposed IFA (*Ortega v Canada (Citizenship and Immigration)*, 2023 FC 652; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428).

[21] However, the onus of demonstrating that an IFA is unreasonable, the second prong of the test, an onus that rests with the claimant, is an exacting one (*Huenalaya Murillo v Canada (Citizenship and Immigration)*, 2022 FC 396 at para 13; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 14). In order to discharge this burden, the claimant must presenter actual and concrete evidence of conditions which would jeopardize the life and safety of a claimant in the proposed IFA city (*Ranganathan v Canada (Minister of Citizenship and Immigration),* 2000 CanLII 16789 at para 15, [2001] 2 FC 164 (FCA); *Campos Navarro v Canada (Citizenship and Immigration),* 2008 FC 358 at para 20).

[22] In this case, the applicant failed to discharge that burden.

[23] The applicant's argument in this application for judicial review focuses on the RAD's analysis of the first prong of the IFA test. The applicant argues that the RAD did not give sufficient weight to the evidence adduced on the connection between the applicant's father-in-law and Los Zetas, and did not sufficiently address the nature and influence of the agents of persecution, Los Zetas. Finally, the applicant raises the inability of the Mexican state to adequately protect individuals targeted by criminal organizations.

[24] In my opinion, the RAD has adequately analyzed the agent of persecution—the father-in-law supported by Los Zetas—and the threat he could pose to the applicant. On the basis of the evidence in the file, the RAD recognizes that the agent of persecution has the ability to find the applicant elsewhere in Mexico; however, there is no evidence to demonstrate his interest in pursuing and persecuting her. Indeed, there is no evidence on the record indicating that the applicant would have received threats from her father-in-law or Los Zetas directly, or other concrete and convincing evidence establishing the interest of the agent of persecution (her father-in-law) to pursue her.

[25] Above all, the evidence shows that neither the father-in-law nor Los Zetas directly threatened the applicant. Rather, she was threatened by her mother-in-law. As the applicant was unable to demonstrate the interest of her father-in-law and Los Zetas in attacking her, she was also unable to demonstrate the inability of the Mexican state to adequately protect individuals targeted by criminal organizations. On this point, evidence to the contrary exists. As the RPD and the RAD concluded, her sister-in-law was herself the victim of threats from her mother-in-

law asking her to leave the family, which she also did. Following her relocation elsewhere in Mexico, she was no longer threatened. There is no evidence in this case that the applicant could not relocate elsewhere, as in the proposed IFA.

[26] To conclude, the applicant did not raise any serious shortcoming in the decision that would warrant the intervention of this Court. Rather, the applicant is asking this Court to conduct its own assessment of the evidence as she disagrees with the RAD's analysis and the manner in which it treated the evidence on the record. This type of intervention is neither appropriate nor defensible in a judicial review under the reasonableness standard of review, where reviewing courts must also refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Canada (Canada Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55, citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 64).

[27] Accordingly, I am of the view that the RAD's decision is reasonable, as it is transparent, intelligible and justified in relation to the relevant factual and legal constraints of the case (*Mason* at para 8; *Vavilov* at para 99).

## V. Conclusion

[28] For the foregoing reasons, this application for judicial review is dismissed.

[29] No question of general importance was submitted for certification, and the Court is of the view that none arises in this case.

**JUDGMENT in IMM-4479-23**

**THIS COURT'S JUDGMENT** is as follows:

1. The style of cause is amended to designate the Minister of Citizenship and Immigration as the appropriate respondent.

2. The application for judicial review is dismissed.

3. No question is certified.

"Guy Régimbald"
Judge

Certified true translation
Daniela Guglietta

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4479-23 |
| **STYLE OF CAUSE:** | ANALITH BETANZOS RAMIREZ v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | APRIL 23, 2024 |
| **JUDGMENT AND REASONS:** | RÉGIMBALD J |
| **DATED:** | MAY 2, 2024 |

**APPEARANCES:**

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| Stewart Istvanffy | FOR THE APPLICANT |
| Simone Truong | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |