

Federal Court



Cour fédérale

Date: 20240510

Docket: IMM-6295-22

Citation: 2024 FC 714

Ottawa, Ontario, May 10, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

LUIS MIGUEL NARANJO JAVIER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Luis Miguel Naranjo Javier, worked as a taxi driver in Mexico. He said he had to pay an extortion fee to one drug cartel, then to another after it took over following a violent turf war between the gangs. He fled Mexico when the second cartel demanded that he work for them.

[2] The Refugee Protection Division (“RPD”) dismissed the Applicant’s claim because it found that he had an Internal Flight Alternative (“IFA”) in another location in Mexico. The Refugee Appeal Division (“RAD”) dismissed his appeal because it agreed that the Applicant had an IFA.

[3] The Applicant seeks judicial review of the RAD decision, claiming that the RAD engaged in unfounded speculation and misconstrued the documentary evidence about the nature of the threat posed by the second cartel.

[4] For the reasons set out below, this application for judicial review will be dismissed. I find the RAD decision to be thorough and based on the application of the legal test to the facts in the record. It is not the role of a reviewing court to re-weigh the evidence and the Applicant has not persuaded me that there are any fatal flaws in the RAD’s analysis.

I. Background

[5] The Applicant began working as a taxi driver in Mexico in 2008. He worked in the Riviera Maya. In 2009 he says that the Los Zetas Cartel asked him and other taxi drivers at his location to work for them. This would involve driving cartel leaders, as well as smuggling drugs and weapons. The Applicant refused to work for the Los Zetas.

[6] It appears that cartels often seek to recruit taxi drivers because they do business in cash, are highly mobile and can easily function as lookouts, or report on local affairs and also transport people and goods. In doing this, a taxi driver would easily blend into the local population.

[7] In 2015, the Applicant moved to Playa del Carmen, and the following year he and other taxi drivers there were told by the Gulf Cartel that they either had to work for them or pay 5,000 pesos every six months. Joining the Gulf Cartel meant the drivers would have to smuggle drugs and weapons, and dispose of bodies. The Applicant stated that he was aware that the cartel told some taxi drivers to kidnap people. The Applicant began to pay the extortion fee, and was not asked to help the Gulf Cartel again.

[8] The Applicant says that a war between the gangs broke out in 2017; the Cartel Jalisco Nueva Generacion (“CJNG”) gained control over the area. Shortly thereafter, the CJNG told the Applicant and other taxi drivers that they were recruiting members. If they did not join, the drivers would have to pay 5,000 pesos every week. The Applicant began to pay the weekly extortion fee.

[9] Some months later, the CJNG returned and demanded that all taxi drivers start to work for them. Refusing would bring harm to the driver and their family. The CJNG gave the drivers two days to decide. The Applicant went into hiding, and gave his taxi plates to his brother to

return to the Syndicate that controlled the taxi business. He moved to Cozumel, which is a short distance from Playa del Carmen. When neighbours warned the Applicant that members of the CJNG were looking for him in Cozumel, he went into hiding in Comalcalco, Tabasco.

[10] A month later, in February 2019, the Applicant left Mexico and came to Canada where he claimed refugee status. The RPD dismissed the Applicant's claim for protection, finding that he had a valid IFA in Mexico.

[11] Applicant's appeal to the RAD was dismissed, also on the basis that he had a viable IFA. The RAD agreed with the RPD's finding that the Applicant's claim should be assessed under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because his allegations related to criminal coerced recruitment and extortion and therefore had no nexus to a Convention ground.

[12] The RAD found the Applicant to be credible with respect to his allegations, and on this point it disagreed with many of the RPD's specific findings. The RAD accurately found that the "RPD's assessment of credibility was confusing and self-contradictory." It is not necessary to discuss the flaws in the RPD decision in any detail; the RAD systematically catalogued and analyzed these findings, and explained its disagreement with many of them. Following its own

analysis of the Applicant's evidence, the RAD found him that his evidence regarding the threats he had received and his reason for fleeing his home city were credible.

[13] Turning to the IFA analysis, the RAD found that the IFA location met the first prong of the legal test because although the CJNG had the means to locate the Applicant anywhere in Mexico, there was no indication they were motivated to do so. The RAD noted the cartel had never searched for the Applicant or his family once they left their home city, and there was no evidence that his family had been questioned or threatened after they moved back to that location. The objective evidence also did not support a conclusion that the cartel would make the effort to try to locate the Applicant given that he had paid the extortion fee and had simply refused the cartel's demand that he join them and then moved away.

[14] Based on this finding, the RAD also assessed whether it was reasonable for the Applicant to move to the IFA location. It concluded that he would be able to find work there and there were no other barriers that would prevent him from living there. For these reasons, the RAD dismissed the Applicant's appeal.

[15] The Applicant seeks judicial review of the RAD decision.

II. Issues and Standard of Review

[16] The only issue in this case is whether the RAD's IFA finding is reasonable. The Applicant says that it is not because the RAD engaged in unwarranted speculation about the motivation of the CJNG to find him, and it misconstrued the objective documentary evidence.

[17] The RAD's conclusions about the IFA are assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[18] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at para 102).

[19] The onus is on the Applicant to demonstrate flaws in the decision that are "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). The decision must be assessed in light of the history and context of the proceedings, including the evidence

and submissions made to the decision-maker (*Vavilov* at para 94). Absent exceptional circumstances, a reviewing court will not interfere with factual findings (*Vavilov* at para 125).

III. Analysis

[20] The Applicant submits that the RAD's IFA finding is unreasonable and incongruous given that the RAD accepted that his narrative was credible. The Applicant points out that by making this finding, the RAD accepted the following facts:

- The CJNG tried to recruit him, demanding that he join them and refusing to accept extortion payments instead. When he refused, they searched for him in Cozumel;
- The Cartel threatened his family and demanded that they reveal his location;
- The CJNG is a powerful, dangerous organization and has the capacity to locate him anywhere in Mexico; and
- Some taxi drivers have been killed for refusing to work for the Cartel.

[21] The Applicant accepts that assessing the means and motivation of an agent of persecution to locate a person in an IFA location involves a degree of speculation about future behaviour. However, he points to case-law that emphasizes that such inferences must be based on clear and non-speculative evidence: *Wijekoon Mudiyansele v Canada (Citizenship and Immigration)*, 2022 FC 312 at para 22 [*Mudiyansele*]. The Applicant emphasizes two points: first, that determinations about who might be attacked and when must be made with caution. Second, he

submits that the IFA finding must meet a high standard of justification in light of the consequences for him. The Applicant puts it bluntly: if the IFA finding is wrong, he will be killed when he is forced to return to Mexico.

[22] The Applicant challenges several key findings by the RAD. He says that the RAD placed undue emphasis on the fact that the CJNG did not target his family while they were in Playa del Carmen, but this is not persuasive because the Cartel were after him, not his family. The Applicant also argues that the RAD put too much weight on the fact that 3.5 years had elapsed since the threats. He argues that this is not a sufficient period of time to draw a reasonable inference that the Cartel is no longer seeking vengeance against him for defying their orders. The Applicant points out that this Court has emphasized that determinations of a lack of interest based solely on the passage of time must be made with extreme caution, citing *Espana Alvarez v Canada (Citizenship and Immigration)*, 2021 FC 935 at para 23 [*Espana Alvarez*].

[23] Furthermore, the Applicant contrasts the RAD's finding that the cartel would have lost interest after 3.5 years with similar findings in other cases, which were only made after the passage of much longer periods of time: nine years in *Vyshnevskyy v Canada (Citizenship and Immigration)*, 2020 FC 881, and thirteen years in *Cherednyk v Canada (Citizenship and Immigration)*, 2021 FC 873. The Applicant argues that the RAD's findings in this case are not a reasoned inference, but rather amount to bald speculation, which is unreasonable: *Danchenko v Canada (Citizenship and Immigration)*, 2018 FC 1099 at paras 23-24 [*Danchenko*].

[24] I am not persuaded by the Applicant's submissions on this point. First, it is important that the RAD did not base its finding that the CJNG would not be interested in pursuing the Applicant solely on the passage of time; this was but one of several factors considered in the analysis. In *Espana Alvarez*, Justice Simon Fothergill provided the following illuminating guidance:

[23] There may be circumstances where a decision maker may reasonably infer from the passage of time that a criminal gang no longer has the means or motivation to harm a claimant (see, e.g., *Cherednyk v Canada (Citizenship and Immigration)*, 2021 FC 873 at para 28, citing *Vyshnevskyy v Canada (Citizenship and Immigration)*, 2020 FC 881 at paras 30-35). However, a decision maker should be cautious about drawing such an inference where the evidence of a criminal gang's *modus operandi* is inconclusive, or where no significant period of time has elapsed.

[25] In this case, the RAD's determination was based on the passage of time (3.5 years), as well as the specific factual circumstances of the case assessed in light of the objective documentary evidence. In particular, the RAD noted that the cartel's pursuit of the Applicant following his move from Playa del Carmen was not surprising given that he was only a short distance away, and he worked in construction in the new location while also maintaining contacts with his former taxi driver colleagues. The RAD observed that once the Applicant moved away from that location, he had no further contact with the cartel.

[26] The RAD also examined the experience of the Applicant's family members, who the cartel had threatened to harm as part of their initial recruitment efforts. However, the RAD found

that the family was not pursued for information about the Applicant's location once they left Playa del Carmen, nor were they threatened after they moved back. The RAD found this to be a relevant consideration in the particular circumstances of this case because of the cartel's specific threats against the Applicant's family.

[27] Finally, the RAD reviewed the objective country condition evidence and media reports, which indicated that business owners who faced threats from the CJNG often closed their operations and moved away to escape the threats. The RAD noted that there was no indication that such individuals were pursued or harmed by the cartel.

[28] The RAD's finding regarding the motivation of the cartel to search for the Applicant was not based solely on the passage of time. Its analysis is clear, and reveals a careful consideration of the personal evidence of the Applicant as well as the objective country conditions. There is no basis to find the RAD's finding on this point to be unreasonable. In this respect, this case can be contrasted with *Espana Alvarez*, where the Court found the analysis to have ignored key relevant evidence regarding the nature of the threat, and only two years had passed since the incidents that gave rise to the refugee claim. I find that this case is more similar to the situation in *Ifeanyi v Canada (Citizenship and Immigration)*, 2018 FC 419 at paras 16-17, where Justice Denis Gascon found the RAD's determination to be based on a reasoned inference from the evidence (see also: *Ortiz Ortiz v Canada (Citizenship and Immigration)*, 2022 FC 1066 at paras 25-26).

[29] Turning to the Applicant's second main submission, I am not persuaded that the RAD misconstrued the objective country condition documentation. The Applicant argues that the RAD erred in stating that there was a "dearth of information suggesting that average, non-political, non-government civilian people who are former victims of extortion and coercion and move away from the area are tracked to other locations in the country or that vengeance is taken upon them." The Applicant submits that the RAD ignored ample information in the record that demonstrates that cartels do track and take revenge on ordinary individuals for a variety of reasons. He points to passages such as the following:

The Assistant Professor stated that a large debt or a personal vendetta could motivate a gang to track someone outside their area, and that gangs can use "corrupt law enforcement agents" to obtain information about people they pursue (Assistant Professor 1 Aug. 2019).

According to sources, criminal groups are motivated to track certain individuals because they steal or lose money; due to personal rivalries; for political incentives/reasons (Doctor of criminology 21 July 2021) or due to "personal vengeance; perceived betrayal; public exposition of relationships with public officials, politicians or investments; or cooperation with authorities as informants or collaborative witnesses" (Research Professor 21 July 2021).

(IRB National Documentation Package, Mexico, August 2019, Item 7.15 and Item 7.8.)

[30] The Applicant also refers to another passage showing that refusing to be recruited can motivate a cartel to track a person. He argues that the RAD misinterpreted this source by placing too much emphasis on the discussion of the targeting of young people while ignoring the more general point that refusing recruitment can itself give rise to persecution.

[31] I disagree with the Applicant's argument on this point because it is based on a selective reading of the RAD's decision. I find that the RAD engaged in a thorough, careful and balanced assessment of the evidence, including its discussion of the specific passage about the motivation of the cartel to track individuals who have rebuffed recruitment efforts.

[32] The RAD notes that there is extensive documentary evidence on the CJNG cartel, and it mentions that victims of extortion who moved away were not tracked in their new locations. The RAD continued:

[44] There is one reference in the NDP to victims of forced recruitment being tracked. It is not a concrete example of it happening in the past, nor does it make reference to the CJNG. Instead, it is one line attributed to an Assistant Professor, who stated that "refusing to be recruited can motivate a cartel to track the person..." The same item states that young people, such as children and other minors, are most at risk of forced recruitment and retribution for refusing or exposing the cartel. The Appellant does not fit this age profile and he did not expose the cartel to Mexican authorities. He simply moved away. While I take this item seriously, I do not think that it alone outweighs the evidence specific to this case showing that the agents of harm have not carried out their threats against the Appellant or his family in spite of having had 3.5 years to do so.

[33] The Applicant's argument that the RAD placed undue emphasis on the threats faced by young people is not borne out by this passage. The RAD does mention the particular risks faced by young people, but it also points out that the Applicant did not expose the cartel to Mexican authorities – a fact that is not disputed. The RAD expressly states that it takes the NDP item relied on by the Applicant seriously, and its conclusion about the risks he faced is based on its

assessment of the objective evidence, as well as the evidence of his particular circumstances. This is a reasonable finding and the Applicant has not demonstrated that this is the type of exceptional circumstance that justifies interference with the RAD's factual findings.

[34] While it is true that there are other passages in the objective evidence discussing the threats posed by cartels in Mexico, the RAD's discussion of the evidence reflects a careful engagement with the totality of the record. For example, based on the general country condition documentation the RAD rejected the RPD's assessment of the reach of the CJNG cartel, finding that it was too focused on the territories controlled by various cartels.

[35] Overall, I find that the RAD's assessment of the risks faced by the Applicant was not based on unwarranted speculation, but rather reasoned inferences drawn from its examination of the Applicant's personal evidence as well as the broader record regarding the threats posed by cartels. In this case, the RAD's analysis is consistent with the guidance provided by the jurisprudence of this Court. For example, Justice Alan Diner summarized the relevant principles in *Soos v Canada (Citizenship and Immigration)*, 2019 FC 455 [*Soos*]:

[13] What someone will do in the future is by definition speculative. Certainly, the Board is entitled to make reasoned inferences based on the evidence before it. In *Ifeanyi v Canada (Citizenship and Immigration)*, 2018 FC 419, Justice Gascon provided as follows:

[32] [...] Speculation is not to be confused with inference. It is acceptable for a decision-maker to draw logical inferences based on clear and non-speculative evidence (Laurentian Pilotage

Authority v Corporation des pilotes du Saint-Laurent central inc, 2015 FCA 295 at para 13). In the same vein, it is well-accepted that a decision-maker can rely on logic and common sense to make inferences from known facts. The RAD cannot engage in speculation and render conjectural conclusions. However, a reasoned inference is not speculation (Bhatia v Canada (Citizenship and Immigration), 2017 FC 1000 at para 38).

[14] Logical, reasoned inferences should thus be based on clear and non-speculative evidence.

[36] In contrast to other cases where the decision-maker engaged in unfounded speculation (for example *Danchenkoat* paras 23-24 ; *YZ v. Canada (Citizenship and Immigration)*, 2021 FC 232 at para 13), or ignored relevant evidence directly relevant to the risks faced by the claimant (for example, *Soos*, and *Espana Alvarez*), the RAD examined the specific circumstances of the Applicant and his family as well as the well-documented evidence about the behaviour of the specific cartel the Applicant feared. The RAD's conclusion that the CJNG cartel lacked the motivation to search for the Applicant in the IFA location is a reasoned inference based on the evidence. I can find no basis to disturb the RAD's finding on this point, and must therefore reject the Applicant's argument.

IV. Conclusion

[37] Based on the analysis set out above, the application for judicial review will be dismissed.

[38] There is no question of general importance for certification.

JUDGMENT in IMM-6295-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Amedeo Clivio FOR THE APPLICANT

Simarroop Dhillon FOR THE RESPONDENT

SOLICITORS OF RECORD:

Clivio Law Professional Corporation FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario