

Federal Court



Cour fédérale

Date: 20240619

Docket: IMM-7918-23

Citation: 2024 FC 951

Toronto, Ontario, June 19, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

Jose VEGA RIVAS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision made by the Refugee Appeal Division [RAD] dated May 30, 2023 [Decision], dismissing his appeal and confirming the decision of the Refugee Protection Division [RPD], finding that he is neither Convention refugee nor person in need of protection. The RAD rejected the refugee claims due to credibility concerns and because

there is a viable Internal Flight Alternative [IFA] in Merida. For the reasons below, this application is dismissed. The RAD's Decision is justifiable, intelligible and transparent.

[2] In brief, the Applicant is a citizen of Mexico. He came to Canada in January 2020 to study, and made a refugee claim in January 2022. His claim was based on a fear of persecution by the Plague Number 7 gang. The RPD denied his refugee claim on the basis that he is not a Convention refugee nor a person in need of protection. The RAD dismissed the appeal and their Decision was based on negative credibility findings and the availability of the viable IFA.

[3] The sole issue before this Court is whether the RAD's Decision was reasonable (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–63; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

[4] While the Respondent observed that the Applicant neither challenged the nexus argument or the second prong of the IFA before the RAD, and should have challenged these findings, I will nonetheless address all of the Applicants arguments for the sake of completeness and his edification, given the important stakes.

[5] The Applicant takes issue with the RAD's credibility and IFA assessments. He argues that the central omission found by the RAD – namely that of the specific agent of persecution from the 2015 event (Plague Number 7 gang) – was due to his mental state, as per the submitted psychological report, and that the RAD did not give enough weight to the evidence of ongoing threat in Mexico. On the RAD's IFA assessment, the Applicant claims that their analysis of the

means and motivation of the agent of persecution is flawed, and that his move to the IFA would be unreasonable. On credibility, the RAD based their finding on the omission of a material fact in his Basis of Claim form. In concluding that the Applicant's testimony was inconsistent and there was a lack of credible evidence proving ongoing threats, the RAD assessed the evidentiary record before it, including the documentary evidence, the psychological report, and the Applicant's father's letter. It did not overlook evidence. The Applicant had a duty to raise credible evidence in support of his claim, which he failed to do, according to the RAD. He is now asking this Court to reweigh the evidence that was put before the RAD, which is not this Court's role. In addition, the RAD is owed significant deference on issues of credibility, and I do not see a reason to interfere with their findings, which are sound given the transcript and other documentary evidence on the record (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 15 [*Lawani*]).

[6] At the hearing, the Applicant specifically raised *Maldonado v Canada (Minister of Employment and Immigration)* [1980] 2 FC 302 (FCA), 1979 CanLII 4098 (FCA) [*Maldonado*] and *Klinko v Canada (MCI)*, 148 FTR 69, 1998 CanLII 7700 (FC) [*Klinko*]. Regarding *Maldonado*, here, the presumption of truth was reasonably rejected by both boards. As noted in *Lawani* at paragraph 21, while it is true that when Applicants swear to the truth of certain allegations they are presumed to tell the truth, this presumption of truthfulness is not unchallengeable, and here the lack of credibility reasonably rebutted it. As for *Klinko*, that case was clear on its facts of the political opinions expressed, their direct consequences to the Applicants' actions, and their nexus to Convention grounds. Here, on the other hand there was a lack of evidence of political opinion – or any other nexus ground.

[7] Turning next to IFA, once a viable IFA is proposed, the onus is on the applicant to prove that it is unreasonable. To do so, they must provide “actual and concrete evidence” that their life or safety would be jeopardized in the IFA (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 at paras 15–17 (FCA)). The Applicant has not provided such evidence, and therefore has not satisfied his burden that the IFA is unsafe. As for the second prong of the IFA test, the RAD also justifiably held that relocation to Merida would be reasonable, in the circumstances.

[8] Therefore, in my view, the RAD’s Decision bears the hallmarks of reasonableness in light of the evidentiary record, and the factual and legal constraints in this matter (*Vavilov* at paras 99–101). This application for judicial review is thus dismissed.

JUDGMENT in file IMM-7918-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.
2. There is no question to certify.
3. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7918-23

STYLE OF CAUSE: JOSE VEGA RIVAS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: JUNE 19, 2024

JUDGMENT AND REASONS: DINER J.

DATED: JUNE 19, 2024

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