

Federal Court



Cour fédérale

Date: 20240627

Docket: IMM-8217-23

Citation: 2024 FC 1007

Toronto, Ontario, June 27, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

**MARIO ANTONIO CABALLERO SALAZAR
MARCO ANTONIO CABALLERO ARREGUIN
LINDA GUADALUPE CABALLERO ARREGUIN
GUADALUPE ARREGUIN TOVAR
VANESSA CABALLERO ARREGUIN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a dismissal of the Applicants' appeal by the Refugee Appeal Division ("RAD"). The issues are whether the RAD's findings concerning credibility and the existence of an internal flight alternative ("IFA") were reasonable.

[2] For the reasons below, I have determined that the RAD's findings are reasonable and I dismiss the application for judicial review.

II. Background

[3] The Applicants are a family of five from Mexico, consisting of two parents and three adult children. Mr. Caballero Salazar, the father and principal Applicant, worked as an administrative and customer service assistant for a truck transportation company in Mexico. He alleges that on June 3, 2018, he received a call at work from the "boss" of the Mexican cartel Cartel Jalisco Nueva Generacion ("CJNG"), who asked him to cooperate with the cartel to ship "illicit substances" to other parts of Mexico. Mr. Caballero alleges that he refused and that he was threatened with retaliation against him and his family.

[4] The Applicants described a number of events which they believed to be connected to the principal Applicant's refusal to cooperate:

- On August 10, 2018, the principal Applicant's son, who is an associate Applicant, was the victim of an armed robbery while he was at work. The assailants were eventually imprisoned, which led to the Applicants being threatened so they would drop the charges, and their house being subject to surveillance;
- On October 3, 2018, the principal Applicant's elder daughter, who is also an associate Applicant, and his nephew were victims of an armed carjacking. They allege that the assailants shouted "for your dad to learn that this is for real" before leaving with their vehicle;

- The elder daughter was the victim of two more vehicle assaults. She also testified that a motorcycle was stolen next to her workplace;
- On November 18, 2016, the nephew's workplace, located next to where the elder daughter was staying, was burgled and expensive material was stolen. The daughter was not there that night and only neighbours witnessed the incident;
- The family stated that they received constant phone calls, to the point that they were afraid to answer the phone.

[5] The Applicants entered Canada on different occasions between January 2019 and March 2022, and eventually made claims for refugee protection.

III. The RPD and RAD decisions

[6] In a decision dated December 12, 2022, the Refugee Protection Division ("RPD") found that the Applicants had not proven a future risk and that they had an IFA in Campeche. It therefore rejected their applications for refugee protection.

[7] The Appellants appealed this decision to the RAD, which dismissed the appeal on May 31, 2023.

[8] The RAD admitted new evidence from the Applicants, but did not conduct an oral hearing because it found that credibility was not determinative. It then unfortunately began its decision by alluding to a number of credibility concerns in the Applicants' evidence, mostly related to their

behaviour, which the RAD believed to contradict their claim to be genuinely fearful. Nevertheless, the RAD made it clear that its decision was based on the existence of an internal flight alternative IFA for the Applicants in Campeche.

[9] The RAD's IFA analysis was based on the lack of a serious risk of persecution in Campeche. The RAD determined that the CJNG cartel was powerful enough to pursue the Applicants in Campeche, but found that it would not have the motivation to do so. The RAD found that the profile of the principal Applicant was insufficient for the cartel to pursue the Applicants strongly, and that the behaviour of the cartel toward the Applicants while they lived in Mexico did not demonstrate that the cartel would be motivated to pursue them in Campeche. It found that perhaps only one of the incidents alleged by the Applicants could be sufficiently tied to the cartel.

IV. Issues:

[10] In my view, there are two issues in this application:

- i) Did the RAD make reasonable findings regarding evidence at the basis of the Applicants' fears of persecution?
- ii) Is the RAD's finding that the Applicants have an internal flight alternative (IFA) in Mexico reasonable?

V. Analysis

Reasonableness of assessment of evidence underlying fears:

[11] As stated above, both the RAD and the RPD found that the determinative issue for the claims is the existence of an IFA for the Applicants in Campeche, Mexico.

[12] However, the Applicants argue that the RAD had to properly assess evidence supporting the Applicants' fears of persecution prior to making a valid assessment regarding the existence of an IFA. In this regard, the Applicants argue that the RAD erred by failing to make a clear credibility finding regarding evidence supporting their fears, and unreasonably found that the incidents supporting their fears were not linked to the principal Applicant's refusal to cooperate with the CJNG cartel. I disagree.

[13] It is true that the RAD alluded to credibility issues connected to the delay in claiming refugee protection in Canada, the failure to leave Mexico promptly, and the principal Applicant's re-availment. It is also true that the RAD stated that its credibility assessment "help[ed] shape" the IFA analysis without specifying how that shaping occurred.

[14] However, in my view, the RAD's IFA finding proceeded on the premise that the incidents underlying the Applicants' fear of persecution did occur. The RAD was simply not convinced that they were strongly linked to the CJNG cartel.

[15] Regarding this issue, the RAD clearly explained its inability to link the incidents described by the Applicants to the CJNG cartel. Specifically:

- The RAD stated it was not clear why the CJNG cartel would consider the principal Applicant so critical to their operations, given his relatively minor position in the transport company [RAD reasons, para. 12];
- The RAD referred to the principal Applicant's testimony that he had not heard directly from the CJNG cartel after quitting his job [RAD reasons, para. 39];

- The RAD found no evidence that the attempted robberies of November, 2018 and August, 2018 were connected to the CJNG cartel [RAD reasons, para. 38];
- The RAD found no link between the Applicants' evidence of being watched and photographed and the CJNG cartel [RAD reasons, para. 39].

[16] These are properly classified as concerns about a linkage to the feared agent of persecution, rather than credibility concerns. The RAD's findings on the lack of connection between these incidents and the agent of persecution were reasonable.

[17] The Applicants argue that a clear linkage to the cartel can be found in an incident which occurred on October 3, 2018, involving the principal Applicant's elder daughter in which the assailants stated "this is for your dad to learn that this is for real." However, at paragraph 40 of its decision, the RAD assumes this incident to be linked to the cartel, but does not find it, in itself, to be evidence that the cartel would remain interested in the Applicants "over many years and over large geographic spaces." This is not an unreasonable finding.

Reasonableness of IFA:

[18] I agree with the Applicants that there are circumstances in which a clearly articulated finding regarding a claimant's fear of persecution in their residence of origin is a prerequisite to a valid IFA finding. However, I do not find that to be the case here, because the RAD clearly explained why it believed the CJNG cartel would not be motivated to pursue the Applicants in Campeche, the proposed IFA.

[19] The RAD and both parties properly stated the test for an IFA, as set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA). As recently summarized by Justice Tsimberis in *Athwal v Canada (Citizenship and Immigration)*, 2024 FC 672, the Board must be satisfied, on a balance of probabilities, that (i) there is no serious possibility of the claimant being persecuted or subject to a section 97 danger or risk in the part of the country to which it finds an IFA exists; and (ii) conditions in that part of the country must be such that it would not be unreasonable in all the circumstances, including circumstances particular to him, for the claimant to seek refuge there.

[20] The only issue here was the first prong of the IFA test, concerning the risk of persecution in Campeche. At this stage of the test, “a serious possibility of risk [...] can only be found if it is demonstrated that the agents of persecution have the probable means and motivation to search for an applicant in the suggested IFA” [*Athwa*, para. 20, citing *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167, para. 46 and *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155, para. 43].

[21] The RAD agreed that the CJNG cartel would have the means to reach the Applicants in Campeche, but found that it would not have the motivation, as the Applicants “are not the profile that gangs like the CJNG tend to target: they are not rivals, are not authorities, they have no particular power, and did not have a personal relationship or steal money from a gang” and nothing otherwise pointed to an ongoing vendetta against them [RAD decision, paras. 10, 13, 40, 42, 44]. The RAD considered not only documentary evidence regarding the profile of person which would provoke a strong interest in the CJNG cartel, but also specific evidence related to the Applicants

concerning the behaviour of the cartel toward them in the principal area of persecution. The RAD concluded that given the evidence of the ruthlessly violent nature of the CJNG cartel, it would not be strongly enough interested in the Applicants to pursue them in Campeche. This conclusion is not unreasonable.

[22] I disagree with the Applicants that the RAD disregarded documentary evidence establishing the risk of persecution in the proposed IFA. The documentary evidence raised by the Applicants before this Court principally concerns the means of the CJNG cartel, not its motivation. The RAD's failure to mention it is not unreasonable because it applies to an issue not considered to be critical for the resolution of the appeal.

VI. Conclusion

[23] For the reasons above, the application is dismissed. The Applicants do not identify shortcomings in the RAD's decision that render it unreasonable.

JUDGMENT in IMM-8217-23

THIS COURT'S JUDGMENT is that:

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

“Michael Battista”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8217-23

STYLE OF CAUSE: MARIO ANTONIO CABALLERO SALAZAR
and others v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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