

Federal Court



Cour fédérale

**Date: 20190730**

**Docket: IMM-610-18**

**Citation: 2019 FC 1019**

**Ottawa, Ontario, July 30, 2019**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**FERNANDO ALFREDO CEJUDO  
HERNANDEZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, a citizen of Mexico, seeks judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [the RAD], dated January 10, 2018 [the Decision], which found that he was neither a convention refugee nor a person in need of

protection pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27, because he had a viable Internal Flight Alternative [IFA] in either Veracruz or Sinaloa.

[2] Neither the Refugee Protection Division [RPD] nor the RAD made any credibility findings against the Applicant. The RAD though overruled the RPD to find that the Applicant was a victim of crime who had been personally targeted.

[3] This application turns on whether the finding that the Applicant had a viable Internal Flight Alternative (IFA) was reasonable.

[4] For the reasons that follow, I find the determination by the RAD that the Applicant had an IFA was unreasonable in that the reasoning process was neither transparent nor intelligible.

## II. Background Facts

[5] The Applicant is a former schoolteacher who lived in Guadalajara. He says that the local teacher's union began to demand money from him when he controlled a school bank account. Initially he gave them money but in mid-2012, he refused as he required the funds for his lab. After that he received a number of verbal threats but did not take them seriously as it was a common union tactic to make threats. When his salary was then cut off, he took the threat more seriously and quit his job. Subsequently he was robbed, extorted and threatened with death.

[6] He started an industrial maintenance business but after a few months union members threatened him again and his business experienced break-ins. On several occasions, his business

was closed down by the department of labour for not paying his employees, although he had no employees. He believed the union was filing false reports to harass and intimidate him.

[7] In September 2013, he was kidnapped when a pick-up truck with six teachers he knew threatened him with a gun and made him get in the truck. He was released when, at gunpoint at an ATM, he gave them all the money he had in the bank which was 6000 pesos. Upon release, he was told not to go to the police or leave the area because they would find him.

[8] The Applicant closed his business and took employment at a gym selling memberships. Union members followed him to that place of employment and he had to pay the union to avoid harm. The gym forced him to resign because of safety concerns following threats from the union.

[9] After the Applicant left his job at the gym, he worked for cash and was not registered with the Social Security system. He believed the union could find him through the Social Security system by using their extensive connections. Nonetheless, in March 2016 he was kidnapped again and forced to pay 20,000 pesos for his release. He was also told he would have to make monthly payments to the union which he did, by taking out bank loans.

[10] In November 2016, the Applicant went into hiding by moving around and staying in different places to avoid trouble. He saved enough money to buy an airplane ticket to Canada and landed at Toronto's Pearson airport on December 28, 2016.

[11] The Applicant made his claim for refugee protection at the airport.

III. Issue and Standard of Review

[12] The sole issue to be determined is whether the RAD erred in the application of the two prong test for determining whether a viable IFA exists for the Applicant. That question is reviewable on the standard of reasonableness and the RAD is entitled to deference. To succeed, the onus is on the Applicant to show that the proposed IFA is unreasonable, which is a high onus to meet: *Ehondor v Canada (Citizenship and Immigration)*, 2017 FC 1143 at para 10.

[13] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[14] If the reasons, when read as a whole, “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met”: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Nfld Nurses*].

[15] An administrative tribunal is not required to consider and comment in their reasons upon every issue raised by the parties. The issue for the reviewing court is whether the decision when viewed as a whole, in the context of the record, is reasonable: *Nfld Nurses* at para 3.

IV. The RAD's IFA determination

[16] The determinative issue for the RAD, as it was for the RPD, was the existence of an IFA.

[17] The RAD reviewed the relevant case law, noting that an IFA must be realistic, attainable and accessible so that the Applicant would not be required to encounter great danger or undergo undue hardship either travelling to the IFA or remaining there.

[18] The RAD also noted that the onus is on the Applicant to show the IFA would not be safe for him.

[19] There were three possible IFA's suggested to the Applicant — Veracruz, Sinaloa or Baja California. The Applicant rejected the first two because the largest drug cartel in Mexico was present in them and it was unsafe in general as a result. The third option was challenged as being an entire state and criticized as being not specific enough for an IFA. The RAD rejected the drug cartel objection as it was a generalized risk and considered the first two IFA's.

[20] The RAD identified and discussed the two-prong test: (1) it must be satisfied that, on a balance of probabilities, there is no serious possibility of the Applicant been personally subjected to a risk to his life or risk of cruel and unusual treatment or punishment or the danger of torture in the part of the country in which the IFA is located; (2) conditions in the IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claimant, for the claimant to seek refuge there.

[21] Contrary to the RPD, the RAD found that the Applicant was personally targeted within the definition under section 97 of the *IRPA*. It found that meant that each of the first two IFAs could be questionable and their suitability had to be further canvassed.

[22] The RAD accepted that the Applicant was at personal risk in Guadalajara. The RAD's reasoning was that he was targeted because he had direct access to funds that the union wanted to steal. Without that special access to something the criminals wanted there was insufficient reason to believe he would have been bothered by them.

[23] The RAD considered that the union members who targeted the Applicant are all part of the local Union in Guadalajara, Jalisco State, Mexico. It noted that the Applicant said that the local union was aligned with the Federal union and, through that alignment as well as the weak online social security system in Mexico, they could easily find the Applicant.

[24] The RAD acknowledged that the union had offices in Veracruz and Sinaloa but found that the Applicant had produced no evidence that the union is or would be looking for him. The RAD concluded there had been insufficient evidence to support the allegation that the Federal or National Union would be interested in the Applicant who is no longer a part of the union.

[25] As a result of those findings, the RAD found that the Applicant failed to show, on a balance of probabilities, that he faced a personalized risk in Veracruz or Sinaloa at the hands of the union. There was less than a mere possibility of a personalized risk in either of the two IFAs.

V. Analysis

[26] Several of the conclusions made the RAD, such as that the Applicant was only at risk in Guadalajara, were arrived at without clear or complete analysis of the facts. In addition, facts, which contradicted the RAD's findings, were not mentioned at all. The Decision is unreasonable as the sparse analysis means it is not possible to determine whether the outcome falls within the range of possible, acceptable outcomes on the facts and law.

A. *Would the Union continue to look for the Applicant in one of the Proposed IFA's?*

[27] The RAD found that once the Applicant was no longer a member of the union, he did not have access to the bank account and so there was "no reason to believe" that the members of the local teacher's union would bother him in one of the proposed IFA's.

[28] Also, the RAD's observation that every event targeting the Applicant occurred in or near Guadalajara was a significant factor leading to the finding that there was less than a mere possibility of a personalized risk to the Applicant at the hands of the union in either of Veracruz or Sinaloa, neither of which are located near Guadalajara.

[29] The Applicant gave specific testimony, in answer to a question by the panel, that after he left the union they would still be interested in him because he had given them money at the time of each of the two kidnappings, after he left the union. Once, when he was working at the gym and later when he gave them 20,000 pesos when he fell behind in his monthly payments.

[30] The fact that the union had successfully extorted money from the Applicant after he no longer had access to the special bank account was accepted by the RAD in that no negative credibility finding was made. His risk was found by the RAD to be personal because the kidnappings were not a random act, he was targeted.

[31] The finding that there was “no reason to believe” the union would not be interested in the Applicant simply because he no longer had access to the union bank account runs contrary to those findings by the RAD and to the evidence. It required an explanation that was not given.

B. *The Applicant did not hear from the criminals after November 2016*

[32] The RAD noted that the Applicant “has not heard, in any manner, from these local union criminals since November 2016 when he last paid them extortion.” The implication of that comment was that the criminals decided to leave the Applicant alone.

[33] However, the RAD fails to mention that a significant reason for not hearing from them could have been that the Applicant has been in Canada since December 28, 2016; the criminals might not know how to contact him in Canada. The RAD’s statement that the Applicant has not heard from the criminals since November 2016 does not necessarily lead to a conclusion that the criminals would not pursue him if he returned to Mexico.

[34] To be clear, I am not making a finding one way or the other on that question. The RAD may have had a reason to discount the geographical distance between Canada and Mexico as



being an explanation for the lack of contact by the union. If that is so, it is not transparent as it is not readily apparent from the reasons given nor from a review of the underlying record.

C. *The weak Social Security system would let the criminals find the Applicant*

[35] The RAD had previously mentioned the Applicant's submission that between the union offices existing throughout Mexico and the weakness of the Mexican social security system it would be easy for anyone to locate him anywhere in Mexico therefore he was not safe anywhere in Mexico, including of course the two proposed IFA's.

[36] Other than the brief mention, the RAD did not address the question of whether the Applicant could be found in either of the two proposed IFA's by using the social security system. It was however his main fear and reason for not accepting the IFA's as being viable.

[37] The underlying record supports the Applicant's proposition. He had submitted evidence of the ease with which someone could be found in Mexico by exploiting the social security system in Mexico. He put forward print outs and screen captures showing that he was able to go online and obtain his cousin's Social Security number. He then used it to obtain the name of her employer. He reasons that if he could do it the union could too.

[38] The RAD neither accepted nor rejected that evidence. However, it needed to be addressed. It indicates that if the Applicant was employed and not working off the books in one of the IFA's he could be found by the union. Working off the books would be the only way to avoid being found through the social security system.

D. *Conclusion*

[39] The reasons set out by the RAD do not permit the Court, even after considering the underlying record and taking the decision as a whole, to understand why it made the critical findings it did about the first prong of the IFA. The decision-making process is neither transparent nor intelligible and the Court is not able to determine whether the outcome falls within the range of possible, acceptable outcomes which are defensible on the facts and law. As a result, the Decision is unreasonable as it does not meet the *Dunsmuir* criteria.

[40] The application is granted and the Decision is set aside. This matter will be returned for redetermination by a different panel member.

[41] Neither party proposed a serious question of general importance for certification nor does one exist on these facts.

**JUDGMENT IN IMM-610-18**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper respondent.
2. The application is granted.
3. The Decision is set aside and returned for redetermination by another panel member.
4. No question is certified.

"E. Susan Elliott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-610-18

**STYLE OF CAUSE:** FERNANDO ALFREDO CEJUDO HERNANDEZ v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 13, 2018

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** JULY 30, 2019

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