

Federal Court



Cour fédérale

Date: 20210512

Docket: IMM-5337-20

Citation: 2021 FC 427

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 12, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

AMADO JAVIER AVILA MAGANA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division (RAD) dated September 25, 2020, in which the RAD confirmed the rejection of the applicant's claim for refugee protection as he is not a Convention refugee or a person in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27, ss 96–97(1) [IRPA].

[2] The applicant is a citizen of Mexico and is claiming refugee protection on the basis of a fear of militants of the Institutional Revolutionary Party (PRI) because of his political involvement with a rival party. The applicant arrived in Canada in November 2018.

[3] The Refugee Protection Division rejected the applicant's refugee protection claim, finding that his political involvement was not credible. The RAD confirmed the decision with respect to the contention that the applicant had been threatened by PRI activists and for conduct that was inconsistent with the alleged fear, given his five-month delay in leaving the country.

[4] This judicial review focuses on the reasonableness of the RAD's findings with respect to the weighing of the evidence, and the lack thereof. A "reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85).

[5] The applicant argues that the RAD erred in its assessment of the evidence as to the delay in leaving the country, which was justified by his move to another city, the renewal of his passport and the saving of funds for his departure. He further argues that the RAD erroneously considered the absence of a police report in determining his credibility.

[6] First, the RAD gave the applicant the benefit of the doubt as to his political involvement. However, the RAD found that this presumption did not apply to statements regarding the alleged threats and the reasons for leaving the country.

[7] In support of its findings, the RAD noted that there was no indication in the evidence that the applicant had made any attempt to report the threats made against him. Although the applicant claimed to have made a complaint to the police, he did not file any evidence to that effect. Further, there appeared to be a serious inconsistency in the applicant's failure to report the threats to the political party or to the electoral commission.

[8] The RAD also found contradictions and inconsistencies in the evidence to explain his delay in leaving the country, as the applicant preferred to move with his family to another part of the country. No details were provided as to what matters he had to attend to, other than renewing his passport, and in June 2018, the applicant had a valid passport in his possession, some five months before he left the country.

[9] Furthermore, while the applicant claimed that the murder of his colleague by PRI activists was related to his decision to leave the country, this assertion was not included in his refugee protection claim, and there is no documentary evidence to support his testimony to that effect.

[10] The RAD further stated that the documentary evidence did not indicate that workers and activists of the rival party were being persecuted for their political allegiance. Therefore, the applicant's profile was not in itself sufficient to establish that his fear was well founded.

[11] In light of the foregoing, the RAD's reasons bear the hallmarks of a reasonable decision. The RAD is presumed to have considered and assessed the entire record. It is not required to

consider a claimant's specific explanations (*Karakaya v Canada (Citizenship and Immigration)*, 2014 FC 777 at para 18).

[12] It should be emphasized that where a claimant makes a statement that has a determinative impact, it should be accompanied by sufficient and probative evidence or, alternatively, a statement of efforts made to obtain it (see *Kallab v Canada (Citizenship and Immigration)*, 2019 FC 706 at paras 156–57, citing *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at para 5 (CA); IRPA, s 170(h); *Refugee Protection Division Rules*, SOR/2021-256, s 11; and UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, December 2011, HCR/1P4/ENG/REV. 3, at paras 203–05).

[13] Finally, the RAD cannot be faulted for failing to consider factors or evidence that were not before it, including some of the reasons for the delay in leaving the country (*Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321 at paras 23–24).

[14] For the reasons stated, the Court dismisses the application for judicial review.

JUDGMENT in IMM-5337-20

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of importance to certify.

“Michel M.J. Shore”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5337-20

STYLE OF CAUSE: AMADO JAVIER AVILA MAGANA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE AT
MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 10, 2021

JUDGMENT AND REASONS: SHORE J.

DATED: MAY 12, 2021

APPEARANCES:

Sophie Touchette FOR THE APPLICANT

Maude Normand (student-at-law) FOR THE RESPONDENT
Suzon Létourneau

SOLICITORS OF RECORD:

Barraza & Associés FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec