

Federal Court



Cour fédérale

Date: 20210727

Docket: IMM-560-20

Citation: 2021 FC 796

Ottawa, Ontario, July 27, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**MUVARAK ANTONIO ALVAREZ VALDEZ
OMAR ANDISUP ALVAREZ VALDEZ
JOAN ABRIL URENA RIVERA
KIMBERLY DILAYLA ALVAREZ URENA**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Muvarak Antonio Alvarez Valdez [Principal Applicant], his wife Joan Abril Urena Rivera, their daughter Kimberly Dilayla Alvarez Urena, and the Principal Applicant's brother brother Omar Andisup Alvarez Valdez [collectively, the Applicants] are citizens of Mexico.

They seek judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB]. The RAD confirmed a decision of the Refugee Protection Division [RPD] of the IRB that the Applicants are neither Convention refugees nor persons in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27* [IRPA].

[2] The Applicants claim to be at risk of persecution by the Cartel Jalisco Nueva Generacion [CJNG], a criminal organization in Mexico. The RPD and RAD found the Applicants to be credible, and accepted that they had been subjected to violence, threats and extortion in Veracruz, Mexico. However, the RPD and RAD also found that the Applicants have an internal flight alternative [IFA] in Merida, Yucatan State.

[3] The Applicants were not represented by counsel in their appeal to the RAD. They provided little in the way of evidence or arguments to substantiate their assertion that the RPD's decision should be overturned by the RAD.

[4] Given the limited evidence and arguments presented, the RAD's rejection of the Applicants' appeal was reasonable. The application for judicial review is therefore dismissed.

II. Background

[5] The Principal Applicant's father operated an auto body shop in Veracruz. In November 2017, the Principal Applicant was working at the auto body shop when individuals claiming to

be members of the CJNG demanded they pay a monthly “protection” fee of 50,000 pesos (approximately \$3,000). The father refused.

[6] The following day, more than 15-armed men entered the family home. The Principal Applicant, his father and his brother were violently assaulted. The assailants said they were no longer expecting 50,000 pesos, but much more. The father gave the men all the savings they had in the house.

[7] The Applicants went to live with an uncle in Mexico City until December 2, 2017, when the Principal Applicant and his brother came to Canada. The Principal Applicant’s wife and daughter went to live with his grandfather on the outskirts of Veracruz. They stayed there until December 25, 2018, when they too came to Canada.

[8] The Principal Applicant’s father remained in Mexico, living with various family members. He has not been found by the CJNG.

[9] According to the Applicants’ former neighbours, cars still drive by their house and ask about their whereabouts. On February 15, 2018 the Principal Applicant’s cousin disappeared. A childhood friend who worked for the Principal Applicant’s father was killed in April 2018.

III. Decision under Review

[10] The Applicants’ submissions to the RAD, in their entirety, read as follows:

Provide full and detailed submissions regarding each error.

The error [*sic*] that are the grounds of the appeal are the Internal Flight Alternative. Merida, in the State of Yucatan, was provided as a viable IFA. However, this is not a viable option. As shown in the attached article, entitled “Violence Against Women increases in Yucatan”, Merida is not a safe place for women due to the increase in violence against women and the failure of the police to report or respond to these incidents. As I have a wife and daughter, they will not be safe in Merida due to the amount of violence that they will have to face and the inability of the government authorities to protect them. Additionally, as shown in the attached article entitled “Cartel Jalisco Nueva Generacion Fights Places in the Yucatan Peninsula Says Expert that Quotes DEA”, there is a presence of cartel violence in the Yucatan Peninsula and therefore my family and I will not be safe there.

[11] The RAD refused to admit the two articles cited by the Applicants as new evidence, because they pre-dated the hearing before the RPD and no explanation was provided why they could not have been adduced earlier. The Applicants do not challenge this aspect of the RAD’s ruling.

[12] On December 20, 2019, the RAD dismissed the appeal on the ground that the Applicants have an IFA in Merida, Yucatan State. The RAD also found that the primary risk for women in Mexico is one of domestic violence, which the Applicants did not allege.

IV. Issue

[13] The sole issue raised by this application for judicial review is whether the RAD’s decision was reasonable.

V. Analysis

[14] The RAD's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only if “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[15] The test for a viable IFA is well-established (*Rasaratnam v Canada (Minister of Employment & Immigration)*, [1992] 1 FC 707 (FCA) at paras 5-6, 9-10): first, the IRB must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA to exist; and second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there. Both prongs of the test must be satisfied.

[16] The Applicants argue that the RAD misapprehended the evidence in finding that: “Nothing in the objective documentary evidence indicates that the CJNG has any meaningful presence in either Yucatan state or Merida”. The Applicants acknowledge that some of the documentary evidence cited by the RAD supported this conclusion. However, according to an article that appeared in the *Journal of Strategic Security* in 2018, the CJNG is one of the most

powerful organized crime groups in Mexico. It has expanded rapidly, and has a documented presence in 24 of 32 Mexican states. According to one source cited in the article, in Yucatan State the CJNG “is disputing leadership with rivals or has an alliance”.

[17] The Applicants also maintain that the RAD failed to consider whether the CJNG might track them down in Merida, even if the cartel does not currently have a meaningful presence there. In addition, the Applicants note that gender-based violence in Mexico is not restricted to domestic violence, and say that the RAD failed to consider gender-based violence more broadly.

[18] The Applicants made only rudimentary arguments before the RAD. They did not identify with any precision the errors allegedly made by the RPD, nor the excerpts from the documentary or other evidence on which they relied. The two articles they sought to adduce as new evidence were rejected by the RAD, and the Applicants do not take issue with this determination.

[19] While the Applicants were not required to seek the assistance of a lawyer, they must accept the consequences of not doing so (*Wagg v Canada*, 2003 FCA 303 at para 25). The RAD was not obliged to act as counsel for the Applicants, or to formulate arguments on their behalf (*Thompson v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 808 at para 15).

[20] The onus was on the Applicants to demonstrate they would be at serious risk of persecution throughout Mexico. The burden did not fall upon the RAD to explain why the proposed IFA would be safe (*Photskhverashvili v Canada (Citizenship and Immigration)*, 2019 FC 415 at paras 28, 32, citing *Thirunavukkarasu v Canada (Minister of Employment &*

Immigration), [1994] 1 FC 589 at paras 2, 6). The RAD cannot be faulted for failing to consider arguments that were never put to it (*Ogunjinmi v Canada (Citizenship and Immigration)*, 2021 FC 109 at para 21, citing *Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 14).

[21] The RAD's conclusion that the CJNG does not have "any meaningful presence in either Yucatan state or Merida" was adequately supported by the documentary evidence it considered. The Applicants presented no personalized evidence to support their contention that the CJNG has the ongoing means or motivation to pursue them in Yucatan State. The Principal Applicant's wife and daughter were not apprehended by the CJNG while they lived in Mexico for more than a year after he and his brother fled to Canada. The Principal Applicant's father continues to live in Mexico, and has not reported any interactions with the CJNG.

[22] The Applicants had a responsibility to establish a link between the general documentary evidence and their specific situation, which they failed to do (*Iskandar v Canada (Citizenship and Immigration)*, 2019 FC 1372 at para 27, citing *Ayikeze v Canada (Citizenship and Immigration)*, 2012 FC 1395 at para 22). Subjective fear is not enough to establish persecution or a risk of harm (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 116 at para 41).

VI. Conclusion

[23] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-560-20

STYLE OF CAUSE: MUVARAK ANTONIO ALVAREZ VALDEZ, OMAR
ANDISUP ALVAREZ VALDEZ, JOAN ABRIL
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ALVAREZ URENA v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN TORONTO
AND OTTAWA, ONTARIO

DATE OF HEARING: JULY 19, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JULY 27, 2021

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