

Federal Court



Cour fédérale

Date: 20211014

Docket: IMM-4846-20

Citation: 2021 FC 1073

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 14, 2021

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

**EFRAIN VAZQUEZ AVILA
LUIS ENRIQUE RODRIGUEZ VALDEZ
CRISTIAN VIANNEY VAZQUEZ
RODRIGUEZ
DAMARIS ESTELA RUDECINO SANCHEZ
JESUS ADAN VAZQUEZ RUDECINO
ELIAN YERIK VAZQUEZ RUDECINO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

[1] The applicants are two adult couples and the minor children of one of them. They are related to each other by the fact that the lady of the first couple is the half-sister of the man of the second couple.

[2] The applicants are all citizens of Mexico and are seeking refugee status in Canada because they fear an influential member of the Zetas crime group who is threatening the principal applicant, who refused to work for him.

[3] Their refugee protection claim was rejected by the Refugee Protection Division [RPD] and then by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board. The RPD and RAD found that the applicants had an internal flight alternative in Mexico.

[4] The applicants challenge the RAD's decision on the basis that it placed too much emphasis on the fact that their family members still in Mexico have not been threatened by the Zetas since their departure. They also argue that the RAD did not adequately consider the evidence in concluding that the Zetas had no interest or motivation to track them down in the suggested cities should they return to Mexico.

[5] The RAD's reasoning is not easy to grasp simply by reading its decision. However, the RPD's decision and the parties' memoranda shed sufficient light on it for the purposes of this judicial review application.

[6] At the hearing before the Court, the parties acknowledged that only the first prong of the internal flight alternative test (*Thirunavukkarasu v Canada (Minister of Citizenship and Immigration)*, [1994] 1 FC 589 (FCA)) was at issue in this case, and that it was not disputed that the Zetas had the ability to locate the applicants wherever they might be in Mexico.

[7] The determining factor, therefore, is whether the Zetas would have the interest or motivation to seek them out in the cities suggested as an internal flight alternative.

[8] At paragraph 11 of the decision, the RAD states:

. . . [The applicants] submit that this cartel has established a national communication network for the purpose of surveillance. They argue that this cartel is dangerous and encourages its members to use violence. They submit that this cartel particularly embraces the use of violence and torture. They submit that this cartel has extended its influence in northeastern Mexico, including the city of Hermosillo. They acknowledge that their profile is not important enough to be the object of an intense inter-state search by the cartel. They submit that the agents of harm possess all the tools needed to locate them.

[Emphasis added.]

[9] In this passage, the RAD seems to focus the debate at the level of the cartel's ability to locate the applicants in the suggested cities, not at the level of their interest or motivation; the applicants acknowledged that they did not have the profile to generate that interest.

[10] However, a reading of the applicants' submissions to the RAD, as well as their position before the Court, convinces me that the applicants have never acknowledged that they do not have the profile that would motivate the Zetas in the suggested cities.

[11] Instead, the applicants argue that “[t]heir story. . . and especially the fact that the applicant [EVA] was attacked by the cartel for information about the applicant [CVVR] in May 2018, likely demonstrates the cartel’s interest in persecuting [them] . . .” Thus, the RAD incorrectly understood the debate to be about the Zetas’ ability to track down the applicants, not their motivation.

[12] This error is sufficient, in my view, to conclude that the RAD’s decision was unreasonable and to justify the Court’s intervention.

[13] The parties do not propose any questions of general importance for certification, and no such questions arise in this case.

JUDGMENT in IMM-4846-20

THE COURT’S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The case is sent back to the Refugee Appeal Division of the Immigration and Refugee Board for reconsideration by another member.
3. No question of general importance is certified.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4846-20

STYLE OF CAUSE: EFRAIN VAZQUEZ AVILA, LUIS ENRIQUE RODRIGUEZ VALDEZ, CRISTIAN VIANNEY VAZQUEZ RODRIGUEZ, DAMARIS ESTELA RUDECINO SANCHEZ, JESUS ADAN VAZQUEZ RUDECINO and ELIAN YERIK VAZQUEZ RUDECINO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 13, 2021

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: OCTOBER 14, 2021

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