Federal Court  Cour fédérale

Date: 20211216

Docket: IMM-1379-21

Citation: 2021 FC 1432

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 16, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MARITZA BAUTISTA MONTERO
DAFNE ISABELLA VERDUZCO BAUTISTA
NELLY ESMERALDA GARCIA BAUTISTA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Maritza Bautista Montero, and her two minor children are seeking judicial review of a February 8, 2021, decision of the Refugee Appeal Division [RAD], in which the

RAD confirmed the rejection of their refugee protection claims because of an internal flight alternative [IFA] in their home country.

[2] The applicants are citizens of Mexico. They fear criminals who are looking for the applicant's husband, as well as the generalized criminality in their country of origin.

[3] The applicant alleges that in October 2016, her husband was robbed. One of the criminals was arrested by the police. The following April, the applicant's husband was intercepted and threatened with death by one of the criminals who had managed to escape. The applicant's husband is considered to be responsible for the fate of the arrested criminal. In July 2018, criminals intercepted the applicant and her family and made further death threats to the applicant's husband. The applicant's husband therefore left Mexico for Canada in August 2018. In January 2019, the applicant received suspicious calls. Fearing for their lives, the applicants left Mexico for Canada on February 2, 2019. They filed their refugee protection claims on February 6, 2019.

[4] On March 13, 2020, the Refugee Protection Division [RPD] rejected the claims, finding that the applicants have two possible IFAs in Mexico. The RPD found the applicant's testimony and the evidence on the record to be insufficient to demonstrate, on a balance of probabilities, that the individuals the applicants allege to fear would track them down and find them in the suggested locations. In this regard, the RPD noted that the applicant herself testified that these individuals would not likely go looking for them in the proposed IFAs and that the issue was actually generalized criminality. The applicant also admitted that she could not confirm whether

the calls she received were related to the problems experienced by her husband. Finally, the applicant had never herself experienced any incidents with the agents of harm.

[5] The RPD also rejected the applicant's argument that the proposed IFAs are unsafe because of the presence of drug traffickers, crime and missing and abducted girls. It found that the applicant had not demonstrated that she and the minor applicants would be personally subjected to a risk described in paragraph 97(1)(*b)* of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[6] Regarding the reasonableness of the proposed IFAs, the RPD noted that the applicant had not mentioned anything preventing her from living in the proposed IFAs as long as they were safe. The applicant also confirmed that she would be able to find employment to support her family and a place to live. The RPD nevertheless reviewed the applicant's profile and concluded that it would be objectively reasonable for the applicants to relocate to the proposed IFAs.

[7] The applicants appealed this decision to the RAD, claiming that the RPD had erred in its assessment of the IFAs. They argued that the RPD had erred in criticizing the applicant for not being able to provide information about the criminals. It was perfectly normal for the applicant to be unaware of the criminals' illegal activities. According to the applicants, the RPD could have verified the existence of this group of criminals in the National Documentation Package [NDP] on Mexico, as well as the group's ability and motivation to track down a person outside their area of activity.

[8] The RAD dismissed the appeal and confirmed the RPD's decision. After setting out the test for determining an IFA and the burden on the applicants, the RAD stated that the applicants could not rely solely on the information in the documentary evidence to establish the existence of a risk under section 97 of IRPA. They had to establish the existence of an individualized risk through their testimony and documentary evidence.

[9] The RAD pointed out that the RPD had found that the applicants had not established that they would be pursued by the members of the criminal group, who were essentially engaged in theft in the northern part of Mexico City, if they established themselves in the proposed IFAs. The RAD further noted that the applicant herself had testified that it was unlikely that the members of the criminal group would come looking for them in these locations. It concluded that, according to its own analysis of the file, the RPD had not committed an error.

[10] The RAD then pointed to the applicant's testimony that there was nothing preventing her from living in the proposed IFAs as long as they were safe. The RAD added that, after analyzing the applicant's personal profile and her testimony, the RPD had found that it would be objectively reasonable for the applicants to move there. Again, it concluded that, based on its own analysis of the record, the RPD had not erred.

[11] The applicants submit that the RAD's decision is unreasonable. In particular, they criticize the RAD for not carrying out an independent analysis of the file and argue that the RAD's reasons are not sufficiently transparent, intelligible and justified for its reasoning process to be understood. According to the applicants, the RAD simply repeated the conclusions of the

RPD without conducting its own analysis. Finally, the applicants reiterate that the RPD should have analyzed the NDP on Mexico to verify the existence of the criminal group. They argue that the RPD and the RAD erred in failing to analyze the relevant evidence in the NDP on the ability and motivation of the group to track them down in the proposed IFAs.

II. Analysis

[12] The parties agreed that the applicable standard of review is reasonableness. The Court agrees.

[13] When the reasonableness standard applies, the Court is concerned with "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 83 [*Vavilov*]). It must consider whether "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The party challenging the decision has the burden of showing that it is unreasonable. The party must satisfy the Court that there are sufficiently serious shortcomings in the decision that it does not exhibit the requisite degree of justification, intelligibility and transparency. The shortcomings or flaws must be "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[14] The Court cannot agree with the applicants' arguments.

[15] The Court recognizes that the RAD must conduct its own analysis of the file in order to decide whether the RPD has committed the errors alleged by an appellant. This does not mean, however, that it is required to start the analysis from scratch, since an appeal to the RAD is not a true *de novo* proceeding (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 79, 98, 103; *Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 at paras 29, 34 [*Gomes*]).

[16] It is also well established that the RAD is assumed to have weighed and considered all the evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1; *Gomes* at para 34), and that it is not required to make an explicit finding on each constituent element leading to its final conclusion (*Vavilov* at para 91; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[17] The fact that the RAD's reasons are brief does not mean that it has not conducted its own analysis of the applicants' case, or that it has not fully understood the issues or the applicants' situation (*Pintyi v Canada (Citizenship and Immigration)*, 2021 FC 117 at para 10; *Gomes* at para 34). What is important is that it provided reasons that bear the hallmarks of a reasonable decision—justification, transparency and intelligibility. The Court must be able to understand the administrative decision maker's reasoning process.

[18] In this case, the RAD carefully summarized the applicants' arguments and correctly stated the legal principles applicable to the applicants in connection with the existence of an IFA.

It rejected the applicant's argument that it was up to the RPD to verify the existence of the group in the NDP on Mexico and the group's ability to develop strategic alliances with groups in other regions. It noted that it was not sufficient to refer solely to the information included in the NDP to establish a risk under section 97 of the IRPA. Rather, the applicants had to demonstrate a personalized risk through their testimony and documentary evidence.

[19] In this regard, the RAD noted that the applicant herself had stated that the members of the criminal group were unlikely to come after them in the proposed IFAs and that the issue was actually generalized criminality. It therefore found that the RPD had not erred in concluding that the applicant had not established that she and her daughters would be pursued by the group members, who were primarily engaged in theft in northern Mexico City. The RAD could reasonably rely on the applicant's admission and the lack of specific evidence in the record demonstrating any interest on the part of the group members in pursuing the applicants in the proposed IFAs to conclude that the RPD had not erred.

[20] It was also reasonable for the RAD to conclude that the applicants could not simply rely on the objective documentary evidence. It is well established that a fear of generalized criminality is not sufficient to establish a risk under section 97 of the IRPA. The applicants had to demonstrate conditions in the proposed IFAs that would jeopardize their lives and safety (*Olvera Correa v Canada (Citizenship and Immigration)*, 2012 FC 243 at para 17; *Perez v Canada (Citizenship and Immigration*), 2011 FC 8 at para 15). They failed to discharge that burden, and there is no evidence on the record that they would be the subject of a personal vendetta.

[21] The Court agrees that the RAD's reasons could have been more extensive. However, even if it can be a fine line between brief and insufficient reasons, the approach taken by the RAD does not mean that it failed to conduct its own analysis (*Gomes* at para 52). Indeed, after reading the decision and considering the entire record, particularly the submissions of the applicants on appeal, the Court believes that the RAD's reasons are sufficiently justified, transparent and intelligible for its reasoning process to be understood. The Court is also satisfied that the RAD conducted its own analysis of the record.

[22] For these reasons, the application for judicial review is dismissed. No issues of general importance have been submitted for certification, and the Court is of the view that none are raised by this case.

JUDGMENT in IMM-1379-21

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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