Federal Court Cour fédérale

Date: 20211229

Docket: IMM-478-21

Citation: 2021 FC 1478

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 29, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

PABLO GARCIA CUEVAS
RAQUEL GARCIA ATRISCO
JUAN MARIANO GARCIA GARCIA
ALEXA GARCIA GARCIA
MARELI GARCIA GARCIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] The applicants are seeking a judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, dated December 31, 2020, rejecting their claim for refugee protection. In its decision, the RAD confirmed the decision of the Refugee Protection Division (RPD), which had rejected the claim for refugee protection based on the existence of an internal flight alternative (IFA) in Mexico. A credibility problem was also raised by the RPD and confirmed by the RAD, but this is not relevant for the purposes of this review.

II. Relevant facts and RPD decision

[2] Pablo Garcia Cuevas (the principal applicant), Raquel Garcia Atrisco (the associate applicant) and their two children (the minor applicants) (collectively the applicants) are citizens of Mexico.

[3] The principal applicant is a farmer. A man named Mr. Perez asked him to grow a crop used for the production of opium. The principal applicant refused. In September 2017, following his refusal, some men showed up at the applicants' home to threaten the principal applicant. One year later, in September 2018, the principal applicant left Mexico for Canada.

[4] On March 25, 2019, the associate applicant claims in her narrative that men came to her residence and asked to see the principal applicant. She allegedly said that they were separated. The men then allegedly threatened her. However, these allegations were not determined to be credible by the RPD and the RAD.

[5] The the minor applicants' refugee protection claims are based on the fears of the principal applicant and the associate applicant.

[6] The associate applicant and minor applicants left Mexico for Canada in June 2019. The applicants submitted claims for refugee protection, which were referred back on June 12, 2019. The RPD rejected the claim, finding that there was an IFA for the applicants in the cities of Merida and Saltillo, Mexico.

[7] With respect to the first prong of the IFA analysis, the RPD determined that the principal applicant had not demonstrated that Mr. Perez or his men would have the interest or motivation to search for the applicants in the proposed IFAs. The RPD also found that the principal applicant had not established that Mr. Perez and his men would even have the capability to find them in the proposed IFAs. The RPD noted that the principal applicant had not established that Mr. Perez was a member of one of the major cartels in Mexico or that its activities extended to the states in which Saltillo and Merida are located.

[8] With respect to the second prong of the IFA analysis, the RPD found that the applicants did not show that the proposed IFAs were objectively unreasonable, considering all the circumstances. In particular, the RPD stressed that the principal applicant had already managed to find employment outside of his village of Oxtocapa in Acapulco, even though the principal applicant alleged that the proposed cities [TRANSLATION] "are for people with an education" and he could not find employment because he did not have a diploma or references.

[9] As previously mentioned, the RPD did not believe the associate applicant regarding the alleged incident of March 25, 2019. The RPD noted significant contradictions between her testimony at the hearing and the account in her Basis of Claim Form (BOC Form), contradictions that she was unable to explain.

III. Decision under review

[10] The decision subject to this judicial review is the decision made on December 31, 2020, in which the RAD confirmed the RPD's decision to reject the claim for refugee protection on the basis that there is an IFA for the applicants.

[11] With respect to the first prong of its IFA analysis, the RAD confirmed the RPD's decision that the applicants had failed to demonstrate, on a balance of probabilities, that Mr. Perez would have the interest and ability to search for them in the proposed cities.

[12] The RAD noted that the principal applicant's BOC Form indicated that other farmers in the village had agreed to grow the crop that Mr. Perez wanted to use to make opium. It also noted that the principal applicant stayed in his village for eight months after he received threats, with no retribution. The RAD also noted that the principal applicant was able to work in other villages following the threats and was not bothered by Mr. Perez and his men. It ultimately noted that the evidence did not show that Mr. Perez was a member of an influential group in Mexico.

[13] For the same reasons as the RPD, the RAD determined in its analysis of the second IFA prong, that the applicants did not show that it would be objectively unreasonable for them to

relocate to either of the proposed cities. As for the principal applicant's allegation that he did not know whether he would be able to find housing in the proposed cities, since he had "no one over there", the RAD indicated that the absence of family or relatives in the IFAs does not make the situation unreasonable.

[14] The RAD also confirmed the RPD's finding that the associate applicant's allegation regarding the incidents of March 25, 2019, was not credible.

IV. Relevant provisions

[15] The relevant provisions in this case are sections 96 and 97 of the IRPA, which are reproduced below:

***Immigration and Refugee Protection Act*, SC 2001, c 27**	***Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, ch. 27**
Convention Refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection	**a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la

of each of those countries; or

protection de chacun de ces pays;

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

accepted international standards, and	infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

V. Issue

[16] This matter raises only one issue: is the RAD's decision with respect to an internal flight alternative for the applicants reasonable?

VI. Analysis

A. *Applicable standard of review*

[17] The parties agree that the applicable standard of review for the RAD decision is reasonableness. I agree (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 (*Vavilov*) at para 25).

B. *Reasonableness of the IFA decision*

[18] The applicants contend that the RAD erred in its analysis of the first IFA prong regarding Mr. Perez's interest in tracking down the principal applicant. Specifically, they submit that the

RAD erred in finding that Mr. Perez had no reason to target the principal applicant since other farmers had agreed to grow the crop that would be used to produce drugs.

[19] According to the applicants, in reaching that conclusion, the RAD accepted a peripheral reason in order to minimize their persecutor's interest and failed to consider [TRANSLATION] "key situations that were not contradicted". The applicants add that an error in the assessment of the agent of persecution's interest generally leads to an error regarding the applicant's possibility of re-establishing himself or herself in his or her country of origin (*Mendoza Velez v. Canada (Citizenship and Immigration)*, 2013 FC 132 at para 29).

[20] Second, the applicants contend that the RAD also erred in its analysis of the second IFA prong. The applicants argue that the RAD did not consider the fact that at the hearing, the principal applicant told the RPD that he could not find employment in the proposed cities because he has no education and that in those cities they only hire people with diplomas. The applicants submit that the RAD's failure to consider this information makes its decision regarding the second IFA prong unreasonable.

[21] In support of this argument, the applicants state that the RAD failed to take into consideration two of the factors that it had to consider in its analysis of the second prong, namely whether there are any barriers to getting to the proposed city/region and whether there is any particular characteristic of the claimant that makes it unreasonable to expect him or her to relocate to the proposed city/region. (*Cardenas v. Canada (Citizenship and Immigration)*, 2017 FC 1194 (*Cardenas*) at paras 19 and 21; *Olivares Sanchez v. Canada (Citizenship and*

Immigration), 2012 FC 443 at para 17). The applicants are of the view that the RAD failed to take into account the principal applicant's lack of education, one of his personal characteristics, or the barrier that this lack of education would pose when seeking employment in the proposed cities.

[22] Third, the applicants argue that the RAD failed to consider a key element in its IFA analysis, namely the quality of protection provided to a claimant in the proposed city/region. They claim that the documentation used by the RPD for selecting proposed cities as IFAs cannot help measure the degree of risk to a person who has had problems with members of a criminal organization in Mexico. They add that some documents in the National Documentation Package show the extent to which Mexican authorities have failed to protect such individuals.

[23] Lastly, the applicants claim that the RAD merely confirmed the RPD's IFA analysis, while it had the duty to undertake its own analysis (*Eng v. Canada (Citizenship and Immigration)*, 2014 FC 711 at para 24, citing *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 837 (SCC), [1998] 1 SCR 27). According to the applicants, the RAD failed to conduct an independent IFA analysis that took into account the quality of protection offered in the proposed IFA cities, making its decision unreasonable.

[24] The respondent contends that the RAD did not err in finding that the applicants have an IFA in Merida and Saltillo, on the basis of the evidence in the record for choosing these two locations. The respondent adds that the RAD correctly applied the two-pronged test defined in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA)

[*Rasaratnam*] and *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*].

[25] According to the standard of reasonableness, this Court must review administrative decisions to determine whether they have the qualities that make a decision reasonable, that is, one that is based on an "internally coherent chain of analysis" and that is justified "in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para 85).

[26] The existence of a viable IFA is fatal to a claim for refugee protection under sections 96 and 97 of the IRPA (*Barragan Gonzalez v. Canada (Citizenship and Immigration)*, 2015 FC 502 at paras 45–46). There are two steps in the test to be completed by a refugee claimant wishing to prove that there is no reasonable IFA in his or her state of nationality. First, the decision maker must be satisfied, on a balance of probabilities, that there is no possibility of a claimant being persecuted in that the claimant risks being persecuted in the part of the country to which it finds an IFA exists. Second, in all the circumstances, including circumstances particular to a claimant, conditions in that part of the country must be such that it would not be unreasonable to seek refuge there. (*Rasaratnam*; *Thirunavukkarasu*; *Castillo Garcia v. Canada (Citizenship and Immigration)*, 2019 FC 347 at para 26).

[27] I reject the applicants' claim that the RAD erred in its analysis of the first prong of this test when it found that Mr. Perez had no reason to track down the applicant, since other farmers had agreed to cooperate with him. It is clear from the RAD's decision that the fact that other farmers agreed to cooperate with Mr. Perez was just one of several reasons why it found that

there was no motivation or interest to track down the principal applicant. The RAD considered several [TRANSLATION] "key situations" in its analysis, such as the principal applicant's failure to establish that Mr. Perez was still looking for him, the fact that the applicants were able to live in Mexico for a long time following the initial threats and had no problems, and Mr. Perez's lack of power and influence throughout Mexico.

[28] It is important to remember that the administrative decision maker is presumed to have weighed and considered all the evidence before it (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (CA) (*Florea*) at para 1; *Boulos v Canada (Public Service Alliance)*, 2012 FCA 193, [2012] FCA No 832 (*Boulos*) at para 11; *Gill v Canada (Citizenship and Immigration)*, 2020 FC 934 (*Gill*) at para 39), and that the role of the reviewing court is not to reweigh and reassess the evidence before the decision maker (*Vavilov* at para 125; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, [2018] 2 SCR 230 at para 55; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 64).

[29] As for the applicants' second argument, that [TRANSLATION] "only people with diplomas are hired" in the proposed IFAs and that the RAD failed to consider the principal applicant's personal characteristics, I note that there are no documents in the National Documentation Package to support that theory. It is the applicant who bears the burden of demonstrating the existence of conditions that would make it unreasonable for him to relocate to the city/region proposed as an IFA. The threshold is high and requires actual and concrete evidence (*Ranganathan v Canada (Minister of Citizenship and Immigration*), [2001] 2 FC 164, [2000]

FCJ No. 2118 (*Ranganathan*) at para 15; *Sharma v Canada (Citizenship and Immigration)*, 2021 FC 545 at para 32). No actual and concrete evidence was presented by the applicants. Furthermore, the RAD's decision shows that it did consider the principal applicant's level of education in its analysis of the second prong of the test (at para 16).

[30] In response to the applicants' argument that the RAD failed to conduct an independent analysis of the IFA, I would only reply that administrative decision makers are presumed to have weighed and considered all of the evidence before them in order to make their decision (*Florea*; *Boulos*; *Gill*). In addition, it is well established that reviewing courts cannot expect administrative decision makers to respond to every argument raised by the parties or to make an explicit finding on each element leading to its final conclusion. (*Vavilov* at para 128; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at paras 16 and 25.) This Court must intervene only where there are serious shortcomings in the decision such that it causes a reviewing court to lose confidence in the outcome reached. (*Vavilov*, at para 100.) In addition, as it did in this case, the RAD may very well find that it accepts the RPD's analysis. After all, it is important to remember that an appeal before the RAD is not a *de novo* proceeding (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157 at para 79).

[31] The applicants refer to a document in the National Documentation Package, at Tab 9.5, which, in their opinion, provides extensive information on the Mexican authorities' failures when it comes to protecting citizens. I repeat that an administrative decision maker is presumed to have considered all the evidence on record and that the failure to mention a particular document is not

a ground for intervention. It is only when the evidence that is not mentioned contradicts the decision maker's finding of fact that the reviewing court may infer that not all the evidence was considered (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [199] 1 FC 53, 157 FTR 35 at para 17). The document in question does not contradict the finding of fact that it would not be unreasonable, in all the circumstances, including the circumstances particular to the applicants, to move to the cities of Merida and Saltillo. The document reports on general conditions in Mexico. The general regional and country conditions of an IFA do not in themselves render an IFA unreasonable (*Arabambi v Canada (Citizenship and Immigration)*, 2020 FC 98 at paras 38, 40–42).

[32] In addition, although the RAD did not explicitly address the level of protection from the authorities in the cities proposed for IFAs, it agreed with the RPD's findings; this does not mean that it did not do its own analysis (*Kayitankore v Canada (Citizenship and Immigration)*, 2016 FC 1030, [2016] FCJ No. 1034 at para 23).

VII. Conclusion

[33] For the reasons set out above, I am of the view that the applicants have failed to show how the RAD's decision is unreasonable. I am of the opinion that the decision as a whole has the qualities that make a decision reasonable, that is, one that is based on an "internally coherent chain of analysis" and that is justified "in relation to the facts and law that constrain the decision maker". (*Vavilov*, at para 85.)

JUDGMENT in IMM-478-21

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

Certified true translation
Daniela Guglietta, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-478-21
STYLE OF CAUSE:	PABLO GARCIA CUEVAS, RAQUEL GARCIA ATRISCO, JUAN MARIANO GARCIA GARCIA, ALEXA GARCIA GARCIA, MARELI GARCIA GARCIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 20, 2021
JUDGMENT AND REASONS:	BELL J.
DATED:	DECEMBER 29, 2021

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