

Federal Court



Cour fédérale

**Date: 20220331**

**Docket: IMM-2270-21**

**Citation: 2022 FC 451**

**Ottawa, Ontario, March 31, 2022**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**CARLOS OMAR RODRIGUEZ YOSHIZAKI  
ALDO LIBERATO RODRIGUEZ YOSHIZAKI  
URIEL RAMON RODRIGUEZ YOSHIZAKI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Carlos Omar Rodriguez Yoshizaki, Aldo Liberato Rodriguez Yoshizaki [Principal Applicant or PA] and Uriel Ramon Rodriguez Yoshizaki, [collectively, Applicants] are three brothers from Coatzacoalcos, Veracruz, Mexico. They seek refugee protection because they fear persecution by members of the Los Zetas cartel [Cartel]. The PA alleges that the Cartel targeted

him because his aunt, who owned two butcher shops where all three of the brothers worked, initially would not accede to the Cartel's extortion demands.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada found that the Applicants were not credible and concluded that the Applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. Their refugee claims therefore were rejected. Following an independent review of the record, the Refugee Appeal Division [RAD] held that the RPD decision was correct and dismissed the Applicants' appeal.

[3] The Applicants now seek judicial review of the RAD decision on the basis that the RAD unreasonably assessed: (i) the Applicants' evidence, thus impacting the RAD's global assessment of credibility and engagement with the Applicants' submissions, (ii) the Applicants' reasons for delay in leaving Mexico, and (iii) the motives of their agent of persecution.

[4] The overarching issue for determination in this matter is whether the RAD decision was reasonable. The presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10. I find that none of the situations rebutting such presumption is present here.

[5] To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov*, at para 99. A decision may be unreasonable “if the reasons exhibit clear logical fallacies, such as circular reasoning, false

dilemmas, unfounded generalizations or an absurd premise,” or if the decision maker misapprehended the evidence before it or did not meaningfully account for or grapple with central or key issues and arguments raised by the parties: *Vavilov*, at paras 104, 125-127. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100.

[6] This matter turns on conflicting or contradictory evidence that the Applicants’ themselves submitted in support of their refugee protection claims and the RAD’s treatment of it, which I find to be unreasonable, as explained below. The Applicants therefore have satisfied their onus, in my view and, hence, I grant this judicial review application.

[7] Because the first of the above issues is determinative, in my view, the remaining two issues are not considered in these reasons.

## II. Analysis

[8] A central allegation of the Principal Applicant’s claim for protection is that, as his cousin “Ashanti” was driving him home from the butcher shop at the end of the day, they were ambushed and the PA was shot four times by the Cartel. The PA’s evidence in support of his claim includes statutory declarations from Ashanti and other family members (notably, the Applicants’ aunt and their father), as well a hospital report containing details about the PA’s gunshot wounds and their location on his body. Another piece of the PA’s evidence is a newspaper article that provides a different version of events regarding the Cartel’s attack on the

PA. The article reports instead that he was taken from inside his home and shot several times at close range (according to the English translation in evidence of the article).

[9] The RAD acknowledged the factual errors contained in the newspaper article, namely, the location of the PA's bodily injuries and the misspelling of his surname. The reasons provided by the RAD permit the Court to understand why it did not accept the Principal Applicant's arguments about why the article was not accurate and was unreliable.

[10] I find, however, that the converse is not evident in the RAD's reasons. In other words, the RAD provided no reasons why, in its independent review, it otherwise accepted the details of the events described in the article, ultimately leading the RAD to discredit all other evidence supporting the Applicants' own version of events.

[11] As this Court previously has held, “[t]he weight that can be given to newspaper articles depends very much upon context **and general indicia of reliability**” [emphasis added]: *Demaria v Canada (Citizenship and Immigration)*, 2019 FC 489 [*Demaria*] at para 143, citing *Thuraisingam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 607 at para 39.

[12] Further, the article here, as reflected in the English translation, does not provide any additional factual basis to support reasonable grounds to believe it: *Demaria*, above at para 145. More to the point, the RAD has not articulated any such basis in its reasons. The fact that the RAD concurs with the RPD's credibility concerns regarding the Applicants and their corroborative evidence, concerns that are rooted in the “veracity of the details of the printed

story” that the RPD accepted, is not an intelligible nor transparent rationale for in turn accepting the article as establishing inconsistencies in the Applicants’ story, in my view, especially in the face of acknowledged inaccuracies in the article.

[13] The following statement by the RPD belies the RAD’s denial of circularity: “The primary question for the panel to resolve is why the principal claimant would provide a newspaper article that details an entirely different story than what he alleged, and what Ashanti has written.”

[14] Further, while it was not incorrect for the RAD to state it was incumbent on the RPD to consider evidence that the Applicants submitted in respect of their claims, the act of submitting the article as part of their evidence, in itself, does not make the article any more believable or reliable, in my view. If the latter was the RAD’s rationale for accepting the article, the RAD did not articulate it in this manner nor even as the RPD did in the above statement.

[15] That the RAD, like the RPD, ultimately preferred the newspaper article to the Applicants’ other evidence is evident, however, from the following conclusion of the RAD: “Presented with inconsistencies between the Appellants’ allegations, supported by their cousin’s statutory declaration, **and the newspaper article**, I find the RPD was correct in determining that the allegations lacked credibility.” [Emphasis added.] I thus find that the RAD’s reasoning in fact is circular and simply does not add up.

[16] I contrast the acceptance of the article here with the book, *Bad Seeds* that was considered in *Pascal v. Canada (Citizenship and Immigration)*, 2020 FC 751 [*Pascal*]. In the latter case, the

Court considered the reasons the decision maker gave for relying on facts contained in the book, for example, that “[t]he book is filled with quotes and information from researchers, community leaders, police, the criminal court, and Galloway Boys members themselves [; ...] this book was written using journalistic standards of checking sources, researching details and quoting accurately”: *Pascal*, at para 58. The Court was persuaded in the end that the decision maker had “reasonable grounds to assess the credibility and trustworthiness of the book as a source of information”: *Pascal*, at para 60.

[17] In my view, neither the RPD nor the RAD presented any reasonable grounds to assess the credibility and trustworthiness of the newspaper article as a source of information. Rather, they accepted that, apart from the misspelled surname and location of the gunshot wounds, the article otherwise was trustworthy on its face in respect of the details of the events it described, and they relied on that singular piece of evidence to discount the entirety of the other evidence the Applicants presented.

[18] I agree with the Applicants’ submission that the RAD’s finding of a possibility that the article is accurate (i.e. that the information was obtained from a reliable source is not precluded) is not a finding of fact, does not demonstrate a thorough consideration of context and general indicia of reliability and, more significantly, does not justify that the article is more reliable than the rest of the Applicants’ evidence.

[19] I also agree with the Applicants that it was improper for the RAD to give little probative value to the statutory declarations of the Applicants’ family members because they are related to

the Applicants and, therefore, do not overcome the inconsistencies between the events alleged by the Applicants and the events described in the newspaper article. As this Court previously has noted, “it would seem to me that any letter written to support the applicant's claim would be, by the Board's reasoning, self-serving. This cannot be the case. An applicant has to be able to establish their case”: *S M D v Canada (Minister of Citizenship and Immigration)*, 2010 FC 319 at para 37, [2010] F.C.J. No. 369. See also *Ugalde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 458 at para 26, [2011] F.C.J. No. 647.

### III. Conclusion

[20] For the above reasons, I conclude that there was an obligation on the RPD and in turn, the RAD, to explain why the newspaper article was accepted as credible on its face, given its centrality and importance to the assessment of all of the other evidence and the Applicants' claims. The lack of explanation renders the decision unreasonable, in my view, and warrants the Court's intervention. Because this issue is determinative, I decline to consider the remaining issues.

[21] I therefore grant the Applicants' application for judicial review and set aside the RAD decision. The matter is to be remitted to a differently constituted panel for redetermination.

[22] The parties have not proposed a serious question of general importance for certification, and I find that none arises in the circumstances.

**JUDGMENT in IMM-2270-21**

**THIS COURT'S JUDGMENT is that:**

1. The Applicants' application for judicial review is granted.
2. The March 10, 2021 decision of the Refugee Appeal Division is set aside and the matter is to be remitted to a differently constituted panel for redetermination.
3. There is no question for certification.

"Janet M. Fuhrer"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2270-21

**STYLE OF CAUSE:** CARLOS OMAR RODRIGUEZ YOSHIZAKI, ALDO  
LIBERATO RODRIGUEZ YOSHIZAKI, URIEL  
RAMON RODRIGUEZ YOSHIZAKI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 24, 2022

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** MARCH 31, 2022

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