Federal Court  Cour fédérale

Date: 20220421

Docket: IMM-4168-21

Citation: 2022 FC 574

Ottawa, Ontario, April 21, 2022

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JOEL EDUARDO VILLANUEVA LOPEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review application concerning a decision from the Refugee Appeal Division [RAD], confirming a decision of the Refugee Protection Division [RPD] which found that Mr. Villanueva Lopez [Applicant] benefited from an Internal Flight Alternative [IFA] in his country of origin, Mexico. As a result, the Applicant is neither a Convention refugee nor a person in need of protection.

[2] The judicial review application is based on section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and asylum was claimed pursuant to sections 96 and 97 of IRPA.

I. Facts

[3] The facts of this case are rather simple and straight forward. Mr. Villanueva Lopez claims that he fears persecution at the hands of members of the Cartel Del Noreste (CDN). Over a short period of time during the summer of 2018, a number of incidents incited him to leave Mexico for Germany, where he claims, he was planning to seek refugee status. He never did. Later on, but in short order, he decided to come to Canada.

[4] The Applicant is from Guadalupe, Nuevo Leon, Mexico. He worked at his uncle's ranch in Guadalupe, and was employed as an Uber driver. At the beginning of June 2018, the Applicant was allegedly approached by members of the CDN. He was tasked with driving them to different locations upon their request. Thus, he was approached on June 5 and June 11 to run errands for the Cartel. On June 23, he was again requested to run more errands: he refused and was told that he would have to pay 2000 pesos per week. The Applicant paid the amount on two occasions: the weeks of July 2 and July 9. On July 16, the Applicant advised the person collecting the money on behalf of the Cartel that he was unable to continue to pay them. That same day, in the evening, he was intercepted, taken away in a truck and he was beaten, electrocuted and asphyxiated. He lost consciousness and then went to find refuge at a friend's house.

[5] He left for Germany in September 2018 (he had purchased a ticket in June 2018 for Germany, where the Applicant said he had a friend). During the period between July and September, 2018, the Applicant went to the United States twice. The first trip was to reunite with his family and to assess the situation, and the second time to render a service to a family member in exchange for money (RPD decision, para 4). The Applicant did not claim asylum in the United States. Upon his return to Mexico after the second trip to the United States, the Applicant stayed at another friend's house.

[6] In September 2018, the Applicant left Mexico for Germany. Although he stated that his intention was to claim asylum in Germany, he did not, attributing this to an influx of Syrian refugees around the same time. Later in September 2018, the Applicant arrived in Canada where he claimed asylum 6 months later, in March 2019, based on his fear of the CDN. After arriving in Canada, the Applicant was told by family members that the Cartel had been looking for him at his house in Guadalupe and that they had extorted money from his uncle and inquired about his whereabouts.

II. The RAD decision

[7] It is of course the RAD's decision which is the subject of the judicial review application. Suffice it to say that the RPD found that the Applicant had an IFA in two Mexican cities separated by 1000 and 2000 kilometres from Nuevo Leon, the region from which the Applicant originates, which is contiguous to the American Border.

[8] Before the RAD, the Applicant argued that the RPD erred in its analysis of the availability of an IFA and the presence of general risk. The Applicant did not submit new evidence on appeal, nor did he request that the RAD hold an oral hearing. The determinative issue was the viability of an IFA in Mexico. The RAD conducted an independent review of the record, and concluded that the RPD's decision was correct, and the Applicant had a viable IFA.

[9] The RAD summarized the two-prong test for the availability of an IFA, devised by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, in the following fashion at paragraph 12:

> (1) The Board 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 to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exit, of torture to the IFA.
>
> (2) Moreover, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for him to seek refuge there.

[10] The RAD went on to find that, with respect to the first prong, the agent of harm does not have the motivation nor the means to find the Applicant where he might go to find refuge in his country of nationality. The RAD stated its agreement with the RPD about the Applicant's contention that the IFAs are not appropriate because of the possible temptation to visit his family "if something major happened" as being concerned with the second prong; the reasonableness for him to seek refuge in those places is the issue. It is on that basis that the assessment was conducted.

[11] Considering the personal circumstances of the Applicant, the RAD concludes that the proposed IFAs are objectively reasonable. The Applicant is a young man without dependants, he studied civil engineering in university and received a culinary diploma; he has a history of employment in Mexico, including in the hospitality industry and as a Uber driver. He worked on a ranch in Mexico and as a truck driver in Canada. He relocated several times in Mexico. The skills developed are assets in relocating and finding employment. Referring to *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) [*Ranganathan*], the RAD notes that the second prong "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant."

[12] Finally, the RAD finds the Applicant was not targeted as a result of his profile. The risk of recruitment by a cartel is faced by the general population.

III. Standard of review and Analysis

[13] The parties share the view that the standard of review is that of reasonableness. Such is the standard. Paragraph 6 of *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 constitutes an adequate summary of the considerations in cases where an applicant challenges the reasonableness of a decision concerning an IFA:

> [6] The first issue relates to the merits of the RAD's determination regarding an IFA. The parties agree that this issue must be reviewed on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16, 23–25; *Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at para 14). A reasonable decision is one that is justified, transparent and intelligible from the perspective of the individuals to whom the decision applies, "based on an internally coherent and rational chain of analysis" read holistically and with

> sensitivity to the administrative setting, from the record before the decision maker and the submissions of the parties (*Vavilov* at paras 81, 85, 91, 94–96, 99, 127–128). The justification of the decision is in light of the evidence that was before the decision maker (*Vavilov* at paras 125–26). Administrative decision makers are not required to respond "to every argument or line of possible analysis" raised by the parties, but the reasonableness of a decision may be compromised if the decision maker fails to consider relevant evidence (*Vavilov* at paras 125–28).

The reviewing Court does not decide on the merits of the decision but rather on its reasonableness (asserted once again by the Federal Court of Appeal in *Canada (Public Safety and Emergency Preparedness) v Bafakih*, 2022 FCA 18 at para 52).

[14] The Applicant limits himself to challenging the reasonableness of the second prong of the test. Thus, his claim is that the conditions where he could have an IFA are such that it would not be reasonable to seek refuge there.

[15] The starting point in the analysis of the second prong of the test is the decision of the Federal Court of Appeal, thirty years ago, in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706. The nature of the notion of an IFA is not a legal defence or some legal doctrine. The IFA is simply inherent to the definition of what constitutes a Convention refugee. If someone can seek refuge in her own country, they should do so. The Court of Appeal wrote at page 710:

> [S]ince by definition a Convention refugee must be a refugee from a country, not from some subdivision or region of a country, a claimant cannot be a Convention refugee if there is an IFA. It follows that the determination of whether or not there is an IFA is integral to the determination whether or not a claimant is a Convention refugee. I see no justification for departing from the norms established by the legislation and jurisprudence and treating

> an IFA question as though it were a cessation or exclusion from Convention refugee status.

The first prong of the test will focus on the ability of the agent of harm to locate the claimant in the country, because it has the means and the motivation to use the means it has to find and harm a claimant if it so wishes.

[16] In the case at bar, the focus was put on the second prong. The Applicant says that if he were to find refuge elsewhere in Mexico, that would be tantamount to preventing him from being able to contact or visit his family members, or for his family to visit him. The assertion is made because the Applicant's uncle is said to be continuing to pay "extortion" money to the CDN, thus showing that the CDN is still active.

[17] I read the evidence of the Applicant to be that he would rather have the restriction of having to travel to Mexico from another country, such as Canada, than being capable to reach where his family is located from Mexico if he were tempted to meet his family on some special occasion. For instance, at page 343 of the Certified Tribunal Record, one reads that "I would be tempted to go to my city if something [like a funeral, the Applicant said at p 342] would happen in my family, like a major cause, something major happened, I would prefer not to think of it."

[18] The burden on the Applicant was confirmed in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*] at page 597:

> Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. This test is

> a flexible one, that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.
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> [My emphasis.]

Once an IFA has been identified, the burden rests on the Applicant to show that it would be objectively unreasonable to seek refuge in the country of nationality. And that burden is a heavy one.

[19] The Court of Appeal followed the passage just quoted with a rather detailed explanation of what the circumstances need to be to make the internal refuge objectively unreasonable. That passage in *Thirunavukkarasu* is reproduced in *Ranganathan*. I reproduce these three same paragraphs from *Thirunavukkarasu* at pages 598-599:

> Let me elaborate. It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?

> An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.
>
> In conclusion, it is not a matter of a claimant`s convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location, before travelling half-way around the world to seek a safe haven, in another country. Thus, the objective standard of reasonableness which I have suggested for an IFA is the one that best conforms to the definition of Convention refugee. That definition requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country.
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> [My emphasis.]

[20] Not only did the Federal Court of Appeal in *Ranganathan* cite at length the *Thirunavukkarasu* decision, but it added even more precision to the requirements and characterized the threshold as being very high with a requirement of actual and concrete evidence:

> [15] We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions

> which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.
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> [My emphasis.]

[21] On the specific issue of the absence of relatives, the Court of Appeal comments further that, if it is true that the absence is a relevant factor, "(i)t makes it obvious though that more than the mere absence of relatives is needed in order to make an IFA unreasonable. Indeed, there is always some hardship, even undue hardship, involved when a person has to abandon the comfort of his home to live in a different part of his country where he has to seek employment and start a new life away from relatives and friends. This is not, however, the kind of undue hardship that this Court was considering in *Thirunavukkaranasu*" (para 14).

[22] The Applicant relied on two cases from our Court: *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 and *Rivera Benavides v Canada (Citizenship and Immigration)*, 2020 FC 810. In my view, neither decision is of assistance to the Applicant in view of the binding decisions of the Court of Appeal. In this case, the only argument offered is that if the Applicant is still in Mexico, he will be greatly tempted to travel back to where his family is located in case where there is a significant family event. That, in and of itself, is less than convincing when the

standard requires actual and concrete evidence of conditions which jeopardize the life and safety of a claimant. Indeed, it is less than obvious how being relocated 2000 km away from his residence, but within Mexico, is so different from being three hours away by airplane, in Canada. The inability to be with loved ones is not, by itself, a reason to consider unreasonable finding refuge in one's own country of citizenship. As the *Thirunavukkarasu* Court said, "one should be expected to make do in that location."

[23] The Applicant had the heavy burden of satisfying the RAD that it would be objectively unreasonable to seek refuge in the two locations identified as an IFA. He did not satisfy his burden on Judicial review to satisfy the Court that the RAD decision was not reasonable. The decision of the RAD was itself reasonable.

[24] It follows that the judicial review application must be dismissed. No question pursuant to section 74 of the IRPA was proposed nor arises.

JUDGMENT in IMM-4168-21

THIS COURT'S JUDGMENT is:

1. The Judicial review application is dismissed.

2. No question is certified pursuant to section 74 of the IRPA.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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