Federal Court  Cour fédérale

Date: 20220425

Docket: IMM-5138-21

Citation: 2022 FC 596

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 25, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

ADAN EDUARDO DAVILA VALDEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is seeking judicial review of a decision of the Refugee Appeal Division (RAD) that confirmed the decision of the Refugee Protection Division (RPD) that he was neither a "Convention refugee" nor a "person in need of protection" under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD confirmed the RPD's determination that the applicant had a viable internal flight alternative (IFA) in Mexico and that a number of his claims were not credible.

I. Background

[2] The applicant is a citizen of Mexico. He alleges that on October 26, 2018, he made a noise complaint against his neighbours. He alleges that the neighbours responded to this complaint by attacking him and threatening to kill him if he did not leave his residence. The applicant testified at the RPD hearing that his neighbours were members of the Jalisco Nueva Generación cartel (the cartel).

[3] On November 4, 2018, the applicant arrived in Canada and claimed refugee protection based on a fear of retaliation from his neighbours.

[4] The RPD found that the applicant's allegation that his neighbours were cartel members was not credible. It noted that the applicant's Basis of Claim Form (BOC Form) was silent on this point, and it rejected the applicant's explanation that this omission was attributable to his representative. The RPD also noted that, eight days before the alleged incident with his neighbours, the applicant submitted an application for an electronic authorization to travel to Canada for tourism purposes.

[5] The RPD determined that the credibility of the applicant was tainted by other discrepancies between his testimony and the content of his BOC Form. In particular, the RPD found that the applicant's allegation that cartel members stole money from his brother's store and told him that, if the applicant did not leave his home, they would kill him was not credible. Again, the applicant's BOC Form was silent on this incident.

[6] Further, the RPD determined that the applicant did not demonstrate that his neighbours could or would track him down in the proposed IFAs. Moreover, the RPD found that the applicant did not establish how it would be unreasonable for him to relocate there.

[7] The RAD confirmed the RPD's decision, finding that the applicant had a viable IFA in Mexico and that some of his allegations were not credible.

[8] The applicant requested that the RAD admit new evidence on appeal, namely, an undated article on IFAs and Guidelines published in 2003 by the United Nations High Commissioner for Refugees (the Guidelines). The RAD did not admit this new evidence as the applicant failed to explain how it met the criteria of section 110(4) of the IRPA.

[9] The RAD found that the RPD had correctly determined that the applicant's allegation that his neighbours were cartel members was not credible and that the applicant's explanation that the omission of this fact was attributable to his representative was not reasonable. It believed that the issue of whether the neighbours were cartel members was paramount to the applicant's complaint, and therefore the absence of reference to this fact in the BOC Form undermined his credibility significantly. The RAD noted that the applicant would have had ample time to add this important detail to his BOC Form. The RAD also found that the applicant's credibility was undermined by the absence of other details in his BOC Form, including the alleged incident with his brother, noting that he had had time to add them before the hearing.

[10] The RAD also drew a negative inference from the fact that the applicant had submitted an application for authorization to travel to Canada eight days before the alleged incident with his

neighbours. It determined that this was inconsistent with his allegation that his departure from Mexico was based solely on a fear of reprisal.

[11] The RAD confirmed the RPD's finding that the applicant had a viable IFA in Mexico in the cities of Mérida and Campeche, as neither the generalized risk of violence in Mexico nor the presence of the cartel in the proposed IFAs would render it dangerous or unreasonable for an individual in the applicant's situation to relocate there.

II. Issues and standard of review

[12] The applicant raises the following issues:

A. Did the RAD err in refusing to accept doctrine and the Guidelines on International Protection on appeal?

B. Did the RAD's decision violate the provisions of sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter], as well as Canada's international obligations?

C. Was the RAD's determination that Campeche was an IFA reasonable?

[13] The applicable standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[14] In order for the Court to be satisfied that a decision is unreasonable, the party challenging the decision must show that it was not "based on an internally coherent and rational chain of analysis" and that it was also not "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The Court must be satisfied that there are sufficiently serious shortcomings in the decision, given that merely superficial or peripheral shortcomings cannot be sufficient to set aside a decision (*Vavilov* at para 100). Moreover, the Court must consider the decision as a whole, and avoid engaging in a "line-by-line treasure hunt for error" (*Vavilov* at para 102).

III. Analysis

A. *The RAD's decision not to admit new evidence on appeal was reasonable*

[15] The applicant argues that the RAD erred in treating the Guidelines as new evidence under section 110(4) of the IRPA. He contends that the article and the Guidelines are simply legal instruments to support his argument before the RAD. The applicant claims that the Guidelines are an international legal instrument, and as such they cannot be ignored by the RAD.

[16] I am not persuaded of this, as I identify two major problems with the applicant's reasoning.

[17] First, in his RAD appeal record, the applicant clearly characterized the article and the Guidelines as new evidence. He requested that an oral hearing be held on the basis of the admission of this new evidence, pursuant to section 110(6) of the IRPA. It was therefore reasonable for the RAD to consider the article and the Guidelines to be new evidence, as

presented. The RAD did not err in considering that the applicant failed to explain how the new evidence met the criteria of subsection 110(4) of the IRPA.

[18] Second, although I agree that the Guidelines are not new evidence but must be treated as doctrinal or legal support (as Justice Pamel did in *Osemwenkhae v Canada (Citizenship and Immigration)*, 2022 FC 503), the case law states that the Guidelines are not authoritative in Canadian law as they do not have the force of law (*Fernandopulle v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91 at para 17; *Tapambwa v Canada (Minister of Citizenship and Immigration)*, 2017 FC 522 at para 35).

[19] The applicant refers to a few paragraphs of the Guidelines and submits that they should have been taken into consideration by the RAD, but I am not persuaded by his argument. As a matter of law, it is clear that "in some . . . contexts, international law will operate as an important constraint on an administrative decision maker . . ." and that "legislation is presumed to operate in conformity with Canada's international obligations . . ." (*Vavilov* at para 114). However, it must be borne in mind that the Guidelines, as such, are only an aid to the interpretation of the *Convention Relating to the Status of Refugees*, 1951, [1969] CTS 6; 189 UNTS 150 [Convention]. It is the Convention that states Canada's international obligations with respect to refugees. Despite the general references made by the applicant in this case, he has not shown how Canadian IFA jurisprudence or the RAD decision are inconsistent with the Convention.

[20] The applicant's argument on this point must be rejected.

B. *The RAD decision will not result in the applicant's removal, and therefore the applicant's argument is premature*

[21] The applicant's argument on this issue is as follows:

> [TRANSLATION]
> The decision . . . of the RAD will ultimately result in the applicant's removal to his country of origin, Mexico, where he will face the well-documented risk of retaliation and persecution by a well-organized cartel group responsible for serious, massive and systematic human rights violations, and in violation of the provisions of sections 7 and 12 of the Charter . . . and Canada's international obligations . . .
>
> (Applicant's Memorandum at para 23)

[22] I do not accept this argument, given the consistent jurisprudence rejecting arguments of this nature (see, for example, *Singh v Canada (Citizenship and Immigration)*, 2022 FC 164 at para 11, and the jurisprudence cited therein). The applicant is not currently facing deportation. His argument is premature.

C. *The RAD's determination that the applicant had a viable IFA in Mexico was reasonable.*

[23] The applicant argues that the RAD erred in its analysis of the IFA. He contends that the documentary evidence indicates that the cartel has significant influence in Mexico and that his life is therefore at risk throughout the country.

[24] I am not persuaded by this argument for two main reasons.

[25] First, the applicant's argument is simply an invitation to the Court to re-evaluate the evidence that was before the RAD and to draw a different conclusion in light of it. It is well established that a reviewing court must refrain from doing so (*Vavilov* at para 125).

[26] Second, although I agree that the cartel is powerful and that the organization has a presence almost everywhere in Mexico, it must be considered that the RAD did not accept the applicant's claim that his neighbours were members of the cartel, finding that the claim was not credible. The applicant did not challenge this determination on judicial review. It is well established that refugee protection claimants must show how their personal circumstances place them at risk in their home country (*Henry v Canada (Citizenship and Immigration)*, 2021 FC 24 at para 46). In this case, the applicant has not made that case.

[27] I agree that, in its analysis of the IFA issue, the RAD applied the appropriate legal test and considered the evidence before it. This is exactly what the standard of review for reasonableness requires. The RAD's decision "bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).

[28] In summary, I am not persuaded by the applicant's argument on this issue. I agree that the RAD's decision was reasonable.

IV. Conclusion

[29] For all of these reasons, the reasoning and outcome of the RAD's decision are reasonable and are based on the law and the evidence. The decision is transparent and understandable. Accordingly, I must dismiss this application for judicial review.

[30] None of the parties proposed any questions of general importance for certification, and I agree that none arise.

JUDGMENT in IMM-5138-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to certify.

"William F. Pentney"
Judge

Certified true translation
Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5138-21
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