

Federal Court



Cour fédérale

**Date: 20230411**

**Docket: IMM-1012-22**

**Citation: 2023 FC 518**

**Ottawa, Ontario, April 11, 2023**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**CELIA MONTALVO FLORES  
JANNINE UTRERA MONTALVO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (“RAD”) dated January 14, 2022, confirming the determination of the Refugee Protection Division (“RPD”) and finding that the Applicants are neither Convention refugees nor persons in

need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”).

[2] The RAD upheld the RPD’s refusal of the refugee claim on the basis that the Applicants have a viable internal flight alternative (“IFA”) in Merida, Mexico.

[3] The Applicants submit that the RAD erroneously concluded that they failed to establish that they were pursued by members of the Los Zetas cartel in Mexico City, and unreasonably overturned the RPD’s positive credibility finding on this point. The Applicants further submit that the RAD engaged in an unreasonable IFA assessment by disregarding contradictory evidence and making an erroneous finding based on a misapprehension of the evidence.

[4] For the reasons that follow, I find that the RAD’s decision is unreasonable. This application for judicial review is granted.

## **II. Facts**

### **A. *The Applicants***

[5] The Principal Applicant, Celia Montalvo Flores (Ms. “Flores”), and her daughter, Jannine Utrera Montalvo (“Jannine”) are citizens of Mexico. They are 33 years old and 5 years old, respectively. The Principal Applicant’s husband, Roman Emmanuel Utrera Melchor (Mr. “Melchor”), was denied an electronic travel authorization (“ETA”) and was therefore unable to travel to Canada with the Applicants.

[6] Prior to their arrival in Canada, the Applicants resided in Veracruz, Mexico, with Mr. Melchor, Ms. Flores's parents, and her brother. The Applicants claim that on December 21, 2018, a car passed by and shot at their house. Roman's brother was shot in the neck but survived after being taken to the hospital for treatment. The hospital informed the police of the shooting, after which the police visited the hospital but did not pursue questioning. The Applicants claim that nothing became of the police report.

[7] The Applicants relocated within Veracruz for their safety. In May 2019, Mr. Melchor began receiving threatening phone calls, demanding money. The Applicants claim that the caller knew where they lived and the location of Jannine's daycare. The Applicants complied with the demands by leaving the money in the hallway of their apartment as instructed.

[8] In June 2019, the Applicants claim that the calls resumed, this time demanding more money. The Applicants were afraid for their safety and felt that they had no choice but to pay the money. The Applicants did not report these calls to the police because they did not trust them, given their lack of action following the attack on their home in December 2018.

[9] In August 2019, Mr. Melchor requested more time to make the payment, but the caller responded that if the money was not paid, they would kidnap Jannine or kill them. The Applicants claim that it was at this point that they learned the calls were coming from Los Zetas. The Applicants changed their phone numbers but continued to receive these threatening phone calls. They continued to comply by paying the money that was demanded of them.

[10] The Applicants began organizing to leave Mexico and scheduled a flight to Canada for October 23, 2019. The Applicants claim that there was a suspicious car parked outside of their house for three days and they could not leave their home, causing them to miss their flight. Once the car left, the Applicants went to live with a family member in Puebla. Mr. Melchor learned that his ETA had been denied.

[11] In November 2019, the Mr. Melchor allegedly received another threatening phone call. The Applicants changed their phone numbers and left Puebla for Mexico City, where they resided with Ms. Flores's sister. Despite changing their location and their phone numbers, the Applicants continued to receive threatening phone calls.

[12] On December 18, 2019, the Applicants spotted a van outside Ms. Flores's sister's home, with three men watching the house. The car was parked there for several nights. Ms. Flores and Mr. Melchor were certain that these men were members of Los Zetas. Their family members encouraged them to leave Mexico for their safety.

[13] Given the denial of Mr. Melchor's ETA, Ms. Flores felt that she had no choice but to leave Mexico with Jannine, for their safety. The Applicants arrived in Canada on December 22, 2019 and sought refugee protection, citing fear of being pursued by members of Los Zetas.

#### B. *RPD Decision*

[14] In a decision dated August 25, 2021, the RPD refused the Applicants' claim for refugee protection on the basis that they have a viable IFA in Merida.

[15] The RPD found the Applicants to be credible with respect to their narrative and testimony. The RPD also noted that the Applicants' fear of the cartel's criminal acts against them does not have a nexus with a Convention ground and the Applicants' allegations are therefore more properly assessed under subsection 97(1) of *IRPA*.

[16] The RPD found that the Applicants have a viable IFA in Merida. The test to determine a viable IFA requires that: (1) there is no serious possibility of persecution or risk of harm in the IFA, and (2) it is reasonable in the Applicant's circumstances to relocate to the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706). The second prong of the test places a high evidentiary burden on the Applicant to demonstrate that relocation to the IFA would be unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1367) ("*Ranganathan*").

[17] The RPD found that the Applicants provided insufficient evidence to demonstrate that Los Zetas would be motivated and able to pursue the Applicants in the proposed IFA. The RPD noted that Ms. Flores was unable to explain how the cartel could locate the Applicants in the IFA and that the National Documentation Package ("NDP") for Mexico does not state that the cartel pursues individuals who do not pay extortion fees throughout Mexico. The RPD further noted the lack of evidence demonstrating that Los Zetas has continued to look for the Applicants.

[18] The RPD further found that the Applicants provided insufficient evidence to meet the high threshold for unreasonableness at the second stage of the test. The RPD noted Ms. Flores's testimony that she would have no issue accessing housing and employment in Merida, and

acknowledged her university degree and established work experience, which would aid the Applicants in settling in a new city. The RPD acknowledged the general hardships associated with relocation, but did not find these hardships sufficient to render relocation unreasonable.

[19] The RPD ultimately found that the Applicants failed to demonstrate that the proposed IFA in Merida is unreasonable in light of their circumstances and they are therefore neither Convention refugees nor persons in need of protection.

C. *Decision Under Review*

[20] In a decision dated January 14, 2022, the RAD dismissed the Applicants' appeal and upheld the RPD's finding that the Applicants are not persons in need of protection, on the basis of a viable IFA in Merida.

[21] At the first prong of the IFA test, the RAD agreed with the RPD's finding that the Applicants failed to prove that they face a risk to their lives or risk of cruel and unusual treatment or punishment upon relocation to Merida. The RAD accepted that Los Zetas likely have the means to locate a person of interest throughout Mexico. It also agreed with the Applicants' submission that the RPD failed to meaningfully engage with the evidence that the cartel had previously located the family in Puebla and Mexico City, and that Mr. Melchor is currently in hiding. However, the RAD found that upon consideration of this evidence, it remains unlikely that the cartel would be interested in pursuing the Applicants in Merida.

[22] The RAD accepted the Applicants' evidence that they were threatened in their hometown of Veracruz and later located in Puebla, but found that the Applicants failed to establish that the cartel had pursued them in Mexico City. The RAD cited the lack of evidence connecting the van outside the Applicants' temporary residence in Mexico City and Los Zetas or the earlier demands for money. The RAD found that the Applicants being tracked to Puebla is insufficient to prove that the cartel is motivated to pursue them in the proposed IFA, particularly in conjunction with an assessment of Ms. Flores's profile.

[23] The RAD acknowledged the Applicants' submission on appeal that they owe a significant debt to the cartel as they were required to make repeated payments and failed to do so. The RAD found that this is unsupported by the evidence, which demonstrates that the family paid the money demanded of them until September 2019, when they fled Veracruz for Puebla. The RAD also found that Ms. Flores's profile does not accord with the profiles known as typical targets of the cartel. The RAD acknowledged the Applicants' submission that these profiles are not exhaustive and do not preclude the Applicants from being possible targets, but ultimately concluded that this overlooks the Applicants' onus to provide sufficient evidence to demonstrate a forward-facing risk and the cartel's motivation to pursue them in the proposed IFA.

[24] The RAD found the Applicants also failed to establish that the cartel continues to search for them. It concluded that while Mr. Melchor living in hiding demonstrates a subjective fear of the cartel, it does not demonstrate an objective risk of harm, further noting that he continued to reside in the locations where the family alleged they were previously tracked and watched by Los Zetas.

[25] At the second prong of the IFA test, the RAD upheld the RPD's finding that it would be objectively reasonable for the Applicants to relocate to Merida, and their subjective fear of the cartel is unsupported by the objective evidence.

[26] For these reasons, the RAD ultimately confirmed the RPD's decision and found that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of *IRPA*.

### **III. Issue and Standard of Review**

[27] The sole issue is whether the RAD's decision is reasonable.

[28] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[29] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).



[30] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

#### IV. Analysis

[31] The Applicants submit that the RAD erred by overturning the RPD’s finding of fact regarding the Applicants being pursued by Los Zetas in Mexico City, and by conducting a selective assessment of the evidence concerning the viability of the IFA.

[32] In my view, the RAD’s decision is unreasonable on both points.

##### A. *Credibility Finding*

[33] The Applicants submit that the RAD erroneously found that they were not located and threatened by Los Zetas in Mexico City, unjustifiably overturning the RPD’s positive credibility finding on this fact. The Applicants submit that this finding fails to accord with the Applicants’ testimony and evidence, which demonstrates that they continued to receive threatening phone calls and were watched for several days by men in a van while in Mexico City. The Applicants contend that the RAD erred by characterizing the Applicants’ allegation that these men were

members of Los Zetas and were pursuing them as being speculation and that, rather, it is a reasonable inference from their previous experience of being located and threatened by Los Zetas upon their relocation within Veracruz and their later relocation to Puebla.

[34] The Respondent submits that the RAD reasonably concluded that the Applicants were not found and pursued by Los Zetas in Mexico City. The Respondent contends that contrary to the Applicants' submissions, the RPD did not find that the Applicants were ever in Mexico City, Ms. Flores's testimony regarding the cartel's alleged pursuit of the Applicants in Mexico City is vague and lacking detail, and other aspects of the Applicants' evidence clearly demonstrate that neither Ms. Flores nor her husband received threatening phone calls while in Mexico City.

[35] I find that the RAD's negative credibility finding regarding the Applicants' claim that they were again found and watched while in Mexico City lacks intelligibility and justification (*Vavilov* at 99). The RAD characterizes the Applicants' testimony that they were pursued in Mexico City as being speculative on the basis that they provided no evidence to establish a connection between the van parked outside their residence and the cartel or the earlier calls. This reasoning for drawing an adverse credibility finding appears to impugn the Applicants for failing to provide corroborative evidence to substantiate this claim. However, this Court has found that the RAD may only draw a negative inference from a failure to provide corroborative evidence when such evidence is reasonably expected and where there is a valid reason to question a claimant's credibility (*Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452; *Nur v Canada (Citizenship and Immigration)*, 2019 FC 951 at paras 10-13; *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at paras 18-22 ("*Luo*").

[36] Neither criterion is present in this case. There are no grounds upon which to doubt Ms. Flores's testimony that "the calls returned" while in Mexico City and to rebut the presumption of truthfulness of a claimant's sworn evidence (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) at para 5). Noting that the reasonable expectation of corroborative evidence is dependent on the facts of each case (*Luo* at para 22, citing *Mendez Lopera v Canada (Citizenship and Immigration)*, 2011 FC 653), and in light of the Applicants' circumstances, I also do not find it reasonable to expect that they would have readily available evidence to substantiate that they continued to receive calls while in Mexico City or to establish a connection between the car outside their residence and the cartel. I do not find it reasonable for the RAD to expect this evidence of the Applicants in light of their circumstances, without placing themselves, including their young child, in danger.

[37] Furthermore, the RAD's line of reasoning on this issue is unintelligible in that it fails to accord with a proper consideration of the Applicants' circumstances. The Applicants were pursued and watched upon their previous relocation, both within their hometown of Veracruz and then again upon moving to Puebla. When asked whether the family was safe after their move to Mexico City, Ms. Flores testified that "at the beginning, yes, like in other places, but then the calls returned and we saw a truck with people in it doing surveillance." She stated that she thought the men in the car outside the home were cartel members because "we were being pursued by them at the time and there was no other person who would be checking on us or surveilling us." This is not mere speculation but, rather, a reasonable inference given the totality of the circumstances. To characterize it as speculation fails to accord with the Applicants'

evidence and draws a negative credibility finding without the requisite degree of justification and intelligibility (*Vavilov* at para 99).

B. *IFA Assessment*

[38] The Applicants submit that the RAD engaged in an unreasonable assessment of the viability of the IFA in Merida in light of the Applicants' circumstances and evidence. The Applicants submit that the first prong of the IFA test, which concerns whether there is a serious possibility of risk to the applicants in the proposed IFA, must be contextual to the Applicants' particular circumstances. The Applicants submit that the RAD's assessment of this risk failed to account for the cartel's consistent pursuit of the Applicants in both Puebla and Mexico City, noting that this error is inextricably tied to the RAD's initial error in finding that the Applicants were not pursued in Mexico City.

[39] The Applicants submit that the objective evidence contradicts the RAD's findings regarding the danger to the Applicants in the IFA, citing various pieces of evidence before the RAD that support the opposite conclusion on the reasonableness of the Applicants' relocation to Merida. The Applicants further submit that the RAD erroneously concluded that the fact that Mr. Melchor is in hiding does not mean that Los Zetas are pursuing the family. The Applicants submit that this places an impossible burden on them to provide evidence to demonstrate harm in order to establish a forward-facing risk in the IFA.

[40] The Respondent submits that the RAD reasonably assessed both prongs of the IFA test in light of the Applicants' circumstances and evidence. The Respondent submits that the RAD

reasonably found that Ms. Flores does not have the profile of someone the cartel would pursue throughout Mexico and that the Applicants' evidence does not demonstrate that they owe the cartel a substantial debt. The Respondent further submits that the RAD reasonably concluded that there is insufficient evidence to establish that Los Zetas are continually pursuing the Applicants and that Mr. Melchor being in hiding does not amount to the finding that the Applicants are being pursued. The Respondent contends that the Applicants' reference to various pieces of objective evidence regarding the dangers in Merida is tantamount to a request that this Court reweigh the evidence, which is not this Court's role on reasonableness review.

[41] In my view, the RAD's error in its assessment of the IFA flows from its error in finding that the Applicants were not pursued by Los Zetas in Mexico City. In other words, the RAD's conclusion that the Los Zetas cartel lacks the motivation to pursue the Applicants throughout Mexico is flawed due to its finding that the Applicants were not also pursued in Mexico City, which I find does not accord with the evidence demonstrating that the Applicants were pursued upon three separate relocations: within Veracruz, to Puebla, and to Mexico City.

[42] The RAD's analysis of the viability of the IFA in the Applicants' circumstances also fails to grapple with clearly contradictory evidence before it. The reasonableness of a decision may be questioned where the decision-maker has "failed to consider relevant evidence," resulting in a decision that is not justified in light of the evidentiary record (*Vavilov* at para 126). While a decision-maker is not required to mention every piece of evidence in the record, it is easier to infer that the decision-maker overlooked certain evidence when it is silent on clearly contradicting evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*),

[1999] 1 FC 53 at para 17). This principle has been affirmed in the context of decisions of the RAD concerning the viability of IFAs (*Hernandez Cortez v Canada (Citizenship and Immigration)*, 2021 FC 1392 at para 29; *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at paras 26-32).

[43] I agree with the Applicants that the RAD's findings on the reasonableness of Merida as an IFA is contradicted by the objective evidence. Despite the RAD's statement that it conducted an independent review of the record, its reasons on the reasonableness of the Applicants' relocation to Merida fail to grapple with the evidence stating that the Los Zetas cartel is one of three "high-impact criminal organizations" operating in Merida; the city is often a "haven" for families of criminal organizations; powerful criminal groups are able to locate and pursue persons of interest throughout Mexico, and; the Los Zetas cartel establishes alliances with other criminal groups to assist in pursuing their targets. The RAD failed to discharge its duty to grapple with this contradictory evidence, particularly in light of the Applicants' specific circumstances and history, rendering its decision unreasonable (*Vavilov* at para 126).

## **V. Conclusion**

[44] This application for judicial review is granted. The RAD's decision fails to accord with the evidentiary record and is therefore unreasonable. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-1012-22**

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

1. This application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a differently constituted panel.
2. There is no question to certify.

“Shirzad A.”

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Judge

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

**DOCKET:** IMM-1012-22

**STYLE OF CAUSE:** CELIA MONTALVO FLORES AND JANNINE  
UTRERA MONTALVO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 31, 2023

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** APRIL 11, 2023

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