Federal Court  Cour fédérale

Date: 20230515

Docket: IMM-1008-22

Citation: 2023 FC 684

Ottawa, Ontario, May 15, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

HUMBERTO VAZQUEZ CRUZ
NANCY ELENA CHICHINO REYES
ROBERTO VAZQUEZ CHICHINO
MELINA VAZQUEZ CHICHINO
HUMBERTO VAZQUEZ CHICHINO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] Humberto Vazquez Cruz, his wife Nancy Elena Chichino Reyes and their three children are citizens of Mexico. They sought refugee protection in Canada on the basis of their fear that members of a criminal cartel had targeted them because Mr. Vazquez Cruz once worked as a

police officer in Mexico and, more recently, had witnessed an attempted break-in and theft of a vehicle. The Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") rejected the claims on the basis that the applicants have a viable internal flight alternative ("IFA") in Culiacan, the capital city of the state of Sinaloa.

[2] The applicants appealed this decision to the Refugee Appeal Division ("RAD") of the IRB. In a decision dated January 19, 2022, the RAD dismissed the appeal and confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection. More particularly, the RAD found that the RPD concluded correctly that the applicants have a viable IFA in Culiacan.

[3] The applicants now apply for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). They submit that the RAD's determination that they have a viable IFA in Culiacan is unreasonable.

[4] As I explain in the reasons that follow, I am persuaded that the RAD's IFA analysis is flawed in two key respects and that these flaws are sufficiently serious and central to undermine the reasonableness of the decision as a whole. This application for judicial review must, therefore, be allowed and the matter remitted for redetermination.

II. BACKGROUND

[5] Mr. Vazquez Cruz was born in 1983. Ms. Chichino Reyes was born in 1986. The two were married in 2003. Their children were born in 2003 (Humberto), 2006 (Roberto) and

2007 (Melina). Before leaving Mexico for Canada, the family lived for many years in the small town of Apizaco in the state of Tlaxcala.

[6] From 2009 until September 2011, Mr. Vazquez Cruz worked as a municipal police officer in Apizaco. He worked in two divisions: traffic and parking enforcement as well as public safety. Mr. Vazquez Cruz stopped working in September 2011 after he was injured at work in a motor vehicle accident. The accident left him with a permanent disability. He was kept on the municipal payroll for several years but eventually retired with a small pension.

[7] According to the applicants' Basis of Claim narrative, their problems began on August 6, 2019. That day the family was visiting Ms. Chichino Reyes' parents at their home in San José Cuamantzingo, a town close to Apizaco. While they were there, an armed man attempted to break into the home and, when he was unable to do so, attempted to steal Ms. Chichino Reyes' parents' truck. Ms. Chichino Reyes' father called the police and the man was apprehended. According to Mr. Vazquez Cruz, when he went outside to see what was happening, the man who had been apprehended and who was being held in the rear of a police vehicle, kept staring at him. This led Mr. Vazquez Cruz to believe that the man had recognized him as a police officer. Mr. Vazquez Cruz did not suggest that he recognized the man as someone he had ever dealt with when he was a police officer.

[8] A few days later, Mr. Vazquez Cruz saw a vehicle with two men in it that he believed was following him. Then, on August 10, 2019, he overheard two men walking behind him identify him as a police officer and threaten him. The men said, "you will pay for this; it is you

or your children". Mr. Vazquez Cruz reported the incident to the local police but he was told they could not act until something actually happened. The police advised Mr. Vazquez Cruz to move to another town.

[9] On August 21, 2019, an envelop with a picture of their two youngest children was slid under the front door to the family's home in Apizaco. A week later, another picture was slid under the door. This one was a photograph of the children playing at their grandparents' home in San José Cuamantzingo. Beginning in September 2019, on several occasions Mr. Vazquez Cruz believed he heard footsteps on the roof of their home in the early morning hours. Then, on September 12, 2019, he found a note that had been slid under his door stating, "I found you, you damn policeman, at some point you won't be able to find your children."

[10] On September 15, 2019, with the assistance of a lawyer, Mr. Vazquez Cruz filed a formal complaint with the Public Ministry of the Integral Assistance Unit, Northern Region, detailing the threats he had received. Mr. Vazquez Cruz provided a copy of the police report in support of the family's claims for protection in Canada. However, he did not have the photographs or the threatening note because he had given them to the police in Mexico. It is unclear if his lawyer kept copies of these documents. A few months after arriving in Canada, Mr. Vazquez Cruz tried to contact the lawyer once but he did not hear back from him.

[11] On September 17, 2019, the applicants left Apizaco for Mexico City where they stayed with Mr. Vazquez Cruz's parents until they left for Canada on September 27, 2019. The

applicants flew directly from Mexico City to Toronto. They submitted their claims for refugee protection on November 20, 2019.

[12] At the hearing before the RPD, Mr. Vazquez Cruz confirmed that he had never been threatened while he worked as a police officer, nor had he had any problems in the eight years between when he stopped and the events that began in August 2019. He acknowledged that he did not know whether the subsequent events were connected to the incident at the home of his in-laws or not. He assumed that someone was seeking revenge for something he did but he could not say what this was. He believed that the individuals targeting him and his family were members of a criminal cartel but he could not say which one. He assumed it must be either the Cartel Jalisco New Generation ("CJNG") or the *huachicoleros* because these are the two dominant groups in the state of Tlaxcala. He acknowledged that, since he and his family had moved to Canada, he was unaware of any subsequent attempts to contact them (for example, through his in-laws). He had no information about what had happened to the man who was arrested at his in-laws' home on August 6, 2019.

[13] The RPD first determined that the applicants had failed to establish a nexus to a Convention ground. Accordingly, it assessed their claims solely under section 97 of the *IRPA*. The applicants have not contested this determination.

[14] In its decision, the RPD expressed some concerns about Mr. Vazquez Cruz's credibility because he was unable to identify the agents of persecution and because he had not produced

copies of the photographs or the threatening note. The determinative issue, however, was the viability of an IFA in Culiacan.

[15] An IFA is a place in their country of nationality where a party seeking protection would not be at risk (in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *IRPA*) and to which it would not be unreasonable for the claimant to have relocated before seeking protection in Canada. When there is a viable IFA, a claimant is not entitled to protection from another country.

[16] To counter the proposition that they have a viable IFA, a party seeking protection has the burden of showing either that they would be at risk in the proposed IFA in the relevant sense or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to relocate there. This test is derived primarily from three decisions of the Federal Court of Appeal: *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); and *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA).

[17] The RPD found that the applicants had not established either that they would be at risk from their agents of harm in Culiacan or that it would be unreasonable in all the circumstances for them to relocate there.

[18] In their appeal to the RAD, the applicants took issue with the RPD's adverse credibility findings as well as the IFA determination. They did not seek to provide any new evidence nor, as a result, did they request a hearing before the RAD. The applicants challenged both aspects of the IFA determination. Under the first branch of the test, they argued that, in concluding that they had not established that they would be at risk in Culiacan, the RPD erred by failing to take into account evidence that the CJNG has a presence in every part of the country, including the state of Sinaloa. Under the second branch of the test, they argued that the RPD erred in concluding that the economic hardship the applicants would suffer if they moved to Culiacan was not sufficient to make it unreasonable for them to relocate there.

III. DECISION UNDER REVIEW

[19] The RAD agreed with the applicants that the RPD had erred in some of its adverse findings concerning Mr. Vazquez Cruz's credibility. However, it found that credibility did not play a significant role in the case. Rather, the determinative issue was the viability of an IFA in Culiacan. The RAD found that the RPD did not err under either branch of the IFA test and agreed with the RPD that the applicants have a viable IFA in Culiacan.

[20] Under the first branch of the IFA test, the RAD found that, even if the agents of harm were active in the state of Sinaloa (including in the city of Culiacan), the applicants had failed to establish that they were likely motivated to pursue them there. The RAD concluded that "the eight-year period between the Principal Appellant's active duty as a police officer, which ended in 2011, and the onset of the threats in 2019 does not support a finding that the Principal Appellant is being targeted due to his former occupation." Instead, "there is a stronger temporal

connection between the attempted break-in and the threats made to the Principal Appellant." In other words, even though the threats referred to Mr. Vazquez Cruz as a police officer, they are more likely the result of his having been a witness to the August 2019 incident at his in-laws' home than to anything he did as a police officer. The applicants had not established that this was sufficient motivation to pursue them in an entirely different place in Mexico. The RAD therefore found on a balance of probabilities that the applicants would be safe from their agents of harm if they were to relocate to Culiacan.

[21] Under the second branch of the test, the RAD did not find persuasive the applicants' evidence that they could not support themselves economically in Culiacan. It was not persuaded that Mr. Vazquez Cruz would be unable to receive his police pension there. Even if they could no longer live rent free as they did in Apizaco, and even if Mr. Vazquez Cruz would have limited employment prospects due to his disability, there was no reason that Ms. Chichino Reyes or Humberto (the eldest son) could not earn a basic living to support the family there. The RAD found that merely being of limited financial means in an IFA is not sufficient to establish that it is unreasonable.

[22] The RAD also noted Mr. Vazquez Cruz's evidence that he would not live in Culiacan because it "is the most dangerous city in all of the Republic." The RAD acknowledged that Mr. Vazquez Cruz's evidence was consistent with the country condition documentation, "which indicates that Culiacan is one of the most violent municipalities in Mexico." However, the RAD held that the fear of being a victim of crime in Culiacan is "a widespread issue faced by most of

this large urban centre, and as such are generalized risks." A generalized risk faced by all residents of Culiacan "does not make the IFA unreasonable."

[23] The RAD therefore dismissed the appeal and confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection.

IV. STANDARD OF REVIEW

[24] The parties agree, as do I, that the RAD's decision should be reviewed on a reasonableness standard.

[25] 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[26] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual

findings unless there are exceptional circumstances (*Vavilov* at para 125). Nevertheless, the test of reasonableness and its requirements of justification, intelligibility and transparency apply to an administrative decision maker's assessment of the evidence before them and the inferences that may be drawn from that evidence (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 46).

[27] The onus is on the applicants to demonstrate that the RAD's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

V. ANALYSIS

[28] As I stated above, I am persuaded that the RAD's decision is unreasonable in two key respects. They are as follows.

[29] First, the RAD found that Mr. Vasquez Cruz was being targeted by the agents of harm because he witnessed the incident at the home of his in-laws on August 6, 2019, and not because of anything he did as a police officer. The RAD based this finding on the stronger temporal connection between that incident and the subsequent threats compared to the length of time that had passed since Mr. Vazquez Cruz last worked as a police officer (some eight years). The RAD also found that there was no evidence connecting his work as a police officer and the threats nor was there any evidence explaining how the agents of harm were able to identify Mr. Vazquez Cruz as a former police officer. The RAD concluded: "In my view, the fact that

the threats identified the Principal Appellant as a police officer does not, on its own, discharge the Appellants' burden to prove that the Principal Appellant is being targeted because of his identity as a police officer or because of his actions while employed as a police officer."

[30] In my view, the RAD's reasoning gives rise to two critical difficulties. One is that, even if Mr. Vazquez Cruz could not explain how the agents of harm had identified him as a police officer, the fact is that they did. The RAD does not doubt Mr. Vazquez Cruz's evidence of this point. It was unreasonable for the RAD to consider the identification of Mr. Vazquez Cruz as a police officer to be irrelevant simply because it could not be explained.

[31] The other difficulty is that the RAD does not consider the possibility that the agents of harm were motivated both by the fact that Mr. Vazquez Cruz witnessed the incident on August 6, 2019, and by the fact that he was a former police officer. By limiting its assessment under the first branch of the IFA test solely to the motivation of the agents of harm to pursue Mr. Vazquez Cruz simply because he was a witness to the August 6, 2019, incident, the RAD unreasonably truncated his risk profile in determining whether the applicants had met their onus under the first branch of the IFA test.

[32] The second flaw in the RAD's decision relates to second branch of the IFA test.

[33] Under this branch, the onus was on the applicants to establish that, in all the circumstances (including their personal circumstances), it is unreasonable to expect them to relocate to Culiacan, the proposed IFA. This has been described as a high threshold to meet,

requiring a demonstration of "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" (*Ranganathan* at para 15).

[34] As set out above, the RAD accepted that Culiacan is one of the most dangerous municipalities in Mexico. It found, however, that the applicants' "fear of being a victim of crime in Culiacan is a widespread issue faced by most in this large urban centre, and as such are generalized risks. A generalized risk faced by all residents of Culiacan does not make the IFA unreasonable."

[35] In my view, in so concluding, the RAD has conflated the first and second branches of the IFA test. It is true that, under the first branch, the applicants would not be able to discharge their onus of establishing that they would be at risk under section 97 of the *IRPA* simply by pointing to how dangerous Culiacan is. That is because this would be a risk faced generally by others, which paragraph 97(1)(b)(ii) stipulates is not sufficient. Under the second branch of the IFA test, however, the prevalence of violent crime in Culiacan is surely relevant to whether the lives or safety of the applicants would be jeopardized if they relocated there to avoid the personalized risk they faced in Apizaco. The RAD's failure to address this issue because of its conflation of the two branches of the IFA test undermines the reasonableness of its adverse determination under the second branch of the IFA test and, as a result, its ultimate conclusion that the applicants are not persons in need of protection because they have a viable IFA in Culiacan.

[36] Whether they are considered individually or together, I am satisfied that these flaws in the RAD's IFA analysis are sufficiently serious and central to require that the matter be reconsidered.

VI. CONCLUSION

[37] For these reasons, I have concluded that the application for judicial review must be allowed. The decision of the Refugee Appeal Division dated January 19, 2022, will be set aside and the matter will be remitted for redetermination by a different decision maker.

[38] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-1008-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Refugee Appeal Division dated January 19, 2022, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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