Federal Court Cour fédérale

Date: 20231127

Docket: IMM-6251-22

Citation: 2023 FC 1576

Ottawa, Ontario, November 27, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

OSWALDO DE JESUS AGUILAR RUIZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Oswaldo de Jesus Aguilar Ruiz, seeks judicial review of a decision of the Refugee Appeal Division ("RAD") dated June 15, 2022, confirming the finding of the Refugee Protection Division ("RPD") that the Applicant is neither a Convention refugee nor a person 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 on the basis that there was insufficient evidence to establish that the agents of harm are members of a cartel and because Applicant has a viable internal flight alternative ("IFA") in Cabo San Lucas.

[3] The Applicant submits that the RAD breached procedural fairness in raising the new issue of the agents of harm's affiliation to a cartel, and made unreasonable findings about the agents of harm and the viability of an IFA in Cabo San Lucas.

[4] For the reasons that follow, I find that the RAD's decision is reasonable and procedurally fair. This application for judicial review is dismissed.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 28-year-old citizen of Mexico.

[6] On September 18, 2017, the Applicant's older brother Jose passed away from a drug-related heart attack. The Applicant describes Jose as having been addicted to crystal methamphetamine.

[7] While working as a truck driver, Jose transported drugs for three individuals: "Jorge," "Raphael," and "Mayra." The Applicant believes that these individuals are members of Los Zetas, a violent drug cartel.

[8] The Applicant claims that these three individuals tried to speak with him at Jose’s funeral. He ignored them.

[9] On September 19, 2017, at Jose’s burial, Mayra and Raphael threatened the Applicant, pointing a gun at him and telling him that he had to sell drugs for them.

[10] The Applicant testified that after this threat he hid in his home between September and December 2017, going out only to study. In December 2017, he travelled to the state of Queretaro to finish a practicum for his university degree. This took approximately eight months. During this time, the Applicant did not have any problems with the individuals who had threatened him.

[11] In July 2018, the Applicant returned to Cuitlahuac to graduate from university. He testified that for a little more than a year, he moved in with this aunt “not too far away” from where he lived after telling her of his situation.

[12] The Applicant claims that on September 1, 2019, while he was leaving work, Mayra and Raphael were waiting for him outside. Mayra was once again armed. The Applicant states that he went back into the store and, after twenty minutes, the two left.

[13] On September 10, 2019, the Applicant entered Canada on an Electronic Travel Authorization. He testified that he had been informed by his colleagues that Mayra and Raphael had been searching for him at his previous place of employment in March 2020. He claims that his father was also followed to work twice in July 2020. The Applicant stated, “[m]y family

members don't leave the house out of fear for their lives. They only leave the house when they are forced to."

B. *RPD Decision*

[14] In a decision dated January 20, 2022, the RPD found that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the *IRPA*, on the basis of a viable IFA in Cabo San Lucas.

[15] The RPD found that the Applicant was a victim of criminal activity, rather than being persecuted. Nonetheless, the RPD found that Los Zetas tried to forcibly recruit him and that he would be at risk should he be returned to Cuilahuac.

[16] The RPD found, however, that the Applicant has a viable IFA in Cabo San Lucas. 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*) *(C.A.)*, [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] On the first prong of the test, the RPD found insufficient evidence that Los Zetas would be motivated and able to pursue the Applicant in Cabo San Lucas. The RPD first found that Los Zetas, on the basis of national documentation package ("NDP") evidence, was no longer a

national cartel. The RPD then acknowledged that when the Applicant moved to Queretaro for his eight-month apprenticeship, no evidence showed that Los Zetas searched for him. This undermined his allegation that Los Zetas would be able to find him anywhere he went in Mexico.

[18] The RPD also found that his profile as a former student and driver had little strategic value to Los Zetas, concluding that it was unlikely that Los Zetas would search him out for revenge in Cabo San Lucas, where Los Zetas did not operate. The RPD further found the Applicant's claims about his vulnerability outside of Veracruz to be speculative.

[19] On the second prong, the RPD concluded that the Applicant failed to produce sufficient evidence to demonstrate that relocating to Cabo San Lucas would be unreasonable and that he could not find employment or build a new community there. The RPD acknowledged evidence of his language capabilities, university education, and employment history to help justify this finding.

[20] For these reasons, the RPD refused the Applicant's claim for refugee protection.

C. *Decision under Review*

[21] In a decision dated June 15, 2022, the RAD dismissed the Applicant's appeal and upheld the RPD's finding that the Applicant is neither a Convention refugee nor a person in need of protection.

[22] The RAD found that the Applicant had not established that the agents of harm are part of the Los Zetas, work for them, or work for another cartel. While the credibility of the Applicant was not challenged, the RAD reasoned that his beliefs were insufficiently grounded in fact. Additionally, the RAD found that there was insufficient documentary evidence to support the Applicant's claims that the agents were members of any cartel in the area.

[23] On the first prong of the IFA test, the RAD agreed with the RPD's finding that the Applicant did not prove that he faces a risk to his life or safety upon relocation to Cabo San Lucas. The RAD once more noted that there was insufficient evidence that the agents of harm were part of a cartel. The RAD also found that there was insufficient evidence to establish that the agents of harm's motivation extended outside of Veracruz or another state. The RAD considered his ties to the university and the transportation companies and found they would not make him an essential target to the agents of harm. Additionally, the RAD found that his time spent at university in a different state without facing problems undermined his fear of the agents finding him. The RAD further found that his father was not pursued by the agents of harms, nor that the agents of harm would likely have access to technology that could track the Applicant or corrupt police or government officials.

[24] On the second prong, the RAD upheld the RPD's finding that it would be objectively reasonable for the Applicant to relocate to Cabo San Lucas. The RAD found that the Applicant's subjective fear, in light of objective evidence, does not amount to a threat to his life or safety. The RAD also found that there are numerous factors that would likely facilitate a successful relocation to Cabo San Lucas, including the Applicant's youth, education, and previous employment experience.

[25] For these reasons, the RAD ultimately confirmed the RPD's decision and upheld the finding that the Applicant is neither a Convention refugee nor a person in need of protection.

III. **Issues and Standard of Review**

[26] The issues raised in this application for judicial review are whether the RAD's decision is reasonable and procedurally fair.

[27] The standard of review on the merits of the RAD's decision 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.

[28] I find that the issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship),* 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[29] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). 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 decision that is reasonable as a whole 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). The emphasis on reasonableness review is the reasons of the decision-maker, read "in light of the record and with due sensitivity to the administrative regime in which they were given" but not "assessed against a standard of perfection" (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 61, citing *Vavilov* at paras 91, 103). While a decision-maker is not required to respond to every line of argument or mention every piece of evidence, a decision's reasonableness may be called into question where the decision exhibits a "failure to meaningfully grapple with key issues or central arguments" (*Vavilov* at para 28).

[31] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

IV. **Analysis**

[32] The Applicant submits that the RAD breached procedural fairness in changing or adding an issue and unreasonably erred in its assessments of the agents of harm and the IFA. I disagree. In my view, the RAD's decision is procedurally fair and reasonable.

A. *Procedural Fairness*

[33] The Applicant submits that the decision was procedurally unfair on the basis that the issue of whether the agents of harm belong to Los Zetas was changed/added by the RAD without notice to the Applicant.

[34] The Respondent argues that the decision is procedurally fair, as the RAD did not raise a new issue; rather, the RAD conducted a statutorily mandated independent review of evidence.

[35] I agree with the Respondent. As my colleague Justice Strickland ruled, it is generally not open to the RAD to make determinations on issues not before the RPD and which the parties did not raise (*Tan v Canada (Citizenship and Immigration)*, 2016 FC 876 at para 40). However, no new issue was raised and the fact the RAD came to a different conclusion than the RPD on the issue of the agents of harm does not invoke concerns about procedural fairness.

B. *Reasonableness*

(1) Agents of Harm

[36] The Applicant submits that the RAD made several reviewable errors about the agents of harm. The Applicant maintains that the RAD speculated in regards to evidence about the agents being "lone criminals" in Los Zetas territory and did not consider the plausibility of the agents being Los Zetas in light of testimony and country condition evidence. The Applicant also contends that Jose, who told the Applicant that Mayra worked for Los Zetas, would have credible, direct knowledge about Los Zetas.

[37] The Respondent submits that the RAD reasonably concluded that there was insufficient evidence to establish a connection between the agents of harm and Los Zetas or any other cartel.

[38] I agree with the Respondent. It was open for the RAD to question the Applicant's belief about the agents of harm's affiliation to Los Zetas or other cartels. The RAD refers to *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 for the proposition that a claimant's allegations are presumed to be true unless there is a reason to doubt them. The RAD also refers to jurisprudence from this Court for the proposition that it does not have to accept the truth of inferences drawn from these beliefs (*Hernandez v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 657 at para 6; *Rahman v Canada (Citizenship and Immigration)*, 2020 FC 138; *Durbas v Canada (Solicitor General)*, [1993] FCJ No 829 at para 3).

[39] In this case, the RAD found that the Applicant is inferring that the agents of harm are Los Zetas. The testimony of the Applicant shows equivocation about Jose's statement to the Applicant, including his concession that the agents of harm could be lone actors and his inferences that drug dealers in the area necessarily belong to the cartel. In my view, the RAD

reasonably assessed this testimony to conclude that the Applicant does not know that the agents of harm, and especially Mayra, are Los Zetas or another cartel and this conclusion is thus justified in light of the relevant legal and factual constraints that bear upon it (*Vavilov* at paras 99-101).

[40] Furthermore, the RAD thoroughly considered and weighed the documentary evidence in reaching the conclusion about the agents of harm. This Court has ruled that "it is only where the non-mentioned evidence is critical and squarely contradicts the tribunal's conclusion that the reviewing court may decide that its omission means that the tribunal did not have regard to the material before it" (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at paras 16-17). In my view, there is no unmentioned critical evidence that squarely contradicts the RAD's conclusion. It would be improper for this Court to reweigh and reassess the RAD's factual findings (*Vavilov* at para 125) and the RAD's conclusion that the Applicant lacked documentary evidence to support his claim is therefore reasonable.

(2) IFA

[41] The Applicant submits that on the first prong of the IFA test, the RAD used a speculative argument about the identity of the agents of harm to defeat the Applicant's IFA argument and erred in the reasoning about the interest, means, and motivations of these agents of harm. The Applicant further submits that the RAD erred at the second prong—and indeed throughout the entire IFA analysis—in failing to analyze the availability of state protection. The Applicant

maintains that the issue of state protection was conceded by the RPD and RAD, and there being no state protection in all of Mexico, the proposed IFA of Cabo San Lucas could not be safe.

[42] The Respondent submits that the RAD did nor err in the IFA analysis. On the first prong, the Respondent argues that the RAD reasonably concluded that the evidence was insufficient to demonstrate that the agents of harm were motivated to find the Applicant outside of Cuitlahuac and that they had the technology necessary to do so. On the second prong, the Respondent submits that the RAD reasonably concluded that the Applicant subjectively believed he would be harmed, but that objective evidence was not provided to cross this prong's high threshold.

[43] I agree with the Respondent. On both prongs of the IFA test, the RAD's assessment of the viability of the proposed IFA is justified, transparent, and intelligible (*Vavilov* at para 15). The RAD's conclusion that the Applicant failed to prove that he faced a risk to his safety or life in or upon relocation to Cabo San Lucas is based upon a thorough and cogent review of the Applicant's testimony and the documentary evidence.

[44] On the first prong, the RAD reasonably found that various essential aspects of the Applicant's claims were speculative. This Court has ruled that speculative assertions about the motivation or interest of an agent of harm in pursuing an applicant is insufficient to establish that the claimant faces a risk of persecution or harm in the IFA (*Melaj v Canada (Citizenship and Immigration)*, 2023 FC 92 at para 46, citing *Franco Garcia v Canada (Citizenship and Immigration)*, 2021 FC 1006 at paras 32-33). The RAD found that the agents of harm could travel to Cabo San Lucas through their connection to transportation companies, but that this fact is not sufficient to establish that they likely would. I agree with the RAD that the Applicant's

submissions on this point are speculation and the Applicant has not pointed to any evidence that contradicts the RAD's conclusion.

[45] The RAD is also justified in finding that there is insufficient evidence to establish that the agents of harm likely would or wished to find the Applicant outside of Veracruz. The RAD acknowledged the fact that agents of harm did not find the Applicant while he was a student in Queretaro and only visited, rather than threatened, the Applicant at work. And again, the Applicant's submissions on the means and motivation of these agents of harm are speculative. That the agents of harm in this case managed to find the Applicant in a nearby town in Veracruz is not necessarily indicative, on the evidence on the record, of their willingness to find in a town in a different state. There is also no evidence to support the Applicant's submissions that the agents of harm would have access to technology or corrupt officials to aid them locate the Applicant. In my view, the RAD's conclusion is justified in light of these factual constraints (*Vavilov* at paras 99-101).

[46] On the second prong, the RAD reasonably found that it was objectively reasonable for the Applicant to relocate to Cabo San Lucas. The threshold for proving relocation to be objectively unreasonable is "very high" (*Oluwafemi v Canada (Citizenship and Immigration)*, 2023 FC 564 at para 40). It demands that individuals demonstrate, through concrete evidence, that relocating to an IFA would jeopardize their life or safety (*Ranganathan* at para 15). The Applicant does not provide any submissions or point to evidence that he would face a threat to his life or safety should he have to relocate to Cabo San Lucas.

[47] Furthermore, the Applicant's argument about the connection between the IFA and state protection analysis does not have merit. As my colleague Justice Fuhrer held, once there is a finding of a viable IFA, a finding of a lack of state protection is not necessary (*Ajekigbe v Canada (Citizenship and Immigration)*, 2023 FC 1017 at para 10). The qualification on these separate analyses is that that one must consider the viability of an IFA in relation to the issue of state protection where a state restricts movement within their territory (*Zhuravlvev v Canada (Minister of Citizenship and Immigration) (T.D.)*, [2000] 4 FC 3 at para 32). The Applicant furnishes no evidence that such a scenario exists here.

V. **Conclusion**

[48] This application for judicial review is dismissed. The RAD's decision is justified, intelligible, and transparent in light of its factual and legal constraints. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6251-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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