

Federal Court



Cour fédérale

**Date: 20240723**

**Docket: IMM-2760-23**

**Citation: 2024 FC 1149**

**Ottawa, Ontario, July 23, 2024**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**CARLOS CRISTOBAL CRUZ SALAZAR  
MARIA DEL SOL HURTADO ZUNIGA  
CRISTOBAL J R CRUZ HURTADO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Members of the Applicant family are citizens of Mexico who say there is no safe location for them to relocate within Mexico because they have been targeted by organized crime groups. They argue that the Refugee Appeal Division (RAD) Decision, that they can safely relocate in

Victoria de Durango, fails to recognize the ability and the motivation of organized criminal gangs to find individuals throughout Mexico. They also argue that the RAD relied upon a selective reading of the National Documentation Package (NDP) in finding that the Applicants do not have a profile that bring them to the attention of criminal gangs.

[2] For the reasons that follow, this judicial review is granted.

I. Background

[3] The principal Applicant, Carlos Cristobal Cruz Salazar, is a 45-year-old citizen of Mexico. The other Applicants are his wife and young son.

[4] After living in the United States for several years, the Applicants returned to Mexico in 2016. He lived in Xalapa and worked in the street trade business. In November 2016, he was approached by members of the Los Zetas Cartel and told ‘that if he wanted to keep selling, he would have to pay a fee equal to half of his daily sales’. The next day, he was approached again and was told that the fee increased because they were aware that he had recently returned from the United States and had money in savings. He was given 24 hours to pay 10,000 pesos. As a result, the Applicant left the street trade business.

[5] In January 2017, he opened a water purifying business. In April 2017, he received a call demanding that he pay 10,000 pesos weekly to keep running the business. Although he continued to receive calls, he did not answer the phone. The Applicant believes these calls were from the Cartel de Jalisco Nueva Generación (CJNG). Three days later, a gun was held to his

head and he was given 24 hours to pay 10,000 pesos and was then required to pay 10,000 pesos weekly. They threatened to burn down his business if he did not pay and he was told that he was being watched. The next day someone came to collect the money from the Applicant. The ongoing payments caused financial strain such that the Applicant had to let employees go and he lost customers.

[6] In January 2018, he was advised by the prosecutor's office that businesses in his area were victims of organized crime. He attempted to file a complaint with the police for extortion but was told to wait until the men came back again. The police patrolled the area for a month, but the men did not return.

[7] In March 2018, the Applicant's delivery truck was stolen and he was approached by four men on motorcycles with weapons. They took money from him and said his truck was being held as a guarantee that he would continue to make payments. He returned home to find his house had been broken into and his television and laptop were missing. When the Applicant decided he would not pay anymore money to the CJNG, he started getting phone calls demanding payment. The prosecutor's office told the Applicant that the truck theft was a common crime, and they could not be sure the CJNG was involved. The authorities offered no further assistance.

[8] The Applicant and his family fled to Canada in November 2019.

[9] The RAD agreed with the Refugee Protection Division that the determinative issue on their refugee claim was the existence of a viable internal flight alternative within Mexico.

II. Issue and standard of review

[10] The only issue is if the RAD finding that the principal Applicant has an internal flight alternative in Mexico is reasonable. The reasonableness of the RAD Decision is assessed by considering the whole decision and assessing if the decision is justified, transparent and intelligible and is justified in relation to the relevant factual and legal constraints that bear on it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

III. Analysis

A. *Identity of Agent of Persecution*

[11] The RAD accepted that the Applicants were credible and accepted that they were threatened while operating their water purification business. The issue for the RAD was that at the RPD hearing, the Applicants could not specifically identify their agent of persecution and, therefore, they could not establish that it was a drug cartel or which cartel targeted them.

[12] The Applicant concedes that he is not able to identify with certainty which criminal gang or cartel targeted him. However, he argues that not being able to name a specific agent of persecution is not a requirement to establish risk (*Diaz v Canada (Citizenship and Immigration)*, 2010 FC 797 at para 22 [*Diaz*]). Further, he notes that in NDP 7.8 information that both of the

potential cartels, Los Zetas and CJNG, are national in scope and have the ability and motivation to track and retaliate throughout Mexico.

[13] Regarding any ongoing interest in the Applicant, the RAD notes that the Applicant had not encountered the agents of persecution since April 2018. But, as the Applicant explains, that is a result of his family going into hiding at his mother-in-law's house. As noted by the Applicant, he continued to receive threatening phone calls until he changed his phone number.

[14] I am satisfied that the RAD had sufficient evidence to conclude that the Applicant was facing extortion and was being targeted by a cartel. The fact that the Applicant cannot name the cartel as either the CJNG or Los Zetas does not disqualify his claim from consideration. As noted in *Diaz*, the fact that the Applicants cannot identify their agent of persecution "does not negate the probability of risk the applicants alleged they faced" (*Diaz* at para 22). The RAD unreasonably failed to consider this factor when it concluded that the Applicants had not established the identity of their agent of harm.

B. *Profile*

[15] The Applicant argues that it was unreasonable for the RAD to conclude that they were low-profile and would, therefore, not be of interest to the criminal gangs. This conclusion fails to acknowledge the Applicants' evidence that they were targeted by criminal gangs in the past. Thus, the RAD's finding that the Applicants face the same risk: "all citizens of Mexico are at

risk of becoming victims of violence and crime anywhere in Mexico”. This finding is not borne out by the evidence of this case.

[16] In particular, the RAD found an absence of motivation from the agents of harm to specifically locate the Applicants in Victoria de Durango. The Applicant submits this is based upon a selective reading of the NDP 7.8 information. On the contrary, the NDP indicates that the IFA of Victoria de Durango, is one of the areas most affected by drug-related gang violence. It states:

... The country profile for Mexico on the Smartraveller website by the Australian Department of Foreign Affairs and Trade (DFAT) indicates that the areas "most affected" by drug-related and gang violence include:

- Northern border states – Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas
- Pacific states – Colima, Guerrero, Jalisco, Michoacán, Nayarit, and Sinaloa
- Central states – Guanajuato, Durango, San Luis Potosí, and Zacatecas
- State of Mexico and the State of Veracruz
- Major cities along Mexico's border with the US – Tijuana, Ciudad Juarez, Nuevo Laredo, Matamoros, Nogales, Piedras Negras and Reynosa. (Australia 27 July 2021) [Emphasis added].

[17] As further noted in the NDP, cartel members do not need to be in the physical location of a person to find them, noting the ability to track people through mobile phones as follows:

The *Guardian* article indicates that many regional and state forces are accused of collaborating with criminal groups and that according to a senior US Drug Enforcement Administration (DEA) official, "corrupt" Mexican officials have helped drug cartels acquire spyware "which can be used to hack mobile phones" (*The Guardian* 7 Dec. 2020).

...

The Professor stated that criminal groups use phone and cellphone companies (Professor 29 July2021). The Research Professor noted that if a criminal organization is "more sophisticated," "they may bribe people working in telephone companies in order to track phone calls or messages, whether SMS or social networks of relatives," in order to find "where targets may be hidden....

[18] I agree with the Applicants that the RAD finding of a lack of motivation of the gangs to locate the Applicants in Victoria de Durango was based upon a selective reading of the NDP 7.8 information. The evidence of the Applicant is that he had been targeted twice by cartels for extortion during his street trade business and water-purifying business. The Applicant also received multiple phone calls and had to go into hiding before escaping Mexico.

[19] In my view, it was unreasonable for the RAD to use the uncertainty of which cartel targeted the Applicants as a basis to conclude that no agent of harm could be identified and, therefore, there was no motivation to locate the Applicant. This conclusion fails to reconcile the country condition evidence against the Applicants' circumstances.

#### IV. Conclusion

[20] The judicial review is granted. There is no question for certification.

**JUDGMENT IN IMM-2760-23**

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

1. This judicial review is granted.
2. There is no question for certification.

"Ann Marie McDonald"

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**:** IMM-2760-23

**STYLE OF CAUSE:** CRUZ SALAZAR ET AL V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 5, 2024

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** JULY 23, 2024

**APPEARANCES:**

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