Federal Court  Cour fédérale

Date: 20240916

Docket: IMM-11166-23

Citation: 2024 FC 1448

Ottawa, Ontario, September 16, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

FRANCISCO LORENZANA VILLAFUERTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Francisco Lorenzana Villafuerte, seeks to set aside a decision dated August 9, 2023, by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board (Decision), upholding the April 18, 2023 decision of the Refugee Protection Division (RPD); the Applicant is not a convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and that the Applicant has a viable internal flight alternative (IFA)..

[2] The Applicant asks this Court to set the Decision aside and send the matter back to the RAD for redetermination by a different panel because the Decision is unreasonable.

[3] For the reasons that follow, this application is dismissed.

II. Background

[4] The Applicant is a citizen of Mexico. He claims that he cannot return to Mexico as he will be harmed or killed by La Familia Michoacana Cartel (Cartel) for failure to pay their extortion demands.

[5] The Applicant worked as a bus driver in Naucalpan for 22 years. The Applicant alleges that in May 2020, two armed men from the Cartel intercepted his vehicle and threatened to kill him if he did not comply with their weekly extortion demands. Over time, the weekly extortion demands rose from 350 pesos to 650 pesos. The Applicant fled Mexico and entered Canada on June 25, 2022. His wife and children relocated to his in-laws' residence, and then to his sister-in-law's in Tecamac in February 2023. He commenced his refugee claim on August 18, 2022.

[6] The RPD rejected the Applicant's claim on April 18, 2023, finding that he was not a Convention Refugee pursuant to section 96 of the *IRPA* and is not a person in need of protection pursuant to subsection 97(1) of the *IRPA*. In addition, the RPD found that the Applicant had a viable IFA in Merida.

[7] The RAD upheld the RPD's decision and affirmed the RPD's finding that a viable IFA existed in Merida, finding that both prongs of the IFA test were satisfied (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) [*Rasaratnam*]).

[8] The Applicant commenced his application for leave and judicial review of the Decision on September 5, 2023. This Court granted leave for judicial review on June 18, 2024.

III. Issues and Standard of Review

[9] The sole issue in this judicial review application is whether the Decision to find a viable IFA in Merida was reasonable.

[10] The standard of review applicable to a RAD evaluation of a refugee claimant's risk of persecution under section 97 of the *IRPA* is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 13, 16–17).

[11] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is judicial restraint and respect for the distinct role of administrative decision makers. Pursuant to the *Vavilov* framework, 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" (*Vavilov* at para 85). Courts should avoid undue interference with a decision-maker's discharge of its functions (*Vavilov* at paras 13, 34, 30, 100).

[12] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant, which renders the decision unreasonable (*Vavilov* at para 100).

IV. Position of the Parties

[13] With respect to the first prong of the IFA test, the RAD found that the Cartel had the means to locate the Applicant anywhere in Mexico but found that the motivation to pursue him was low.

[14] The Applicant asserted that the RAD failed to consider important factors and erred in its assessment of the prospective motivation of the Cartel to pursue the Applicant. The Applicant argued that motivation and means to locate are inextricably linked. Further, the Applicant argued that the Cartel was not pursuing his family because they did not have the means to pay the extortion.

[15] In addition, the Applicant pointed to the letter from his sister dated June 2, 2003, where she indicated that the owner of the bus company, the Applicant's former employer, wanted him to return to work because the Cartel required it . Accordingly, the Applicant argued that the Cartel knew he was no longer in Mexico.

[16] Finally, the Applicant argued that the RAD's conversion of Mexican pesos to Canadian dollars was designed to imply that the extortion demand was not enough money for the Cartel to locate the Applicant going forward.

[17] With respect to the second prong of the test, the Applicant argued that he cannot reasonably relocate to the IFA. As found by the RAD, the Cartel has a presence in Merida, therefore he would not feel safe. He submitted that the RAD disregarded evidence concerning the activities and reach of the Cartel in Merida.

[18] The Respondent argued that the RAD reasonably found the Applicant has a viable IFA in Merida. They submitted that the Applicant's arguments amount to nothing more than a disagreement with the conclusions of the RAD. The onus is on the Applicant to demonstrate that the IFA is not viable. The Respondent asserted that the Applicant has failed to provide sufficient evidence to establish that the IFA is unreasonable. Further, the Respondent argued that the Applicant had not pointed to any evidence that was not considered by the RAD or any way the Decision would have been different if the RAD had chosen a different standard of review.

V. Analysis

[19] The well established two-prong test for assessing an IFA pursuant to section 97 of the *IRPA* was set out by the Federal Court of Appeal in *Rasaratnam*.

[20] The first prong of the test looks at whether a claimant—in the proposed IFA—faces a serious possibility of persecution, under section 96 of the *IRPA*, or a risk of harm, under subsection 97(1) of the *IRPA*. At this stage of the analysis, the agent of persecution's means and motivation to locate the claimant in the IFA are considered (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21).

[21] The second prong of the test requires the claimant to prove that they could not reasonably seek refuge in the IFA location when considering their particular circumstances (*Bhuiyan v Canada (Citizenship and Immigration)*, 2024 FC 351 at paras 6–7).

[22] To establish that an IFA is not reasonable, an applicant must persuade the RAD that at least one prong of the test is not made out (*AB v Canada (Citizenship and Immigration)*, 2021 FC

90 [*AB*] at para 39, citing *Aigbe v Canada (Citizenship and Immigration)*, 2020 FC 895 at para 9). Applicants are required to meet a very high threshold. In other words, they need evidence of "the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a save area. In addition, it requires actual and concrete evidence of such conditions" (*AB* at para 40, citing *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 15).

[23] The onus is on applicants to ensure that there is sufficient evidence before the RAD to assess refugee claims (*Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at para 57). Officers are not required to further investigate or provide an opportunity for applicants to clarify their application or provide additional information to supplement their application (*Ohuaregbe v Canada (Citizenship and Immigration)*, 2023 FC 480 at paras 31–33).

[24] This Court has held that it is reasonable for an officer to consider that a claimant's family member(s) have not been contacted by the agent of persecution (*Kanu v Canada (Citizenship and Immigration)*, 2022 FC 674 at paras 23–28; *Rendon Segovia v Canada (Citizenship and Immigration)*, 2023 FC 868 at paras 23–24; and *Peña Gutiérrez v Canada (Citizenship and Immigration)*, 2024 FC 1025 at para 32). While evidence of past persecution may support one's claim to a forward-facing risk, it will not necessarily do so (*Fernandopulle v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91 at para 25; *Zuniga v Canada (Citizenship and Immigration)*, 2018 FC 634 at paras 34, 37).

[25] The Applicant has argued that the means and motivation to persecute an individual are inextricably linked. However, this Court has found that there is a distinction to be made between the two concepts:

> It is important to note that there is a difference between a persecutor's *ability* to pursue an individual throughout a country and his *desire* to do so or *interest* in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that that there is no serious possibility of persecution.
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> *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13 [emphasis in original].

[26] It was appropriate for the RAD to consider these two distinct concepts in their application of the first prong of the IFA test. The RAD noted that the evidence in the National Documentation Package (NDP) for Mexico supports the finding that the Cartel has the "means and capacity" to locate the Applicant throughout Mexico.

[27] However, the RAD also noted that the evidence supported their finding that the Cartel's actions in this case were localized to Naucalpan. There was no evidence that the Cartel had approached the Applicant's wife, children, or other family members for payment or had threatened them with violence due to his non-payment. Further, the RAD also noted that "the objective evidence in the NDP indicates that cartels do not deploy their resources to track just anyone."

[28] A reasonableness standard requires courts on judicial review to show deference to the decision-maker. This is necessary so as to respect the "legislature's choice to give a specialized tribunal the responsibility for administering statutory provisions, and the expertise of the tribunal in so doing" (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 14, citing *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 33; *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 48–49).

[29] The RAD's conclusions demand a high degree of judicial deference upon judicial review, considering their role conferred to them by the legislature (*Lawani* at para 15; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 89; *Lawal v Canada (Citizenship and Immigration)*, 2015 FC 155 at para 9).

[30] In my opinion, the RAD's findings with respect to the Cartel's motive to pursue the Applicant going forward are entitled to some deference by this Court. Particularly in the absence of evidence to show that the Cartel has a continuing interest in the Applicant outside of Naucalpan.

[31] It is clear that the RAD considered the additional evidence from the Applicant concerning an encounter the Applicant's sister had with the owner of the bus company in 2023. However, the RAD was not persuaded this was evidence that the Cartel would have the motivation to pursue the Applicant going forward if he relocated to the IFA in Merida. In view of the totality of the evidence considered by the RAD, their Decision is reasonable.

[32] The Applicant also suggested that the RAD converted the amount of the extortion demands from Mexican pesos to Canadian dollars in an effort to illustrate that the amount of money was insufficient to motivate the Cartel to continue to pursue the Applicant. I respectfully disagree.

[33] A review of the RAD's reasons indicate that the amount of the extortion, coupled with other factors highlighted in the NDP concerning where cartels typically devote resources to pursue individuals, supported their conclusion that the Cartel is not likely to continue to pursue the Applicant should he relocate to the IFA. In other words, the conclusion that the Applicant

would not be pursued going forward in the IFA was based on more than just the monetary amount of the extortion.

[34] The Applicant further argued that it is not reasonable for him to relocate to the IFA because the NDP evidence demonstrates the Cartel's reach extends across Mexico and is therefore not safe.

[35] The RAD found that the "[Applicant] has not established that he and his family would need to exercise anything more than normal prudence in Merida." The RAD considered the Applicant's level of education, skill set, and the general conditions in Merida. The RAD Decision notes that "[the Member] also considered the objective evidence in the NDP regarding whether Merida is objectively safe for the [Applicant]. According to the objective evidence, Merida has a low homicide and a low rate of extortion… I therefore find that, objectively, Merida is not unsafe for the [Applicant]." It is clear that the RAD considered not only the potential reach of the Cartel, but also the general conditions in Merida and the Applicant's circumstances.

[36] In conclusion, the RAD considered all the evidence and the Decision falls within the acceptable range of possible outcomes. The RAD applied the proper legal tests and considerations in its analysis. The RAD reasonably concluded that there was a viable IFA in Merida available to the Applicant.

[37] I agree with the Respondents that the Applicant is inviting this Court to prefer his conclusions to those of the RAD. This is not the proper role of a reviewing court (*Fatoye v Canada (Citizenship and Immigration),* 2020 FC 456 at para 42).

VI. Conclusion

[38] In light of the foregoing, this application for judicial review is dismissed.

[39] While the Applicant does not agree with the RAD's assessment concerning the viability of the IFA, a holistic review of the Decision, coupled with the record, illustrates that the RAD conducted a complete and detailed assessment of the evidence and the conclusions reached are reasonable. In other words, the Decision is justified, transparent, and intelligible, and there is no reviewable error to justify the Court's intervention.

[40] The parties did not pose any questions for certification, and I agree that there are none.

JUDGMENT in IMM-11166-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11166-23
STYLE OF CAUSE:	FRANCISCO LORENZANA VILLAFUERTE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 4, 2024
JUDGMENT AND REASONS:	BLACKHAWK J.
DATED:	SEPTEMBER 16, 2024

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