

Federal Court



Cour fédérale

Date: 20250110

Docket: IMM-7965-23

Citation: 2025 FC 7

Toronto, Ontario, January 10, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

**KAREN TORRES JIMENEZ
JOSE MIGUEL RODRIGUEZ TORRES
JESUS ALBERTO RODRIQUEZ JIMENEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants seek judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. In that decision, the RAD confirmed the Refugee Protection Division's [RPD] determination that the Applicants are not Convention refugees pursuant to section 96 of the *Immigration and Refugee Protection Act* [IRPA] or

persons in need of protection pursuant to subsections 97 (1)(a) or (b) of the IRPA, due to the availability of an internal flight alternative [IFA].

[2] For the reasons that follow, I will dismiss this application for judicial review. The RAD reasonably concluded that the Applicants have a viable internal flight alternative in Tlaxcala, Mexico. While the decision under review is not perfect, I have concluded that it contains no overriding errors warranting judicial intervention.

II. BACKGROUND

A. *Facts*

[3] The Applicants are citizens of Mexico. In these reasons, I will refer to Karen Torres Jimenez as the Principal Applicant [PA]. I will refer to her spouse, Jesus Alberto Rodriguez Jimenez as the Associate Applicant [AA]; and their son, Jose Miguel Rodriguez Torres, as the Minor Applicant [MA].

[4] The Applicants allege a personalized risk of torture, risk to life, or risk of cruel and unusual punishment in Mexico, stemming from a series of incidents by unknown assailants between June 2021 and February 2022. The incidents in question began on June 1, 2021, when an unidentified man robbed the PA at knifepoint in the Applicants' hometown of Huimanguillo, after she had withdrawn money from the town's only ATM. The PA reported the crime to the police, but they took no action. Then, in August 2021, an unidentified assailant again robbed the PA at knifepoint after she had visited the same ATM. This assailant knew the PA's identity and threatened her by name.

[5] In September 2021, strangers began surveilling the Applicants at home. Individuals on motorcycles would lurk outside the Applicants' home for hours, or people would come to their door asking suspicious questions, and attempt to gain access to the house or the family.

[6] In early October 2021, the Applicants returned home from the PA's parents' house to find that their house had been broken into and trashed, and that they had been robbed. The PA found a note on their kitchen table, which stated, "Deliver 300,000 pesos for your security and for us to leave you alone." Later in the month, a group of men on motorcycles pursued the AA home from work and attempted to follow the AA into his driveway or garage. As a result, in November 2021 the Applicants moved into the PA's parents' house.

[7] In February 2022, an unknown couple attempted to abduct the MA from his kindergarten class, by posing as the PA's sister and her husband. Then, in the same month, the PA narrowly escaped after being followed to the home of her parents-in-law, after picking up the MA at school. Due to these incidents, the Applicants decided to flee Mexico and come to Canada.

[8] The Applicants arrived on visitor visas in April 2022, and submitted claims for protection in May 2022.

[9] The RPD determined that the Applicants were not persons in need of protection. The determinative issue was the availability of an IFA. The RPD found that the Applicants are victims of criminality and could thus continue to be of interest to the perpetrators in their home area. However, it found insufficient evidence to establish that the agents of harm are a cartel. Therefore, the RPD ultimately concluded that there was no serious possibility that the Applicants

would be pursued to the IFA locations of Merida, Campeche, or Tlaxcala. It also found that it would not be objectively unreasonable for the Applicants to relocate to any of these locations.

[10] The Applicants appealed to the RAD.

B. *Decision under Review*

[11] The RAD dismissed the Applicants' appeal and confirmed the RPD's conclusion that they were not persons in need of protection, pursuant to s.97 of the IRPA. The determinative issue was again the availability of an IFA. The RAD found that the Applicants had a viable IFA in Tlaxcala, as the agents of harm would have neither the means nor the motivation to locate them there.

[12] In coming to this conclusion, the RAD agreed with the RPD that there was insufficient evidence to establish that the Applicants had been targeted by a large cartel. It found, based on the incidents in questions, that the agents of harm "may" be members of a different form of organized criminal group. However, the RAD went on to determine that the evidence does not establish that the agents of harm have the means and motivation to locate the Applicants in Tlaxcala.

[13] On motivation, the RAD noted that the agents of harm have not sought the family at their relatives' homes, despite those homes being very close to the Applicants' home and despite having been followed there in the past. The RAD therefore found that there has been no indication in over a year that the agents of harm are searching for the family anywhere in

Huimanguillo, and so found it unlikely that they would search for the Applicants in Tlaxcala, which is over 500 kilometers away.

[14] As to means, the RAD found that because the Applicants were unable to identify their assailants, there was insufficient evidence to establish that the agents of harm have the means to locate them in Tlaxcala.

[15] Finally, the RAD found that it would not be objectively unreasonable for the Applicants to relocate to Tlaxcala.

III. ISSUES

[16] The only issue raised in this matter is whether the RAD reasonably confirmed the RPD determination that the Applicants have a viable IFA in Tlaxcala.

[17] Specifically, the Applicants submit that the RAD erred by failing to make a clear finding as to whether they were targeted by a criminal organization, and failed to make any finding as to whether their particular profile would result in an ongoing risk to their lives in the IFA location. Absent such a finding, the Applicants argue that the RAD could not arrive at a reasonable decision on either the motivation, or the means of the agents of harm to pursue them in areas beyond their hometown.

IV. LEGAL FRAMEWORK

[18] Refugee protection is a surrogate, or backup, form of protection for individuals who cannot obtain it within their country of nationality. Consequently, those seeking refugee protection must be found to face an identified risk in every part of their country of origin. The possibility of a safe and viable internal flight alternative will therefore negate a claim for refugee protection, regardless of the merits of other aspects of the claim: *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799.

[19] The two-prong test to determine the existence of a viable IFA is well established: *Rasaratnam v Canada (Minister of Employment and Immigration)* (C.A.), 1991 CanLII 13517 (FCA), [1992] 1 FC 706 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (C.A.), 1993 CanLII 3011 (FCA), [1994] 1 FC 589. In order for a proposed IFA to be considered viable, two criteria must be met: 1) There must be no serious possibility of the claimant being persecuted, or subject to a personalized risk of torture, risk to life, or risk of cruel and unusual punishment in the part of the country where the IFA exists; and 2) It must not be unreasonable for the claimant to seek refuge in the IFA, considering all of their particular circumstances.

[20] A serious possibility of persecution, or (as is relevant to this case) a risk of torture, risk to life, or risk or cruel and unusual punishment can only be found if it is demonstrated that the agents of persecution have the means and motivation to search for an applicant in the suggested IFA: *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46, citing *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43.

[21] In addition, in all the circumstances, including the Applicant's particular circumstances, the conditions in the proposed IFA must be such that it is not unreasonable for the Applicant to seek refuge there: see *Ranganathan v Canada (Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) at para 15.

[22] The refugee claimant bears the onus of demonstrating that the IFA is unreasonable: *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21.

V. STANDARD OF REVIEW

[23] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. In conducting a reasonableness review, a court “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

VI. ANALYSIS

[24] The Applicants make essentially two arguments on judicial review, which they refined in their oral argument. First, they argue that the RAD overlooked important evidence regarding their profile and the identity of the agents of persecution. This was important, they argue, because the documentary evidence establishes that organized crime groups may be both motivated and able to target individuals with certain profiles throughout Mexico. This being the

case, the Applicants argue that the RAD could not reasonably reject their case without first assessing if they possessed the kind of profile that could attract targeting in the proposed IFA location, which the tribunal failed to do.

[25] Second, the Applicants argue that the RAD's brief reasons for finding that the agents of harm do not have the means to locate them in the IFA location was not sufficiently grounded in the evidence, and lacked justification, transparency, and intelligibility.

[26] While I agree that the RAD's reasons could have been clearer in some respects, for the reasons that follow, I do not accept either of the above arguments.

A. *The Motivation of the Agents of Harm*

[27] As noted above, the Applicants' submissions on the question of motivation are essentially twofold: first that the RAD's findings on the identity of the agents of harm were not intelligible; and second, that the RAD did not adequately consider their profile in assessing the viability of the IFA.

[28] On the first point, the Applicants submit that the RAD did not come to a clear finding on the identity of those who had targeted them, which was an important aspect of the appeal. The RAD stated:

I have also considered whether the evidence demonstrates that the agents of harm are an organized crime group. I have considered that the Principal Appellant was robbed on two occasions, the Appellants were followed, their home was robbed, an extortion note was left, and someone tried to abduct the Minor Appellant. While I acknowledge that these events may suggest that the agents of harm are members of a criminal group, as outlined below, I find

that the evidence does not establish on a balance of probabilities that they have the motivation and means to locate the Appellants in Tlaxcala.

[29] The Applicants submit that either the RAD accepted that the Applicants were targeted by an organized crime group - in which case it erred in assessing the group's motivation and means - or it simply did not make an intelligible finding on the identity of the agents of harm. Either way, the Applicants' maintain that the RAD "overlooked important evidence regarding the Applicants' profile and the identity of the agents of persecution." I respectfully disagree.

[30] Read in context, I find that the RAD's reasoning on this issue was sufficiently transparent, justified, and intelligible. Taking a step backward, the RPD correctly noted that the Applicants do not know the identity or group affiliation of the agents of harm. This being the case, it was not an error for the RAD to confirm the RPD's finding that the Applicants simply did not establish that the agents of harm were one of the region's large cartels. Given the nature of the allegations, however, the RAD drew the common-sense inference that the Applicants may have been targeted by a local organized crime group. I see no error in this approach, and in oral argument, the Applicants did not press the point.

[31] Having accepted the possibility that the agents of harm were part of an organized crime group, the RAD went on to consider whether such a group would have the motivation or means to locate the Applicants in the IFA location. In doing so, the Applicants argue that the RAD erred in failing to assess their profile, before concluding that the agents of harm would not be motivated to find them in Tlaxcala.

[32] The documentary evidence before the RAD indicated that crime groups would only be motivated to track down targets in other locations in particular circumstances. One report indicated that this could arise where the group in question has a “very strong motivation to find and retaliate against a certain person.” This would be particularly clear “if the criminal group were one of the more powerful groups in Mexico....” The evidence further established that “a large debt or a personal vendetta could motivate a gang to track someone outside their area....”

[33] The crux of the Applicants’ argument is that the RAD’s decision was unreasonable because it failed to assess whether their profile was consistent with those cited in the documentary evidence as giving rise to the likelihood that they could be pursued in the IFA location.

[34] I respectfully disagree. As noted above, the Applicants have been clear, and admirably candid, that they simply do not know who targeted them, or why they were targeted, aside from the perception that they have money. They have never alleged that they are indebted to a criminal gang, that there is a vendetta against them for any reason, or that they were pursued out of revenge. Indeed, in their testimony, the Applicants could really only speculate that they had been targeted because of their perceived wealth and their work. As a result of the above, I do not view the RAD’s failure to specifically describe the Applicants’ profile as being fatal to its analysis. This is because there was simply no connection between their profile and the scenarios referred to in the evidence that could motivate a criminal group to search for individuals across Mexico. While it clearly would have been preferable for the RAD to have assessed the IFA location with direct and explicit reference to the Applicants’ profiles, its failure to do so in this case is not a reviewable error.

[35] It is trite law that decision-makers are presumed to have considered all of the evidence before them, and that they are only required to refer to evidence that contradicts their conclusions: *Aguilar Ruiz v Canada (Citizenship and Immigration)*, 2023 FC 1576 at para 40, citing *Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24. Given that the Applicants did not adduce evidence related to their profile that contradicted the RAD's conclusions, the tribunal did not err in failing to specifically assess this (absence of) evidence.

[36] Moreover, as this Court has held, "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.

[37] Further, the RAD's conclusion that the agents of harm likely lacked a motivation to find the Applicants was based, at least in part, on the fact that these individuals had not contacted the Applicants' family in their hometown of Huimanguillo since their departure.

[38] While the reasonableness of such findings will always turn on the particular facts of each case, this Court has often (and recently) upheld this indicator of ongoing motivation: *Eyeoyibo v Canada (Citizenship and Immigration)*, 2024 FC 1008 at para 24, *Lorenzana Villafuerte v Canada (Citizenship and Immigration)*, 2024 FC 1448 at para 24. In this case, I find the RAD did not err in referring to this concern. The Applicants had moved in with their parents in November 2021. The agents of harm had also followed the PA to the home of her parents-in-law.

In these circumstances, it was not unreasonable for the RAD to draw inferences from the lack of any contact between the agents of harm and the Applicants' remaining family in Huimanguillo.

[39] The Applicants also suggest that the RAD was overly reliant on a 15-year-old Federal Court decision, and correspondingly, was too dismissive of more recent documentary evidence on the reach of criminal organizations in Mexico. Again, I respectfully disagree with this assertion. The case in question is *Morales Esquivel v Canada (Citizenship and Immigration)* 2009 FC 468 [*Morales Esquivel*]. In that decision, Justice Lagacé found (at para 17):

The Board also noted that the applicants were unable to identify their aggressors; therefore, it was not unreasonable for the Board to find that the applicants had failed to establish who was targeting them and that they were at risk throughout their country. Indeed, if the applicants did not know the identity of their aggressors' gang, how could they claim that an unknown gang would target them throughout the whole country?

[40] I see no error in the RAD's reference to this decision, the facts of which are indeed similar to those that arise in this case. Irrespective of the documentary evidence on gangs in Mexico, the truly unfortunate situation for the Applicants is that they have very little idea who targeted them and, as such, whether these individuals would have any motivation to find them elsewhere in Mexico. To this extent, it was reasonable for the RAD to rely on this Court's decision in *Morales Esquivel*. Moreover, the above passage from *Morales Esquivel* finds other jurisprudential support in more recent decisions of this Court. For instance, in *Haider v Canada (Citizenship and Immigration)*, 2022 FC 1775 my colleague Justice Grammond found as follows (at para 6):

The applicants argue that it was unreasonable for the RAD to focus on the fact that the identity of those who murdered the brother is unknown. Based on *Diaz v Canada (Citizenship and Immigration)*, 2010 FC 797 at paragraph 22, they say that one may be a refugee even if the identity of the agent of persecution is unknown. This may be true in theory, but it is difficult to assess an agent of persecution's motivation and means if we have no idea of who they are. By noting this issue, the RAD did not ignore the evidence nor engage in illogical reasoning.

[41] I would also note here that the RAD did not summarily dismiss the Applicants' appeal on the mere basis that their assailants were unknown. Rather, it considered the evidence and came to the conclusion that, in the absence of clear evidence as to the identity of the agents of harm, the Applicants were simply unable to establish, on a balance of probabilities, that they would be targeted in the IFA location. I see no reviewable error in this conclusion.

B. *The Means of the Agents of Harm*

[42] The RAD also found that the Applicants had failed to establish that the agents of harm had the means to find them in the IFA location of Tlaxcala. The reasons provided in support of this finding were quite brief. Nevertheless, the Applicants had to establish that their assailants possessed *both* the motivation and the means to target them in the IFA locations. Therefore, the brevity of the RAD's analysis of this issue does not, on its own, render the decision unreasonable. Given that I have found that the RAD's analysis on motivation was reasonable, it follows that this issue cannot, on its own, lead to a reviewable error in the RAD's outcome.

VII. CONCLUSIONS

[43] This application for judicial review is dismissed. The RAD reasonably found that, while the Applicants may have been the victims of an organized crime group in Huimanguillo, there was simply insufficient evidence to indicate that the agents of harm would have the motivation or the means to pursue the Applicants in the proposed IFA location.

[44] I would conclude by noting that the Applicants have been found to be credible witnesses throughout their refugee claim process. I recognize that they have endured hardship, and that they fear returning to Mexico. Nevertheless, the RAD's conclusions on the risk the Applicants face in the IFA location were consistent with the documentary evidence, and were sufficiently transparent, intelligible, and justified. There are no errors warranting judicial intervention.

[45] The parties did not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-7965-23

THIS COURT'S JUDGMENT is that:

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

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7965-23

STYLE OF CAUSE: KAREN TORRES JIMENEZ, JOSE MIGUEL
RODRIGUEZ TORRES AND JESUS ALBERTO
RODRIQUEZ JIMENEZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 11, 2024

JUDGMENT AND REASONS: GRANT J.

DATED: JANUARY 10, 2025

APPEARANCES:

Gavin Maclean FOR THE APPLICANTS

Zofia Rowgovska FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gavin MacLean Immigration FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario