Federal Court



#### Cour fédérale

Date: 20250124

**Docket: IMM-1733-24** 

**Citation: 2025 FC 151** 

Toronto, Ontario, January 24, 2025

**PRESENT:** The Honourable Justice Battista

**BETWEEN:** 

# LUIS ENRIQUE RUBIO GUILLEN ELIZABETH STEPHANIA RUBIO MORALES EMILY XIMENA RUBIO RUBIO ANDRES EMILIANO RUBIO RUBIO

**Applicants** 

and

### THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

## JUDGMENT AND REASONS (Delivered orally from the Bench on January 23, 2025. Edited for grammar, syntax, and citations.)

[1] The Applicants seek judicial review of a decision made by the Refugee Appeal Division (RAD) dismissing the appeal of the negative decision made on their refugee claims. The claims were rejected on the basis that the Applicants had an Internal Flight Alternative (IFA) in Merida, Mexico. While there are two components in the IFA test, the Applicants challenge only the determination that they do not have a well-founded fear of persecution in Merida.

- [2] The IFA determination was based on the finding that the Jalisco New Generation Cartel (CJNG), the Applicants' feared agent of persecution, was not motivated to find them in Merida. The RAD found that the Refugee Protection Division (RPD) was correct to infer CJNG's lack of motivation due to the absence of continued contact with the Applicants' family members in Mexico.
- [3] First, the Applicants challenge the RAD's reliance on factually distinguishable jurisprudence. Second, the Applicants state that the RAD breached natural justice by not dealing with their submission that they were at risk due to their profiles.
- [4] The RAD relied upon Federal Court decisions for the principle that "where there is no evidence of efforts made by an agent of harm to locate a claimant or contact their family, it is reasonable to infer that they do not have an ongoing interest and are not motivated to pursue the claimants in a proposed IFA."
- [5] The RAD reasonably relied upon this principle from this Court's jurisprudence and evaluated the salient evidence to determine that the CJNG lacked motivation to pursue the Applicants since their departure from Mexico (*Canada (Minister of Citizenship and Immigration*) v Vavilov, 2019 SCC 65 [Vavilov] at para 99). The RAD did not merely rely upon the factual similarity between the cited cases and the Applicants' circumstances.
- [6] Second, while it is true that the RAD did not deal with the Applicants' profiles as a basis for fearing the CJNG, this issue relates to the reasonableness of the decision rather than the standards of procedural fairness because it is an issue of responsiveness (*Vavilov* at paras 127–128).

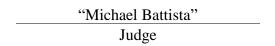
- [7] For the RAD, the lack of evidence of the CJNG's motivation since the Applicants' departure from Mexico was determinative; this was regardless of the Applicants' profile that they suggested as a motivating factor for the CJNG. It is reasonable for the RAD to have not dealt with this issue given its finding that the CJNG was not motivated to locate the Applicants in the proposed IFA.
- [8] For these reasons, the RAD's decision is reasonable and does not raise an issue of procedural fairness.

#### **JUDGMENT in IMM-1733-24**

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

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#### **FEDERAL COURT**

#### **SOLICITORS OF RECORD**

**DOCKET:** IMM-1733-24

STYLE OF CAUSE: RUBIO GUILLEN ET AL.

v THE MINISTER OF CITIZENSHIP AND

**IMMIGRATION** 

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 23, 2025

**JUDGMENT AND REASONS:** BATTISTA J.

**DATED:** JANUARY 24, 2025

**APPEARANCES**:

Jeffrey L. Goldman FOR THE APPLICANTS

Asha Gafar FOR THE RESPONDENT

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