Federal Court Cour fédérale

Date: 20250127

Docket: IMM-10770-23

Citation: 2025 FC 164

Ottawa, Ontario, January 27, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JUAN MANUEL TREJO MARIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of Mexico reports that he fears persecution in that country at the hands of the Cartel Jalisco Nueva Generacion [CJNG]. The Refugee Protection Division [RPD] rejected the claim finding the Applicant to be neither a Convention refugee nor a person in need of protection because he has a viable internal flight alternative [IFA] in Culiacan.

[2] In a decision dated July 31, 2023, the Refugee Appeal Division [RAD] dismissed the Applicant's appeal and confirmed the decision of the RPD. The RAD rejected certain new evidence the Applicant sought to place before it and found the availability of an IFA to be determinative.

[3] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the RAD decision.

[4] I am satisfied that the RAD reasonably concluded that the new evidence in issue was not admissible and that an oral hearing was not required. The Applicant has not demonstrated that the RAD's IFA analysis or the conclusions it reached are unreasonable. For the reasons outlined below, the Application is dismissed.

II. Background

[5] The Applicant worked in his family business with his siblings in Hidalgo, Michoacan. He reports the business was subject to extortion by cartels in Mexico, including the CJNG. The extortion demands caused the family business to close and the Applicant's brother, who confronted the cartel, was kidnapped. The kidnapping was reported to authorities, but no action was taken. The business was re-opened and the CJNG renewed the demand for payments, which could not be made. The business again closed, and the siblings moved to new locations. Cartel communications then ceased. The Applicant left Mexico in April 2022 to come to Canada, where he initiated his claim for protection.

[6] The RPD found that the Applicant's narrative was credible but that the claim failed because the Applicant has an IFA in Culiacan. The RPD found that there was insufficient evidence of any ongoing interest in the Applicant that would motivate the cartel to look for him in the IFA, particularly because the Applicant had conceded in his basis of claim narrative, and in testimony before the RPD, that nobody was actively looking for him.

III. Decision under review

A. *New Evidence*

[7] Before the RAD the Applicant sought to admit new evidence.

[8] The RAD first addressed the new evidence that was put forward upon perfection of the appeal. This evidence consisted of nine media articles describing country conditions in Mexico. The articles postdated the RPD decision. The RAD concluded that this evidence satisfied subsection 110(4) of the IRPA and the requirements of newness, relevance, and credibility. The RAD admitted this first tranche of new evidence.

[9] Following perfection of the appeal, the Applicant sought to admit additional new evidence pursuant to Rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257 [RAD Rules]. This tranche of evidence consisted of four documents: an Affidavit sworn by the Applicant, a letter from the Applicant's daughter, the daughter's Basis of Claim form, and the Applicant's submissions to the RAD seeking admission of the new evidence. The RAD rejected this evidence finding it was non-complaint with Rule 29; the evidence could, with reasonable effort, have been advanced as part of the appeal record. The RAD further found that even if it

were inclined to admit the evidence under Rule 29, it would nonetheless have excluded it on the grounds that it was not credible.

[10] Having not admitted any new evidence raising a serious issue with respect to the Applicant's credibility, the RAD declined to hold an oral hearing. The RAD preceded to conduct an IFA analysis presuming the risk allegations as advanced before the RPD were true.

[11] The RAD considered the proposed IFA of Culiacan, setting out the two prong IFA test, and detailing the RPD's reasons for concluding Culiacan satisfied the first prong of the test. The RAD states that it reviewed the entirety of the evidence before engaging in a consideration of the alleged errors in the RPD analysis.

[12] The RAD accepted that the CJNG has the means to find and harm anyone it might wish to in Mexico, but noted the key question under the first prong of the IFA test is motivation. The RAD found there is no solid and credible evidence pointing to an ongoing motivation to locate the Applicant – the Applicant was not contacted by the cartel after closing his business and moving, and there was no credible evidence that any family member had been contacted or harmed by the cartel; a circumstance that would indicate ongoing efforts to locate the Applicant.

[13] The RAD accepted that in an environment where cartel violence occurs with impunity, motivation need not be significant to create a risk under the first prong of the IFA test, but noted the absence of any objective evidence indicating the CJNG tracks individuals solely for the purpose of continuing local–level extortion efforts. The RAD found the absence of *modus operandi* evidence was meaningful where there was no other evidence of motivation. The RAD

also dismissed the suggestion that the RPD's motivation findings amounted to improper plausibility findings and that a neighbour's letter referring to suspicious people outside the Applicant's former home was too vague to support the conclusion that the Applicant is being monitored or that those individuals had anything to do with the agent of persecution. The RAD also concluded the Applicant's fear that an investigation might be undertaken into his background within the IFA lacked a foundation in the objective evidence and was speculative. The RAD concluded the first prong of the IFA test was therefore satisfied.

[14] Turning to the second prong of the test, the RAD acknowledged crime rates in Culiacan and the existence of a Government of Canada travel advisory against all non-essential travel to the area. The RAD accepted the evidence demonstrates Culiacan struggles with a serious crime problem but noted the city, its citizens, and its institutions function. The RAD found there to be an absence of evidence indicating the Applicant would be systematically denied the ability to find suitable work, housing, or that he would be prevented from participating in society or exercising his democratic rights. The RAD concluded it would not be unreasonable in all the circumstances for the Applicant to seek refuge in the proposed IFA.

IV. Issues and standard of review

[15] The Applicant raises the following issues:

A. Did the RAD breach procedural fairness by not admitting the new evidence and making various negative credibility findings without notice to the Applicant and without holding an oral hearing?

B. Did the RAD err in its IFA analysis by:

i. Unreasonably concluding there to be insufficient evidence that the CJNG is motivated to pursue the Applicant in Culiacan?

ii. Unreasonably concluding that Culiacan is a reasonable IFA in all of the circumstances?

[16] In submitting the RAD erred in failing to admit new evidence, the Applicant advances a series of arguments, none of which raise an issue of procedural fairness. Instead, the Applicant argues the RAD's treatment of the evidence was unreasonable and makes various submissions in advancing this position.

[17] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] teaches that the RAD's treatment of the new evidence, the RAD's overall assessment of the evidence, and its IFA conclusions are to be reviewed on the presumptive standard of reasonableness (at para 10). Reasonableness review is robust, but the starting point is judicial restraint and respect for the distinct role of administrative decision makers.

[18] To succeed on a reasonableness review, the party challenging the decision must satisfy the Court that the decision's shortcomings cause it to lack the requisite degree of justification, intelligibility and transparency in relation to the relevant factual and legal constraints. A decision maker need not address every possible issue that might arise on the record, but a failure to address central issues and concerns raised may undermine the reasonableness of a decision. Any alleged flaws or shortcomings must be more than merely superficial or peripheral missteps;

instead, a reviewing court must be satisfied the flaws relied on by the challenging party are sufficient to render the decision unreasonable (*Vavilov* at paras 99-100 and 127-128).

V. Analysis

A. *The RAD did not act unreasonably in concluding the new evidence would not be admitted*

[19] Rule 29 of the RAD Rules states:

29 (1) A person who is the subject of an appeal who does not provide a document or written submissions with the appellant's record, respondent's record or reply record must not use the document or provide the written submissions in the appeal unless allowed to do so by the Division.	**29 (1)** La personne en cause qui ne transmet pas un document ou des observations écrites avec le dossier de l'appelant, le dossier de l'intimé ou le dossier de réplique ne peut utiliser ce document ou transmettre ces observations écrites dans l'appel à moins d'une autorisation de la Section.
(2) If a person who is the subject of an appeal wants to use a document or provide written submissions that were not previously provided, the person must make an application to the Division in accordance with rule 37.	**(2)** Si la personne en cause veut utiliser un document ou transmettre des observations écrites qui n'ont pas été transmis au préalable, elle en fait la demande à la Section conformément à la règle 37.
(3) The person who is the subject of the appeal must include in an application to use a document that was not previously provided an explanation of how the document meets the requirements of subsection 110(4) of the Act and how that evidence relates to the person, unless the document	**(3)** La personne en cause inclut dans la demande pour utiliser un document qui n'avait pas été transmis au préalable une explication des raisons pour lesquelles le document est conforme aux exigences du paragraphe 110(4) de la Loi et des raisons pour lesquelles cette preuve est liée à la personne,

is being presented in response to evidence presented by the Minister.	à moins que le document ne soit présenté en réponse à un élément de preuve présenté par le ministre.
(4) In deciding whether to allow an application, the Division must consider any relevant factors, including	**(4)** Pour décider si elle accueille ou non la demande, la Section prend en considération tout élément pertinent, notamment :
(a) the document's relevance and probative value;	**a)** la pertinence et la valeur probante du document;
(b) any new evidence the document brings to the appeal; and	**b)** toute nouvelle preuve que le document apporte à l'appel;
(c) whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record.	**c)** la possibilité qu'aurait eue la personne en cause, en faisant des efforts raisonnables, de transmettre le document ou les observations écrites avec le dossier de l'appelant, le dossier de l'intimé ou le dossier de réplique.

[20] Subsection 110(4) of the IRPA provides that new evidence may be admitted before the RAD where (1) it arose after the rejection of the claim, (2) was not reasonably available, or (3) the evidence could not reasonably have been expected to have been presented at the time of the rejection. Where the RAD is satisfied the requirements of subsection 110(4) have been met the RAD must then consider whether the evidence is credible, relevant and material before admitting it (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 13–15; *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paras 38–49 [*Singh*]).

[21] The Applicant argues that in assessing the new evidence and its credibility prior to its admission, the RAD's decision is unintelligible. The new evidence was tied directly to the issue of motivation under the first prong of the IFA test and relates to a specific incident reported by the Applicant's daughter. The RAD erred by focussing on the Applicant's explanation for not producing the evidence at an earlier stage but failed to engage with the evidence itself.

[22] I disagree. The RAD clearly articulates that the new evidence was not admitted because the Applicant had not reasonably explained why the evidence had not been presented before the RPD. In coming to this conclusion the RAD notes, the Applicant:

A. was clearly aware that his daughter had reportedly been contacted by the CJNG seeking information about the Applicant's whereabouts;

B. withheld this information from his lawyer, and reported that nobody was actively looking for him in his written narrative;

C. testified before the RPD that:

    i. his written narrative was complete and true; and

    ii. again testified nobody was actively looking for him;

D. readily shared numerous details regarding family members in his narrative and testimony, undermining the explanation that the CJNG threat communicated to his daughter was not his information to share; and

E. did not reveal the information at the time his RAD appeal was perfected.

[23] The RAD, relying on the above, finds the Applicant's explanation for not disclosing known information directly relevant to the claim and actively asserting the opposite for the stated reason that the information was not his to share was not reasonable. The RAD acknowledged there may be situations where a claimant will be reluctant to share personal information (*i.e.* medical information, or circumstances that might be viewed as shameful from a cultural perspective) but concluded there was an absence of any such convincing evidence that the Applicant's circumstance was one of this nature.

[24] The Applicant argues the RAD findings reflect improper plausibility conclusions. Again, I disagree. In considering the IRPA subsection110(4) criteria, the RAD relied on identified inconsistencies in the Applicant's explanation to support the conclusion that the subsection 110(4) criteria had not been satisfied.

[25] The Applicant takes issue with the RAD's alternative assessment of the actual evidence, the credibility issues identified in the course of that analysis and that the RAD misapprehended the status or circumstances of the Applicant's daughters. None of these issues undermine the reasonableness of the conclusion that the IRPA subsection 110(4) criteria had not been satisfied.

[26] The RAD's analysis is transparent and intelligible. Having reasonably concluded that the criteria set out in IRPA subsection 110(4) had not been satisfied, the RAD had no discretion to admit the evidence (*Singh* at paras 34-35; *Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 at para 17; *Ifogah v Canada (Citizenship and Immigration)*, 2020 FC 1139 at paras 44-46).

B. *The RAD did not err in refusing the request for an oral hearing*

[27] The Applicant argues that the RAD should have granted him an oral hearing or, in the alternative, provided him notice if it had credibility concerns. He argues that the RAD's conclusions regarding the new evidence do, in fact, constitute new credibility findings.

[28] Again, I disagree. As set out above, the RAD's determinative finding was that the new evidence was inadmissible because the Applicant had not satisfied the IRPA subsection 110(4) criteria. The documentary evidence not having been entered, no serious issue of credibility arose and the RAD therefore had no discretion to hold a hearing under IRPA subsection 110(6).

C. *The RAD's IFA analysis is reasonable*

(1) First prong of the IFA test – the RAD's motivation analysis is reasonable

[29] The Applicant argues the RAD misconstrued the motivation required to pursue the Applicant in the IFA. The documentary evidence reveals the presence of CJNG throughout the country. Further, CJNG members would not necessarily need to travel to the IFA to target the Applicant. Instead, they could easily hire someone to do so at almost no cost. Because the cost to track and harm the Applicant is low, the motivation needed to do so is similarly low. The RAD's conclusion that cartels do not track former extortion targets failed to reconcile that low-level motivation presents a risk to the Applicant.

[30] Contrary to the Applicant's submissions, the RAD directly dealt with and addressed the Applicant's argument that the cost of pursuing the Applicant is low stating:

> [35] There is simply no solid credible evidence pointing to any ongoing motivation. […] In this case, there is no credible evidence that any family member has ever been contacted or harmed by the cartel in an ongoing search after they all closed the business and moved away. This is certainly not a determinative finding, but it is relevant and worth considering.
>
> [36] The Appellant makes an excellent point that in a country like Mexico, where the objective evidence shows that it is inexpensive to contract a killer, and where the evidence also shows that cartel killings are often carried out with impunity, only a small amount of motivation would be needed to trigger a real risk. I agree with the logic underpinning this argument.
>
> [37] I must also consider this, though, against the complete silence of the very detailed evidence showing that the CJNG or similar cartels spend any effort tracking ordinary former targets of local extortion when they simply close their businesses and move away. There is clear evidence that people who refuse to pay extortion and attempt to stay put or continue business as usual are harmed. But Mexico is, for all its challenges, still an open democracy and thousands of people move about the country for work, family, or other personal reasons every day. Businesses open, close, and move with regularity. There is simply not evidence that it is the *modus operandi* of the CJNG or similar cartels to track people that end their business and simply move away in order to continue local-level past extortion. The Federal Court recently found [in *Escobedo Cerda v Canada (Citizenship and Immigration)*, 2023 FC 763] that I was reasonable in interpreting the silence of the evidence on this type of *modus operandi* to be meaningful in the absence of other evidence of motivation that overrides it. This circumstance is extremely similar to the one considered at the Federal Court.

[31] Again, the RAD's analysis is transparent and intelligible, and is adequately supported by the evidence. The RAD reviewed and engaged with the objective country condition evidence, does not dispute the CJNG has the means to track the Applicant, but found it more likely than not that the CJNG has no ongoing motivation to do so. In coming to this conclusion, the RAD

relied on the lack of evidence that the cartel would spend *any* effort tracking ordinary former targets of local extortion. This was responsive to the Applicant's argument that motivation must take into account the low cost of pursuit. The RAD did not err in considering the first prong of the IFA analysis.

(2) Second Prong of the IFA test – the RAD did not err in concluding it would not be unreasonable for the Applicant to locate to the IFA.

[32] Relying on *Vazquez Cruz v Canada*, 2023 FC 684 [*Vazquez Cruz*], the Applicant argues the RAD's treatment of the second prong of the test was unreasonable. The Applicant submits the RAD failed to acknowledge the documentary evidence identifying the recent violence that plagued Culiacan and demonstrating that rampant violence has always been a part of the everyday lives of Culiacan residents.

[33] In *Vazquez Cruz*, Justice John Norris did conclude the RADs treatment of the second prong of the IFA test was unreasonable:

> [34] As set out above, the RAD accepted that Culiacan is one of the most dangerous municipalities in Mexico. It found, however, that the applicants' "fear of being a victim of crime in Culiacan is a widespread issue faced by most in this large urban centre, and as such are generalized risks. A generalized risk faced by all residents of Culiacan does not make the IFA unreasonable."
>
> [35] In my view, in so concluding, the RAD has conflated the first and second branches of the IFA test. It is true that, under the first branch, the applicants would not be able to discharge their onus of establishing that they would be at risk under section 97 of the IRPA simply by pointing to how dangerous Culiacan is. That is because this would be a risk faced generally by others, which paragraph 97(1)(b)(ii) stipulates is not sufficient. Under the second branch of the IFA test, however, the prevalence of violent crime in Culiacan is surely relevant to whether the lives or safety of the applicants would be jeopardized if they relocated there to avoid the

> personalized risk they faced in Apizaco. The RAD's failure to address this issue because of its conflation of the two branches of the IFA test undermines the reasonableness of its adverse determination under the second branch of the IFA test and, as a result, its ultimate conclusion that the applicants are not persons in need of protection because they have a viable IFA in Culiacan.

[34] However, contrary to the decision under review in *Vazquez Cruz*, the RAD does not, in this instance, conflate the first and second branches of the test. Instead, the RAD identifies the absence of evidence to suggest the Applicant would be systematically denied the ability to find suitable work or housing, or that he would be unable to participate in society or exercise his democratic rights.

[35] In *Ortega v Canada (Citizenship and Immigration)*, 2023 FC 652, where the RAD similarly identified the lack of evidence demonstrating any impediment in securing housing or employment in Culiacan, the Court concluded the IFA analysis was reasonable (at para 32). While the Applicant cites the subsequent capture of Ovidio Guzman – a high-ranking member of the Sinaloa Cartel, which is present in Culiacan – as a distinguishing circumstance, this argument was made to and rejected by the RAD. It is not the Court's role on judicial review to engage in a reweighing of the evidence [*Vavilov* at para 125].

[36] I am not persuaded that the RAD's IFA analysis is unreasonable.

VI. Conclusion

[37] For the reasons outlined above, the Application is dismissed.

[38] The Parties have not proposed a question for certification, and none arises.

JUDGMENT IN IMM-10770-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10770-23
STYLE OF CAUSE:	JUAN MANUEL TREJO MARIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 29, 2024
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JANUARY 27, 2025

APPEARANCES:

Julie Beauchamp	FOR THE APPLICANT
Aneta Bajic	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jared Will & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT