Federal Court Cour fédérale

Date: 20250131

Docket: IMM-8934-23

Citation: 2025 FC 206

Ottawa, Ontario, January 31, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

J CARLOS FLORES ROMERO
FRANCISCA LOPEZ ESTRADA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated November 18, 2021 [Decision].

[2] The RAD upheld the decision of the Refugee Protection Division [RPD], finding the Applicants neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because an Internal Flight Alternative [IFA] existed in Cabo San Lucas.

[3] The Applicants have 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 Facts

[4] The Principal Applicant [PA] and his wife, the Associate Applicant [AA; collectively, the Applicants] are citizens of Mexico. They allege fear of persecution by police in Mexico, who threatened and extorted the PA.

[5] In November 2016, the Principal Appellant was on the Veracruz highway when he came upon a Federal Police conducting inspections. The police accused him of driving a car that was too expensive, made an accusation that it was stolen, and offered to buy it. After the PA refused, the police escorted him to police facilities where they told him his car was not a stolen car. The police drove the PA to a town, threatened to make him disappear and locked him in a supposed jail, accusing him of robbery. The police demanded ransom for his release and threatened that they would transfer him to prison without the possibility to leave. The AA arrived in town with money. The police released the PA that night and told him to stay in a hotel while he waited for his release papers. Instead of waiting, the Applicants managed to escape and went to Chiapas

where they lived. The PA began to receive calls demanding money. The police alleged he had to pay to recover his car.

[6] In March 2017, the PA returned to Querétaro where he spoke to the police and told them he wanted his car back. The police said they would return the car, but he had to pay them and warned him to be careful as he could disappear at any moment. He went to file a complaint, but the police did not pay much attention to him. In July 2017, the PA received a visit from some police officers who said that he left an abandoned car in Veracruz. The PA asked them to identify themselves, but they refused. They tried to force their way into his house. Fearing retaliation, the PA decided to move. He put his house up for rent, and a month later, one of the neighbours said there were unknown people looking for the PA.

[7] In September 2017, the Applicants arrived in Canada. They returned to Mexico in December 2017 hoping that things were in order, but the threats continued, so they returned to Canada in April 2018.

III. Decision Under Review

[8] The RAD held the RPD was correct in finding the Applicants have a viable IFA in Cabo San Lucas.

[9] The RAD held the determinative issue is the availability of an IFA.

[10] The RAD applied the two-prong test for IFAs set out by the Federal Court of Appeal, which requires refugee claimants to establish that:1) “there is no serious possibility of the

claimant being persecuted in the part of the country to which it finds an IFA exists"; and that 2) "it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there". (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at paras 7-9 [*Olusola*], citing *Thirunavukkarasu v Canada (Minister of Employment and Immigration) (CA)*, 1993 CanLII 3011 (FCA) at 592–93, citing *Rasaratnam v Canada (Minister of Employment and Immigration) (CA)*, 1991 CanLII 13517 (FCA) at 710 [*Rasaratnam*]).

A. *First Prong: No risk of persecution or harm in Cabo San Lucas*

[11] The RAD accepted that the Applicants "sincerely believe they will be tracked to Cabo San Lucas," but held this was insufficient to establish their claim. (*Olusola* at para 25; *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at para 57; *Alvarez Valdez v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 796 at para 22; *Solis Ramirez v Canada (Citizenship and Immigration)*, 2022 FC 71 at para 13).

[12] The RAD held that the Applicants failed to link general information about corruption and access to information by police in Mexico to their own circumstances (*Chavez Perez v Canada (Citizenship and Immigration)*, 2021 FC 1021 at para 12 [*Chavez Perez*]). Rather, the RAD found "the evidence supports that the police are not motivated to pursue the Appellants to the IFA of Cabo San Lucas."

[13] The RAD also held the evidence of the people looking for the PA in his hometown was insufficient "to establish that the Veracruz police are motivated to search for the Appellants in

Cabo San Lucas on a forward-looking basis" because "there is no evidence that the 'unknown people' were the Veracruz police" and the visit occurred "many years ago at this point."

B. *Second Prong: Relocating to Cabo San Lucas is not unreasonable*

[14] The onus is on the Applicant to establish that an IFA is unreasonable (*Rasaratnam* at 709-10), which is a "very high threshold" (*Ranganathan v Canada (Minister of Citizenship and Immigration) (CA)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at para 15 [*Ranganathan*]).

[15] The RAD found the Applicants had not met this threshold. As summarized by the Respondent, the RAD considered the following in making this finding:

a. The Applicants were not lacking in education or work experience such that they could not find work.

b. Difficulty finding housing and employment do not make an IFA location unreasonable.

c. Having to find a job in a different industry does not make an IFA location unreasonable.

d. The Applicants did not provide sufficient evidence to show that they would be unable to seek psychologist treatment in Mexico.

[16] The RAD gave little weight to the psychological reports provided by the Applicants for being, "based almost entirely on self-reported events." The RAD also found these reports conducted "an implicit country condition assessment that effectively precludes the [RAD] from finding an IFA and 'impermissibly trespassed on the jurisdiction of the RAD to make such a finding - it being the ultimate issue in this case'" (*Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at para 55).

IV. Issues and Standard of Review

[17] The Applicants submit the standard of review is correctness, relying on *Dunsmuir v New Brunswick*, 2008 SCC 9. The Respondent submits the standard of review is reasonableness.

[18] I agree with the Respondent that the standard is reasonableness: (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 7, 10, 16-17, 23-25, 48-49, 53-54, [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Submissions and Analysis

A. *Preliminary Issue: Style of Cause*

[19] The Respondent requests that the style of cause be changed from "the Minister of Citizenship and Immigration Canada" to "the Minister of Citizenship and Immigration." The Applicants make no submissions on this issue. The Applicants do not oppose. The style of cause is amended with immediate effect.

B. *First prong of the IFA test – the RAD analysis is reasonable*

(1) Assessment of agent of harm

[20] The Applicants submit they do not fear the Veracruz State Police but rather members of the Federal Police who were located on the Veracruz Highway. They also argue that "when agents of persecution are state actors, the idea of an Internal Flight Alternative is not appropriate, since the threat from the state actor is present throughout the country" (*Canada (Minister of Citizenship and Immigration) v Chen*, 2004 FC 1403; *Zhuravlvev v Canada (Minister of Citizenship and Immigration) (TD)*, 2000 CanLII 17128 (FC), [2000] 4 FC 3).

[21] The Respondent argues the Applicants did not challenge the RPD's identification of the agent of persecution as the "Veracruz State Police," which was on appeal. There is no evidence that the Applicants challenged this finding of the RPD, on appeal to the RAD. As such, the Applicants cannot now challenge this finding.

[22] I agree with the Respondent. The general rule is that a reviewing court assesses the reasonableness of a decision in light of the record that was before the decision maker. (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20).

[23] As stated in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 636, "new argument[s] not argued before the RAD should not be advanced for the first time with the Court on judicial review" (at para 15).

[24] The Applicants did not challenge the RPD's identification of the agent of persecution as the Veracruz State Police. This argument was not before the RAD. I find that they cannot challenge this finding in this application for judicial review of the RAD's Decision.

(2) Assessment of motivation is reasonable

[25] The Applicants further submit the RAD made unreasonable inferences from the lack of contact by the police. They argue this is irrelevant to the motivation of the agents of persecution (*AB v Canada (Citizenship and Immigration)*, 2020 FC 915 at para 28; *Cejudo Hernandez v Canada (Citizenship and Immigration)*, 2019 FC 1019 at paras 32-38).

[26] The Respondent submits the Applicants are attempting to reassess and reweigh the evidence, which is impermissible under a reasonableness review (*Vavilov* at para 125).

[27] As in *Chavez Perez* at paragraph 10, I find the absence of evidence that the agents of harm tried to locate the Applicants is an element that can reasonably support a finding of a lack of ongoing interest in pursuing them and therefore a finding of an IFA. I note they have not contacted their family members living in Mexico since the Applicants have been in Canada. The RAD's reasoning that a lack of contact by the Police to the Applicants and their family members was indicative of a lack of motivation is reasonable.

[28] The RAD further considered other relevant elements such as the fact that the PA was not formally charged with any crime, that there was no warrant for his arrest, and that his arrest was illegal.

[29] It was reasonable for the RAD to conclude the Applicants had failed to establish that the Veracruz police are motivated to search for them in Cabo San Lucas on a forward-looking basis.

C. *Second prong of the IFA test – the RAD analysis is reasonable*

[30] The Applicants submit the RAD engaged in selective assessment of documentary evidence about the proposed IFA's reasonableness, thus creating a reviewable error (*Okafor v Citizenship and Immigration (Minister of)*, 2002 FCT 1108 at paras 8-9*; Singh v Canada (Citizenship and Immigration)*, 2007 FC 1296 at paras 22-31; *Ali v Minister of Employment and Immigration* (1994), 80 FTR 115 (TD)).

[31] First, the Applicants submit the RAD did not engage with the evidence of ageist discrimination, which they allege, "makes it functionally impossible for them to find work."

[32] Second, the Applicants submit the RAD erred in its assessment of the psychological reports because "[i]f the Applicants continue to live in the same environment where their fear is rooted; their fear of the Mexican Police due to previous persecution, it is futile to continue seeking mental health care there".

[33] The Respondent submits the Applicants' arguments are without merit. The RAD reasonably weighed the numerous factors surrounding the reasonableness of the IFA, outlined above, and was not obligated to mention every piece of evidence before it in the Decision (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 16; see also *Vavilov* at para 128).

[34] The Respondent further argues that difficulty in finding a job does not make an IFA unreasonable (*Fasoyin v Canada (Citizenship and Immigration)*, 2021 FC 1069, at para 11; *Ganiyu v Canada (Citizenship and Immigration)*, 2022 FC 296 at para 11; *Oluwafemi v Canada (Citizenship and Immigration)*, 2023 FC 564 at para 46; *Desmond-Umeh v Canada (Citizenship and Immigration)*, 2020 FC 447 at para 30; *Trujillo Sanchez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 604 at para 21; *El Assadi Kamal v Canada (Citizenship and Immigration)*, 2018 FC 543 at para 17).

[35] The Respondent also submits the RAD was entitled to rely on the availability of mental health care in Mexico in assessing the IFA's reasonableness (*Adebowale v Canada (Minister of Citizenship and Immigration)*, 2024 FC 1828 at para 17).

[36] I agree with the Respondent that under the second prong of the IFA, Applicants must overcome a high threshold to demonstrate that the IFA location is unreasonable and that they are required to provide evidence that their life and safety would be jeopardized if they relocated to the proposed IFA. (*Ranganathan* at para 15).

[37] I find that RAD reasonably found that it would not be objectively unreasonable for the Applicants to relocate to the proposed IFA in view of their profile and circumstances.

[38] In its assessment of IFA's reasonableness, the RAD considered several factors such as the Applicants' education and work experience, the possibility of having to find a job in a different industry, and the difficulty of finding housing and employment. The RAD specifically engaged with the psychological reports and found that the Applicants did not provide sufficient evidence

to show they would be unable to seek psychologist treatment in Mexico. It is not the Court's role on judicial review to engage in a reweighing of the evidence [*Vavilov* at para 125].

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

VI. Conclusion

[40] For the reasons set out above, this application for judicial review is dismissed.

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

JUDGMENT in IMM-8934-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

"L. Saint-Fleur"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Peter Ademu-Eteh	FOR THE APPLICANTS
Maria Burgos	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Obazee Nobahar LLP Barristers and Solicitors Toronto (Ontario)	FOR THE APPLICANTS
Attorney General of Canada Toronto (Ontario)	FOR THE RESPONDENT