Federal Court   Cour fédérale

Ottawa, Ontario, February 3, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**THELMA GUADALUPE PORRAS
TAVAREZ**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1]   The sole issue for determination is the reasonableness of the Refugee Appeal Division's

[RAD] section 97(1) risk analysis. As I am not persuaded that its finding was unreasonable, this

application must be dismissed.

I.   Facts

[2]   The Applicant is a citizen of Mexico. On May 23, 2019, while leaving work, she was

accosted by a woman, later identified as "KA," who forced her to speak on the phone with an

unknown caller. The caller threatened to kill her family. Under duress, the Applicant was

compelled to withdraw 1,500 MXN for KA to buy prepaid phone cards, and subsequently went

with KA to a local hotel.

[3]   At the hotel, KA and other individuals subjected the Applicant to physical assault and

humiliation. The perpetrators seized the Applicant's personal identification documents, took

compromising photos of her, and coerced her to participate in video calls with unseen persons

who demanded a ransom of 250,000 MXN.

[4]   The Applicant managed to escape by secretly texting her location to her father when KA

untied her to call her parents for ransom. After the hotel reception called the room, KA panicked

and attempted to flee but was ultimately apprehended.

[5]   Following the incident, the Applicant was taken to the local state prosecutor's office

where she provided a statement. There, she learned that KA had admitted to connections with

the Jalisco New Generation Cartel [JNG Cartel]. A medical examiner present warned her to flee,

indicating this was not the first serious incident involving KA and her accomplices.

[6]   In June 2019, the Applicant left Mexico for Canada out of frustration with the pace of the

police investigation and having been denied ongoing protection. Her family remained in the

same city in Mexico but moved about 30 minutes away and changed their contact information.

During her time in Canada, the Applicant has had a daughter who is a Canadian citizen. She was

employed at a meat processing plant before taking maternity leave.

[7]   The Refugee Protection Division [RPD] heard the Applicant's refugee claim and issued

its decision finding the Applicant credible but determining that she faced no forward-looking

risk. In the alternative, the RPD found she had viable internal flight alternatives [IFAs] in Cabo

San Lucas or Mérida.

II.   Decision Below

[8]   On August 18, 2023, the RAD dismissed the Applicant's appeal and upheld the RPD's

decision. The RAD conducted an independent assessment of the record, identifying the

determinative issue as a lack of prospective risk. Based on this finding, the RAD did not

consider the Applicant's arguments on IFAs.

[9]   The RAD found insufficient evidence to demonstrate the Applicant was personally

targeted by the JNG Cartel. Rather, the RAD agreed with the RPD that the evidence suggested

she was the victim of an "express kidnapping" arising out of a random interception for extortion

purposes. While the Applicant testified that her abductor claimed to have followed her for days,

the RAD noted that she was kidnapped on a day she left work early, suggesting the agents of

harm did not actually know her schedule.

[10]   Regarding ongoing risk, the RAD found insufficient evidence of continued JNG Cartel

interest. The RAD noted that following the May 2019 kidnapping, where the Applicant was

rescued before any ransom was paid, she left Mexico approximately one month later due to frustration with the investigation and lack of protection. Although the perpetrator had obtained her personal details, including her parents' address, her family had not been contacted in the years following the incident, despite remaining within the same city at a new location only 30 minutes away.

[11]   The RAD concluded that the degree of risk appeared to have mitigated. It found on a balance of probabilities that, given the totality of the evidence, the kidnapping incident was a random one-off attempt at extortion. While recognizing that the risk of extortion and kidnapping remains high in Mexico, the RAD found insufficient evidence to indicate the Applicant would be specifically targeted upon return. The RAD determined that this was a risk faced generally by the population, and despite being a prior target of kidnapping, the Applicant was no more likely than others to be targeted in the future.

[12]   Based on this analysis, the RAD confirmed the RPD's decision that the Applicant is neither a Convention refugee nor a person in need of protection, concluding that her claim had not been established.

III.   Issue

[13]   This application turns on whether the RAD reasonably concluded that the Applicant faces no forward-looking risk under section 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. This issue has three parts. First, whether the RAD reasonably characterized the May 2019 kidnapping as a crime of opportunity rather than targeted violence. Second, whether the RAD appropriately assessed the sufficiency of evidence regarding ongoing risk. Third,

whether the RAD properly distinguished between the initial reason for targeting the Applicant and the ongoing risk of harm.

IV.   Standard of Review

[14]   I agree with the parties that the standard of review is reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

V.   Analysis

[15]   I find no basis to interfere with the RAD's decision, because the Applicant's three main grounds of challenge are all requests that the Court reweigh the evidence and substitute its own judgment for that of the administrative decision-maker. Such a request falls squarely outside the scope of judicial review.

[16]   Before addressing how the Applicant's arguments amount to a request for reweighing the evidence, I wish to first review the relevant legal principles regarding sufficiency. The Applicant correctly refers to *Magonza v Canada (Citizenship and Immigration), 2019 FC 14* [*Magonza*], as the leading authority from this Court on the matter. In my view, three key principles from that case are instructive. First, the assessment of sufficiency is inherently contextual and case-specific, particularly where indirect or circumstantial evidence is involved. As Justice Grammond explains, "it is impossible to say in advance 'how much'" evidence will be sufficient, as this determination represents "a practical judgment made on a case-by-case basis": *Magonza* at para 34. Second, while findings of insufficiency must be explained, such findings attract

significant deference from reviewing courts: *Magonza* at para 35. Third, and most critically for this case, sufficiency is fundamentally about whether the evidence, viewed holistically, convinces the decision-maker of the existence of the disputed fact: *Magonza* at para 32.

[17]   Applying these principles, I find that the RAD's assessment of all three interrelated aspects of forward-looking risk reflects the type of holistic and contextual evaluation required by law. I will address each aspect in turn.

[18]   First, the RAD's conclusion that the May 2019 kidnapping was a crime of opportunity rather than targeted violence is reasonable. The evidence before the RAD supported this finding, particularly the circumstantial factors that weighed against targeted violence. Key considerations include the fact that the kidnapping occurred on a day of unscheduled early departure, the ransom demand of 250,000 MXN was significantly lower than typical amounts for targeted victims documented in the National Documentation Package for Mexico, and the incident aligned with established patterns of "express kidnappings" in Mexico. While the perpetrators' alleged knowledge of workplace activities and claims of prior surveillance might suggest targeted violence, the RAD reasonably concluded that the evidence of prior surveillance was suspect, as the perpetrator was jailed at the time, and the evidence did not outweigh the broader circumstantial indicators of opportunistic targeting.

[19]   The Applicant's argument that the RAD failed to adequately consider the perpetrators' workplace knowledge misapprehends the nature of sufficiency analysis under *Magonza*. The RAD was not required to give determinative weight to a single piece of evidence when considered against the totality of circumstantial factors suggesting opportunistic targeting. I am

of the view that the RAD's assessment reflects the kind of holistic, case-by-case judgment that *Magonza* emphasizes should attract significant judicial deference.

[20]   Second, the RAD's determination that there is no ongoing risk to the Applicant is appropriate, especially given the lack of evidence indicating continued interest from the perpetrators. This is reflected in the complete absence of contact with the Applicant's family over multiple years, the lack of attempts to exploit personal identification documents, and the absence of any efforts to pursue the outstanding ransom demand. The RAD also considered the broader context, noting that despite the family remaining in the same city and the perpetrators having detailed personal information about them, no further incidents occurred.

[21]   The Applicant's assertion that the family's relocation explains the absence of further threats is speculative and does not undermine the RAD's conclusion. The RAD was convinced that there was not sufficient evidence to indicate ongoing threat based on a holistic review of the evidence. It made this conclusion after examining that despite the perpetrators having access to the Applicant's personal information, and the family remaining in the same city, albeit at a new location 30 minutes away with changed phone numbers, there had been no contact for several years. The RAD inferred that if the perpetrators were genuinely motivated to continue their threats or retaliate for the failed ransom and police report, they would have attempted to reach the family. Viewed in this context, I find it reasonable for the RAD to conclude a lack of ongoing interest given the absence of contact. The Applicant's alternative explanations, lacking supporting evidence, do not reveal any reviewable flaws.
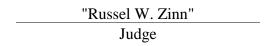
[22]   Finally, the RAD's assessment of the relationship between the initial kidnapping and the ongoing risk is well-founded. My reading of its decision reveals that, rather than solely relying on its initial characterization of the kidnapping as opportunistic, the RAD conducted an independent forward-looking assessment that considered both the nature of the incident and subsequent developments. It was open for the RAD to conclude that the risk had dissipated, given the random nature of the kidnapping, the fact that the rescue occurred before any ransom was paid, and the arrest of an immediate perpetrator. The RAD further supported its conclusion by considering the lack of subsequent contact, the absence of retribution attempts, and the continued safety of the Applicant's family in the area. All of this reinforces the finding that no ongoing risk exists, despite the severity of the initial incident suffered by the Applicant.

VI.   Conclusion

[23]   In conclusion, the RAD's determination regarding forward-looking risk under section 97(1) of the *Act* warrants deference. The RAD's analysis of the nature of the initial incident, ongoing risk assessment, and the relationship between initial and continuing risks reflects a careful consideration of the evidentiary record and proper application of the relevant jurisprudential principles from *Magonza*. Each of the Applicant's attacks, while framed as arguments about sufficiency of evidence, effectively constitutes an invitation for this Court to reweigh evidence and substitute its own judgment. This is a task that falls outside this Court's proper role on judicial review.

[24]   Neither party proposed a question for certification, and there is none.

JUDGMENT in IMM-11785-23

THIS COURT'S JUDGMENT is that this application is dismissed, and no question is

certified.

"Russel W. Zinn"
Judge