

Federal Court



Cour fédérale

**3047Date: 20250210**

**Docket: IMM-13081-23**

**Citation: 2025 FC 260**

**Ottawa, Ontario, February 10, 2025**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**CLAUDIA VANESSA IBARRA  
HERNANDEZ ARTURO MEDINA  
VILLALOBOS**

**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] dated October 4, 2023 [the Decision]. In the Decision, the RAD dismissed the Applicants' appeal of a decision by the Refugee Protection Division [RPD] finding that the

Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The RAD found the RPD correctly rejected the Applicants' refugee claims due to the Applicants having an internal flight alternative [IFA] within Mexico.

[3] As explained in further detail below, this application for judicial review is dismissed, because the Applicants' arguments neither undermine the reasonableness of the Decision nor establish that the Applicants were deprived of procedural fairness.

## II. **Background**

[4] The first Applicant named above [the Principal Applicant] and the second Applicant who is her husband [the Associate Applicant] are citizens of Mexico who owned a clothing store in a town in Mexico.

[5] The Applicants fear harm by the *Cártel de Jalisco Nueva Generación* [CJNG] in Mexico. The CJNG began extorting the Applicants in June 2021 and threatened the Principal Applicant once she was unable to pay. The Principal Applicant filed a police complaint, but it was not formalized, as the police informed her that not much could be done because she had not been injured.

[6] The Principal Applicant fled her town and received a threatening phone call from the CJNG while she was in hiding at her mother's home. On October 2, 2021, the Principal

Applicant left Mexico and joined the Associate Applicant in Canada. (The Associate Applicant had been in Canada exploring business ventures.)

[7] The Applicants claim the CJNG still monitors their home and that their neighbor was approached by the CJNG in November 2021 and informed the CJNG that the Applicants had left Mexico.

[8] The Applicants filed a refugee claim and, in a decision dated June 21, 2023, the RPD rejected the Applicants' refugee claims, because it found that the Applicants had an IFA in Mexico. The Applicants appealed the RPD's decision to the RAD, and on October 4, 2023, the RAD issued the Decision that is the subject of this application for judicial review.

### III. **Decision under Review**

[9] In the Decision, the RAD rejected the Applicants' refugee claims, because it agreed with the RPD that the Applicants had a viable IFA within Mexico.

[10] As preliminary matters, the RAD accepted an article dated July 28, 2023 [the Article] submitted by the Applicants to the RAD, but it rejected the Applicants' request for an oral hearing, finding that the Article did not meet the requisite conditions to warrant an oral hearing.

[11] Turning to its analysis, the RAD first found that there was no risk of persecution or harm to the Applicants in the IFA. While finding the Applicants generally credible, the RAD found there was insufficient evidence that the CJNG would be motivated to pursue the Applicants in

the IFA. As such, the RAD found the issue of whether the CJNG had the capacity to pursue the Applicants irrelevant.

[12] The RAD found there was insufficient evidence that the CJNG had more than a local interest in the Applicants. In particular, the RAD found the CJNG only visited the Principal Applicant at her house, the CJNG had not contacted the Applicants' family in Mexico, and the CJNG's last contact with the Applicants was years ago. The RAD also noted that the Principal Applicant's police complaint was never formalized and that the CJNG never told the Principal Applicant they were aware of this complaint. As the RAD was not satisfied the CJNG had more than a local interest in the Applicants and considering the relative size of the IFA and its distance from the Applicants' previous home, the RAD found the Applicants would not be at risk of harm in the IFA.

[13] Finally, the RAD found the Applicants had not met their burden of establishing that relocating to the IFA would be unreasonable. The RAD found that the Applicants would not have to hide from the CJNG in the IFA, and it was not unreasonable for the Applicants to find different employment there. The RAD also found the Applicants' argument that they would be targeted if they opened a business in the IFA to be speculative. Relying on National Documentation Packages [NDP] dated July 31, 2023 [the July NDP] and September 29, 2023 [the September NDP], which indicated the relative safety of the IFA, the RAD also did not find crime in the IFA so prevalent it would jeopardize the Applicants' safety.

[14] As such, the RAD dismissed the Applicants' appeal and confirmed the RPD's decision rejecting the Applicants' refugee claims.

IV. **Issues and Standard of Review**

[15] The Applicants articulate the following issues for the Court's determination:

- A. Did the RAD err in its assessment of the motivations of the CJNG to pursue the Applicants in the IFA?
- B. Did the RAD fail in its duty of fairness by not disclosing to the Applicants the NDP for Mexico dated September 29, 2023?
- C. Did the RAD fail to address evidence regarding the presence of the Applicants' agent of persecution in the IFA?
- D. Did the RAD fail in its duty of fairness by relying on extrinsic evidence?
- E. Did the RAD err in finding that it was not unreasonable for the Applicants to find another type of employment?

[16] The first, third, and fifth issues identified above relate to the merits of the Decision and are reviewable on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17). The second and fourth issues relate to procedural fairness and are governed by the standard of correctness, or akin to correctness. Put otherwise, in relation to those issues, the Court must assess whether, having regard to all the circumstances, the procedure followed by the RAD was fair (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

V. **Analysis**

A. *Did the RAD err in its assessment of the motivations of the CJNG to pursue the Applicants in the IFA?*

[17] The Applicants argue that the Decision is unreasonable, because the RAD ignored or mischaracterized evidence relevant to the motivation of the CJNG to pursue them. They refer to the evidence before the RAD that the CJNG learned from one of their neighbours that they had left Mexico. The Applicants submit that, in combination with the evidence that the CJNG has continued to monitor their residence in Mexico and inquire of their neighbours, the evidence of the CJNG's knowledge of their absence from the country was relevant to the RAD's assessment of their motivation.

[18] I agree with the Respondent's position that the Applicants are precluded from raising this argument on judicial review of the Decision because, while the RPD arrived at materially the same conclusions regarding the CJNG's motivation, the Applicants failed to raise this argument in their appeal to the RAD. An administrative decision-maker cannot be faulted for failing to respond to arguments that were not advanced before it (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 875).

[19] The Applicants also argue that the RAD erred by assuming that the CJNG is a rational actor and would behave in a certain way. They refer the Court to jurisprudence cautioning against an administrative decision-maker engaging in speculation as to what a reasonable agent of persecution would do (e.g., *Reyad Gad v Canada (Citizenship and Immigration)*, 2011 FC 303 at para 11).

[20] I accept the principle to which the Applicants refer but do not find it applicable to the RAD's reasoning, which was based on the evidence as to the local nature of the CJNG's interest in the Applicants, an analysis that I find intelligible and therefore reasonable.

[21] The Applicants further submit the RAD failed to address evidence in the September NDP that indicates the CJNG is motivated to pursue individuals who fail to pay extortion demands. As will be explained in my below analysis of the Applicants' procedural fairness argument related to the September NDP, the RAD did not rely on this evidence in conducting its analysis under the first prong of the IFA test. Nevertheless, I agree with the Respondent that the materials that the Applicants argue the RAD failed to address do not clearly contradict the RAD's finding such that it could be inferred that the RAD overlooked this evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 [*Cepeda-Gutierrez*] at paras 16–17 (FC)).

B. *Did the RAD fail in its duty of fairness by not disclosing to the Applicants the NDP for Mexico dated September 29, 2023?*

[22] The Applicants raise this procedural fairness argument because the Decision references the September NDP without the RAD having afforded the Applicants an opportunity to make submissions thereon. They rely on *Zhang v Canada (Citizenship and Immigration)*, 2015 FC 1031 at paragraphs 53 to 63, holding that the RAD had erred by relying on a version of the NDP (in that case, applicable to country conditions in China), which was not publicly available and accessible when the applicants made their submissions, without providing the applicants an opportunity to comment thereon.

[23] As the Respondent submits, the principles governing this sort of argument were explained in *Lin v Canada (Citizenship and Immigration)*, 2021 FC 380 [*Lin*]. Claimants are deemed to have knowledge of publicly available documents describing general country conditions such as the NDP. However, when that information changes and the RAD intends to rely upon an updated NDP after the claimant's opportunity to make submissions has passed, the duty of fairness requires the RAD to disclose the new information it intends to rely upon and provide the claimant with an opportunity to respond. Procedural fairness imposes this requirement so that the claimant knows the case to be met (at para 26).

[24] In the matter at hand, the RAD referenced the September NDP in the context of its analysis under the second prong of the IFA test, *i.e.*, considering whether it would be unreasonable for the Applicants to relocate to the proposed IFA. In addressing the Applicants' submission that the crime situation in the IFA made relocation unreasonable, the RAD referred to documents in the July NDP (the version of the NDP in place when the Applicants filed their appeal record) indicating that the state in which the IFA was located was among the safest states in Mexico and the most peaceful state. The RAD further noted that the information in the September NDP (the most recently published version) was consistent therewith.

[25] In a footnote to this portion of the Decision, the RAD referenced *Lin* and commented that, because the information in the September NDP was consistent with that in the July NDP, it was unnecessary to give the Applicants notice of the information in the September NDP.



[26] I find no procedural unfairness in the RAD's approach. The Applicants' argument is not based on the information in the September NDP referenced in the Decision, or any suggestion that such information had indeed changed between the two versions of the NDP, but rather relies on other information, that was not included in the July NDP, that the Applicants submit demonstrate changes in country conditions relevant to the assessment of the CJNG's motivation to pursue the Applicants.

[27] As the Respondent submits, the RAD did not rely on either version of the NDP in the course of its analysis of the CJNG's motivation under the first prong of the IFA test (assessing the Applicants' risk of persecution or harm in the IFA). As such, the information in the September NDP that the Applicants argue was relevant to the motivation assessment did not form part of the case the Applicants had to meet, and the procedural fairness principles explained in *Lin* did not require the RAD to seek submissions from the Applicants in relation to the September NDP.

C. *Did the RAD fail to address evidence regarding the presence of the Applicants' agent of persecution in the IFA?*

[28] The Applicants refer to evidence in both the July NDP and the September NDP, as well as the Article introduced by the Applicants as evidence in the appeal, indicating that the CJNG operates in the state where the IFA is located. Relying on the principles explained in *Cepeda-Gutierrez*, they argue that the RAD erred by failing to address this evidence.

[29] The evidence to which the Applicants refer relates to the geographic reach, alliances, resources, and capabilities of the CJNG. I agree with the Respondent that, while this evidence

could be relevant to the assessment of the capacity of the CJNG to locate the Applicants in the IFA, it has little relevance to the determinative issue of the CJNG's motivation to locate them. Applying *Cepeda-Gutierrez*, this evidence does not sufficiently contradict the RAD's findings such that the Court could conclude that the evidence was overlooked.

D. *Did the RAD fail in its duty of fairness by relying on extrinsic evidence?*

[30] The Applicants' second procedural fairness argument relates to the RAD's reliance on a Mexican government website [the Website], cited in the Decision, for information as to the population of the proposed IFA. The Applicants note that the website also provides information related to economic conditions, security, criminality, and employment in the IFA, that they submit could be relevant to the required IFA analysis. They argue that, because the Website was not among the sources listed in the NDP or consulted by the RPD in its decision, the RAD's duty of procedural fairness required it to give the Applicants notice of the information it identified about the IFA through its own independent research and afford the Applicants an opportunity to address that information (*Gluvakov v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1427 at para 13).

[31] However, the Court has found that a reference to online resources by an administrative decision-maker does not automatically trigger a duty to provide the applicant with the opportunity to respond (*Shah v Canada (Citizenship and Immigration)*, 2018 FC 537 [*Shah*] at para 34). In *Shah*, Justice Kane discussed a contextual approach to be applied when assessing whether reliance on online evidence triggers a procedural fairness duty (at paras 34–42). In *Alves v Canada (Citizenship and Immigration)*, 2022 FC 672 [*Alves*] at paragraph 29 the Court

affirmed the contextual approach adopted in *Shah*, and described factors to consider as follows

(at para 30):

In assessing whether the duty of fairness requires the disclosure of such documents, the Court will consider factors such as (i) the source, including its reputability; (ii) the public availability of the documents and the extent to which the applicant could be reasonably expected to know of them; (iii) the novelty and significance of the information, including the extent to which it differs from other evidence; and (iv) the nature of the decision, including the applicant's allegations and the evidentiary burden: *Shah* at paras 35–38; *Majdalani v Canada (Citizenship and Immigration)*, 2015 FC 294 at paras 29–37; *Rutayisire v Canada (Citizenship and Immigration)*, 2021 FC 970 at paras 80–88. In considering such factors, the ultimate question remains whether the procedure was fair having regard to all of the circumstances: *Canadian Pacific* at para 54.

[32] Considering the factors identified in *Alves*, I find the RAD did not breach its duty of procedural fairness to the Applicants. The website appears to be from an official source (the Mexican government), which would reasonably be expected to have reliable census information, and the information was publicly available. The information does not appear to be highly significant, as the RAD notes that the population of the IFA is not a determinative factor on its own, although it is relevant to the Applicants' arguments that the proposed IFA is not viable. I am not satisfied that the principles of procedural fairness required the RAD to disclose to the Applicants its intent to rely on the information on the Website as to the population of the IFA.

E. *Did the RAD err in finding that it was not unreasonable for the Applicants to find another type of employment?*

[33] Finally, the Applicants argue that, in conducting its analysis under the second prong of the IFA test, it was unreasonable for the RAD to expect them to find employment in the IFA

other than operating a business as they had in the past. They note that the Associate Applicant testified at the refugee hearing before the RPD that owning a business was all that he knew.

[34] As the Respondent submits, the applicable jurisprudence clearly indicates that the need to seek new employment, with the difficulties inherent in doing so, is not sufficient to satisfy the high bar of demonstrating that it would be unreasonable to relocate to an IFA (e.g., *Trujillo Sanchez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 604 at para 21, aff'd 2007 FCA 99, leave to appeal to SCC refused, 32028 (27 September 2007)). I find no reviewable error in this aspect of the Decision.

## VI. **Conclusion**

[35] As I have considered the Applicants' arguments and identified no reviewable error by the RAD, this application for judicial review must be dismissed.

[36] Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-13081-23**

**THIS COURT'S JUDGMENT is that** this application is dismissed. No question is certified for appeal.

"Richard F. Southcott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-13081-23

**STYLE OF CAUSE:** CLAUDIA VANESSA IBARRA HERNANDEZ AND  
ARTURO MEDINA VILLALOBOS v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 5, 2025

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**APPEARANCES:**

Belinda Bozinovski	FOR THE APPLICANTS
Joseph Granton	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Bozinovski, Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT