

Federal Court



Cour fédérale

Date: 20250207

Docket: IMM-9399-23

Citation: 2025 FC 249

Ottawa, Ontario, February 7, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**AUDELIA BAUTISTA OLAYO
ALFREDO ESPINOZA JIMENEZ
PEDRO DANIEL ESPINOZA BAUTISTA
MONSERRAT ESPINOZA BAUTISTA
FRANCISCO JAVIER ESPINOZA BAUTISTA
DOLORES ORDUNO LIMA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Audelia Bautista Olayo (the “Principal Applicant”), together with her spouse Mr. Alfredo Espinoza Jimenez and their children Pedro Daniel Espinoza Bautista, Monserrat Espinoza Bautista and Francisco Javier Espinoza Bautista, and Dolores Orduna Lima, the partner

of Francisco (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In that decision, made on July 4, 2023, the RAD dismissed an appeal from a decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), dismissing the Applicants’ claim for protection.

[2] The Applicants are citizens of Mexico. They sought protection in Canada on the basis of a fear of persecution from the Knights Templar cartel (the “Cartel”). The Cartel wanted to bring the Applicants into its drug trafficking operations.

[3] The Applicants made their claim for protection in Canada in 2019. The RPD rejected their claim. An appeal to the RAD was successful and the matter was remitted to the RPD. Again, by a decision delivered in January 2023, their claim was denied on the basis that an Internal Flight Alternative (“IFA”) is available to the Applicants in Victoria de Durango. Upon appeal to the RAD, the RAD confirmed the conclusion of the RPD about an IFA and dismissed the appeal.

[4] In dismissing the appeal, the RAD found that the Applicants were credible. However, it also found that the Applicants failed to show that the alleged agents of persecution were motivated to find them in the proposed IFA and found that it would not be unreasonable for the Applicants to relocate.

[5] The Applicants now argue that the RAD erred in dismissing their claim when there were no credibility concerns, that it ignored evidence about the Cartel, and that it failed to take into account the psychotherapist's report about the effect of returning to Mexico upon their mental health.

[6] The Minister of Citizenship and Immigration (the "Respondent") submits that the decision of the RAD shows no reviewable error.

[7] Following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653, the decision is reviewable on the standard of reasonableness.

[8] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov*, *supra* at paragraph 99.

[9] The fact that the RAD found the Applicants to be credible does not mean that it had to accept their claim for protection. The RAD was allowed to consider the RPD's finding that an IFA is available to the Applicants in Mexico.

[10] The test for an IFA was addressed by the Federal Court of Appeal in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 at 710-711 (F.C.A.). The test is two-part and provides as follows:

First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA.

Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[11] The RAD found that the Cartel was not motivated to find the Applicants in the proposed IFA.

[12] In my opinion, the RAD's finding is supported by the evidence. The RAD, not the Court, is mandated to assess the evidence.

[13] The RAD noted that the Applicants do not have a high profile that would attract the attention of the Cartel. It also observed that the Applicants had resided in Maravatio in the state of Michoacán and the acts of the agents of harm occurred in that state.

[14] The proposed IFA is in Victoria de Durango, an area beyond the influence of the Cartel.

[15] The RAD considered the objective country documents and concluded that the agents of harm would not be motivated to pursue the Applicants to Durango.

[16] The RAD determined that its conclusion on the lack of motivation on the part of the Cartel was dispositive of the first part of the IFA test. It then considered the second part of the test, that is whether it would be reasonable for the Applicants to relocate to Durango.

[17] The RAD specifically considered the psychotherapy reports. It acknowledged that relocation to the proposed IFA may be “more challenging”, in light of the mental health concerns, but it found that the Applicants had not shown that such relocation would be unreasonable.

[18] This conclusion by the RAD lay within its mandate, to assess the evidence, both the subjective and objective, that was before it.

[19] The Applicants have not shown a basis for judicial intervention and this application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-9399-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9399-23

STYLE OF CAUSE: Audelia bautista olayo et al. V. MCI

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 25, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: FEBRUARY 7, 2025

APPEARANCES:

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