Federal Court Cour fédérale

Date: 20250714

Docket: IMM-14708-24

Citation: 2025 FC 1251

Toronto, Ontario, July 14, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

JONATHAN MAURICIO OLMOS HERRERA
MARIELLA GIORDANA SCHNEIDER VILCHEZ
KIARA ANAIS OLMOS VALDES
MATEO IGNACIO OLMOS SCHNEIDER
TANYA BELEN PUYOL SCHNEIDER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a July 30, 2024 decision [Decision] of the Refugee Appeal Division [RAD] confirming a decision of the Refugee Protection Division [RPD] that the Applicants were neither Convention refugees nor persons in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*¸ SC

2001, c 27 [IRPA]. The determinative issue was the availability of an internal flight alternative [IFA].

[2] As set out further below, the application is dismissed as it is my view that there is no reviewable error with the RAD's decision.

I. Background

[3] The Applicants are a family of Chilean citizens who allege a fear of persecution at the hands of leftist organizations who targeted the Principal Applicant, Jonathan Mauricio Olmos Herrera [PA], and by extension the rest of his family.

[4] The PA was employed as a transit driver in Valparaiso, Chile. He asserts that during a period of large-scale leftist protests in the country in October 2019, his bus was stopped and burned, and he was attacked by anarchist protesters. He alleges that the protesters threatened to kill him if he continued to drive the bus because his work activities supported the government. The PA went to report the incident to police, but they were too busy with the protests to deal with his complaint and requested that he come back another day. However, he did not do so.

[5] Following the incident, as the protests continued, the PA claims that he tried to help protect his neighbourhood and attempts were made to set his family home on fire. He asserts that his bus was attacked and burned again, and that his phone and wallet were stolen.

[6] The PA and his family went to Santiago, Chile for two weeks before going back home. The PA came to Canada on December 7, 2019.

[7] The Applicants claim that on December 15, 2019, their home was destroyed in a suspected arson attack. As a result, the PA's wife, Mariella Giordana Schneider Vilchez, and children Kiara Anais Olmos Vlades, and Mateo Ignacio Olmos Schneider left Valparaiso. The family stayed with friends until they came to Canada in February 2020 and applied for refugee protection in November 2020.

[8] The PA's oldest daughter Tanya Belen Puyol Schneider, remained in Chile as she was pursuing university studies. In September 2021, she asserts that she started receiving threatening phone calls from individuals who claimed that they were looking for the PA and that she later received a threatening note at her door. On October 27, 2021, she fled Chile for Canada and filed a claim for refugee protection in May 2023, which was ultimately joined with the refugee claims of her family.

[9] The RPD rejected the Applicants' claims, finding they had viable IFAs in Puerto Mont and Punta Arenas, Chile. The RAD upheld the RPD's determination.

[10] Before the RAD, the Applicants tried to submit 26 documents as new evidence. The RAD found that all but three of the documents were published and available to the Applicants prior to the RPD decision and were therefore not admissible under subsection 110(4) of the IRPA. With respect to the remaining three articles, the RAD found the first article to be inadmissible on the

basis that it was undated and contained information that was clearly known to the Applicants and that could have been presented prior to the rejection of their claims. The other two articles, which were described as "a June 16, 2024 article outlining how the Chilean authorities had recently disrupted the activities of two drug smuggling organizations, and a May 9, 2024 article outlining how a Venezuelan crime organization had entered Chile" [Articles], were rendered inadmissible on the basis that neither concerned the organizations alleged by the Applicants to be the agents of persecution [AOP] and were therefore not relevant pursuant to *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385.

[11] In the Decision, the RAD applied the two-part test set out in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164, assessing whether the IFA locations were: 1) safe in that there was no serious possibility of persecution or risk to life, cruel and unusual treatment, punishment or torture in the IFAs; and 2) reasonable based on the Applicants' personal circumstances (*i.e.*, not unduly harsh and did not jeopardize the life or safety of the Applicants) to require the Applicants to relocate to the IFAs.

[12] In considering the first prong of the IFA test, the RAD found that the Applicants had not provided sufficient evidence to establish the identify of their AOP. While the RAD disagreed with the RPD and found that it is was possible to satisfy this prong of the test when the AOP was not specifically identified, the RAD nonetheless found that there was insufficient evidence to establish that the AOP possessed the motivation and the means to pursue the Applicants in the IFA locations, and to conclude that the AOP had ties and influence to the government so as to create a risk to the Applicants.

[13] The RAD further found on the second prong of the IFA test that the Applicants had failed to demonstrate that the purposed IFA locations were unreasonable.

II. Analysis

[14] There are two issues raised by this application:

A. Under the first prong of the IFA test, did the RAD err when assessing the risk of persecution by allegedly failing to consider all the evidence before the RPD that was part of the National Documentation Package [NDP] for Chile?

B. Under the second prong of the IFA test, did the RAD err when determining that the Articles were not relevant to the appeal?

[15] The parties assert, and I agree, that the standard of review on this application is reasonableness. To assess reasonableness, the Court must consider whether the Decision is "based on an internally coherent and rational chain of analysis and that it is justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85. Any alleged flaws or shortcomings with the decision must be more than merely superficial or peripheral to the merits of the decision. The Court must be satisfied that they are sufficiently central or significant to render the decision unreasonable: *Vavilov* at para 100. A decision will be reasonable if when read as a whole and taking into consideration the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at para 99.

III. Analysis

A. *Did the RAD err when assessing the risk of persecution by allegedly failing to consider all the evidence before the RPD that was part of the NDP for Chile?*

[16] The Applicants argue that RAD failed to consider certain evidence from the NDP that demonstrated that they would face a serious possibility of persecution from left-wing activists and organizations if they were sent to the IFA locations. Specifically, they refer to three articles from the NDP that report on criminal organizations in Chile and comment generally on deficiencies in Chile's police and judicial systems.

[17] The Respondent asserts that the Applicant's arguments amount to a disagreement with the RAD's analysis, and a request for this Court to reweigh evidence. I agree.

[18] The RAD considered the evidence before it but found that it was insufficient to establish that the AOP would have the motivation or means to pursue the Applicants in the IFA locations. As reasonably considered by the RAD, the incidents involving the Applicants were localized and did not indicate that the AOP had the means or motivation to pursue the Applicants elsewhere. The RAD assessed the objective evidence and reasonably noted that the incidents involving the Applicants occurred during a time of severe societal upheaval, and the PA had testified that many other transit drivers were also attacked during this time. The Applicants also testified that arson and house fires were common occurrences during that time.

[19] Further, after five years, there was no evidence that the Applicants, or their family and friends, had been contacted by the AOP, nor was there any evidence that the AOP had the

motivation to pursue the Applicants in the IFA locations. While the Applicants asserted that the AOP had police connections, the evidence relating to the Applicants' personalized experiences was not supportive of this claim.

[20] The three documents highlighted by the Applicants from the NDP do not detract from this finding. The documents do not relate to the purported AOP, nor do they establish a personalized forward-looking risk for the Applicants. While the Applicants assert that the evidence establishes that the state lacks sufficient capacity to provide protection to the Applicants anywhere in Chile, I agree with the Respondent this assertion is an improper invitation for the Court to reweigh the evidence: *Vavilov* at para 125.

[21] The RAD considered the objective evidence but found that "societal institutions in Chile [were] generally well regarded and relatively strong, with the Chilean Carabineros, in particular, being 'one of the most professional and well-trained, and least corrupt, police forces in Latin America'". The Applicants assert that circumstances have changed since the protests of 2019, however the objective evidence cited by the RAD refers to documents that are dated after 2019. The fact that the RAD did not arrive at the conclusion desired by the Applicants is not a reviewable error.

[22] The Applicants have not established that the analysis on the first prong of the IFA test was unreasonable.

B. *Did the RAD err when determining that two of the articles that the Applicants sought to introduce on appeal were not relevant to the appeal?*

[23] The Applicants assert that the RAD erroneously disregarded the Articles as being irrelevant to the first prong of the IFA test when the articles should have been considered for the second prong of the analysis. They argue that the articles indicate that the proposed IFA locations are experiencing a rise in violent crimes due to transnational criminal organizations, and as such it would be unreasonable for the Applicants to relocate there. The Applicants assert that the RAD should have considered these articles when assessing the impact on the Applicants relocating to the IFA locations. I do not find these arguments persuasive.

[24] First, the arguments conflate the two arms of the IFA test. Second, the Applicants did not establish the relevance of these general country condition documents to their situation, nor to their ability to relocate to the proposed IFAs.

[25] As reasonably noted by the RAD, safety concerns relate to the first prong of the IFA test. Here, while the Articles were directed at crime in Chile generally, they did not relate to the alleged AOP. As such, they were not relevant to the Applicants' alleged fear of persecution. Further, they did not establish that the IFA locations would be unsafe for the Applicants as they did not demonstrate that the AOP had the means or motivation to locate, pursue or harm the Applicants in the IFA locations.

[26] For the second prong of the IFA test, the Applicants' personal context and situation are to be considered, including factors such as language, religion, ethnicity, education, and their ability

to earn a living. As stated by the RAD, establishing unreasonableness in the IFA requires actual and concrete evidence of the existence of conditions that would be unduly harsh to the Applicants to the point of jeopardizing their life and safety if they were to relocate to the IFAs. None of this was established by the evidence.

[27] I find no error in this analysis. The RAD was aware of the test to be applied and the arguments raised by the Applicants, including the arguments based on the Articles, but found that the Applicants did not establish that they would be unsafe in the IFA locations or that the IFA locations were unreasonable.

[28] For all these reasons, the application is dismissed.

[29] There was no question for certification proposed by the parties, and I agree that none arises in this case.

JUDGMENT IN IMM-14708-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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