

Federal Court



Cour fédérale

Date: 20250723

Docket: IMM-13794-23

Citation: 2025 FC 1315

Ottawa, Ontario, July 23, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

**PEDRO FLORES MORENO
MARIA DE LOURDES FERIA BRAVO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a Refugee Appeal Division [RAD] redetermination of the Applicants' (husband and wife) claim that they are at risk in Mexico from the Jalisco New Generation (CJNG) cartel. They argue that the RAD erred by rejecting the new evidence and by impugning their credibility.

[2] I am dismissing this judicial review application as I have found that the RAD's decision is reasonable.

I. Background

[3] In their basis of claim form, the Applicants allege as follows:

- a. The Applicants run a used car business in Mexico. On December 22, 2019, CJNG members stole one of the Applicants' cars during a test drive. The CJNG member threatened to kill the Applicants if they reported the theft to the police. On the following day (December 23, 2019) the Applicants reported the theft to the police, along with descriptions of the CJNG members and the car.
- b. In February 2020, the Applicants received a call from a CJNG member who said that they knew the Applicants had made a complaint to the police about them and warned that there would be consequences for doing so. The Applicants were concerned that the CJNG member must have found out about the complaint through the police department, and fled Mexico for Canada on March 4, 2020.
- c. When the Applicants left Mexico, they asked their neighbour Ruth Monserrat Cortes Huerta (Ms. Cortes) to watch over their home while they were in Canada. In August 2020, Ms. Cortes told the Applicants that there had been suspicious activity around the Applicant's place: cars with tinted windows and people with CJNG badges were checking in on the property. [Footnotes omitted.]

[4] The Refugee Protection Division [RPD] rejected the Applicants' claim based on credibility, citing a lack of evidence to corroborate: (1) their used car business; (2) their report of the vehicle theft; and (3) their communication with Ms. Cortes regarding the CJNG monitoring their home after they left for Canada.

[5] The RAD refused their appeal. When the Applicants sought judicial review, the parties consented to a redetermination by the RAD. In the redetermination, the Applicants filed new evidence under subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

A. *RAD decision under review*

[6] On October 17, 2023, the RAD again refused the Applicants' appeal.

[7] The RAD rejected the new evidence, finding that the letters from Ms. Cortes were not credible, and that portions of Mr. Flores Moreno's affidavit were not credible. The RAD also concluded that there was no forward-looking risk to the Applicants due to a lack of corroborating evidence.

II. Issues and standard of review

[8] On this judicial review, the Applicants submit that the RAD erred in:

- A. the exclusion of the new evidence; and
- B. the consideration of forward-looking risk.

[9] The parties agree that reasonableness is the standard of review on both issues. Upon conducting a reasonableness review, this Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12, 15

[*Vavilov*]). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85).

III. Analysis

A. *The exclusion of the new evidence*

[10] The Applicants argue that it was unreasonable for the RAD not to admit their new evidence which included letters from their neighbour Ms. Cortes and Mr. Flores Moreno's affidavit, which explains why the Cortes letters were not provided to the RPD or the first RAD panel.

[11] The RAD's consideration of new evidence is governed by subsection 110(4) of the *IRPA*, which states:

Evidence that may be presented	Éléments de preuve admissibles
110. (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	110. (4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[12] In Canada (*Citizenship and Immigration*)v Singh, 2016 FCA 96, the Court of Appeal

addressed the role of the RAD in considering new evidence as follows at paragraph 50:

[50] As the Supreme Court noted in *Palmer*, a well-established judicial principle exists whereby the evidence and issues must be introduced exhaustively and dealt with at trial in criminal matters or at first instance in civil matters. As a case progresses, the issues in the matter must normally be further narrowed; the effect of introducing new evidence would be rather to expand the scope of the debate. This is what the RAD aptly highlighted at paragraph 20 of its reasons:

On this topic, it should be noted that the fact that evidence corroborates facts, contradicts RPD findings or clarifies evidence before the RPD does not make it “new evidence” within the meaning of subsection 110(4) of the Act. If that were the case, refugee protection claimants could split their evidence and present evidence before the RAD at the appeal stage that could have been presented at the start, before the RPD. In my opinion, this is exactly what subsection 110(4) of the Act seeks to prohibit.

[13] Here the RAD addresses the new evidence in the form of the Cortes letters as follows:

[25] However, I must also assess whether the letters also meet the *Singh* criteria for newness, relevance, and credibility. I find the letters failed to meet the criteria from credibility. I have serious concerns about the fortuitous timing of the letters, undermining their credibility. At the Hearing, the PA testified that he attempted to call Ms. Cortes and ask for a letter but did not get an answer. However, the first letter from Ms. Cortes arrived during the RPD Hearing and the Appellants did not make the Member aware of it at that time.

[26] Furthermore, upon careful examination of the letters, I find they contain conflicting information undermining Ms. Cortes’ credibility. In the first letter dated July 5, 2022, Ms. Cortes states she “can attest to the events that took place starting in the month of August 2020, before Mr. Flores Moreno had to leave Mexico City.” However, the Appellants left Mexico on March 4, 2020.

Therefore, the events would have occurred after they left. The PA alleges that after July 5, 2022, he spoke with Ms. Cortes and told her to submit an updated version of the letter. After this conversation, in her second letter dated July 11, 2022, Ms. Cortes states that she “can attest to the events that took place starting in the month of March 2020,” changing the timeline of her letter. Cumulatively, I find the circumstances surrounding the Cortes letters, including their fortuitous timing and the conflicting timeline, undermine their credibility. Therefore, they are rejected. [Footnotes omitted.]

[14] In my view, the RAD reasonably considered the Cortes letters and found them not credible due to inconsistencies and conflicting information. On judicial review, it is not the role of the Court to reweigh evidence that was reasonably considered by the RAD.

[15] The RAD goes further and explained how this credibility finding affected the affidavit of Mr. Flores Moreno (referred to as the PA’s affidavit), which relied on information from Ms. Cortes. The RAD addressed this as follows:

[27] At paragraph 17 of the PA’s affidavit, he alleges he spoke to Ms. Cortes on the phone, and she told them that a member of the cartel had come looking for him earlier in 2023. The PA alleges he contacted Ms. Cortes in August 2023, to ask for corroborating evidence and received a text message from a former neighbour, Polo. Polo spontaneously texted without prompting and the PA speculates Ms. Cortes told Polo about his request.

[28] The Appellants have the onus of demonstrating why the new evidence meets the admissibility criteria. The Appellants have not provided either a letter from Ms. Cortes or the alleged text message from Polo on appeal. Given my credibility concerns regarding the Appellants’ other new evidence, I find the presumption of truth attached to paragraph 17 of their sworn affidavit is rebutted. There is no way for me to assess the credibility of either the conversation with Ms. Cortes or the alleged text message from Polo. I find the Appellants have failed to discharge their burden, on a balance of probabilities, and paragraph 17 of the affidavit is rejected.

[16] The RAD reasonably rejected the new evidence, noting the Applicants did not provide a letter from Ms. Cortes or the alleged text message from Polo.

[17] Relatedly, the Applicants argue that the RAD erred by not specifically addressing paragraphs 1-16 of the Flores Moreno affidavit. However, the mere fact that the RAD does not specifically reference those paragraphs does not indicate the evidence was overlooked. Decision-makers are presumed to have weighed and considered all the evidence before them unless proven otherwise (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36).

[18] The RAD consideration and treatment of the new evidence was consistent with the direction provided in *Singh* and therefore is reasonable.

B. *The consideration of forward-looking risk*

[19] The Applicants argue that the RAD erred in its forward-looking risk analysis by requiring corroborating evidence. They argue that, absent credibility concerns, their evidence should be presumed to be true and not require corroboration (*Galamb v Canada (Citizenship and Immigration)*, 2018 FC 135 at para 9).

[20] On this issue, the RAD concludes as follows:

[42] The PA testified that in August 2020, Ms. Cortes, his neighbour, informed him that cars sometimes park outside their home and people have been looking for him. Absent evidence to the contrary, I find it difficult to believe that, despite knowing where the Appellants lived, the agents of harm waited nearly five months to visit their home to harm them. Furthermore, given the fact that I did not admit the Cortes letters into evidence because

they were not credible, I find that the Appellants' failed to establish that the CJNG ever visited their home after the car theft, on a balance of probabilities.

[43] I find the Appellants have failed to present sufficient credible and reliable evidence to establish that the CJNG presents a forward-looking personalized risk of harm to them in Mexico

[21] As noted above, the RAD found Ms. Cortes' letters were not credible. In light of this, any presumption of truth was rebutted. As noted by the RAD at paragraph 28: "Given my credibility concerns regarding the Appellants' other new evidence, I find the presumption of truth attached to paragraph 17 of their sworn affidavit is rebutted".

[22] The Applicants argue that the RAD's concern regarding a lack of visits by the CJNG prior to August 2020 was speculative and amounted to an unreasonable plausibility finding. However given the credibility concerns surrounding Ms. Cortes' letters, it was reasonable for the RAD to make a plausibility finding. The RAD reasonably concluded: "I find it difficult to believe that, despite knowing where the Appellants lived, the agents of harm waited nearly five months to visit their home to harm them."

[23] Ultimately, the Applicants had the onus to establish, on a balance of probabilities, the facts and evidence to support their risk allegations. They did not meet this onus. Therefore, the RAD's finding was not speculative but grounded in the evidence, which was reasonably weighed and found lacking in reliability and credibility.

[24] The RAD's forward-looking risk analysis was reasonable.

IV. Conclusion

[25] This judicial review application is dismissed. There is no certified question.

JUDGMENT IN IMM-13794-23

THIS COURT'S JUDGMENT is that:

1. This judicial review application is dismissed.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-13794-23

STYLE OF CAUSE: MORENO ET AL V MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 11, 2025

JUDGMENT AND REASONS: MCDONALD J.

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