Federal Court Cour fédérale

Date: 20250903

Docket: IMM-17716-24

Citation: 2025 FC 1452

Ottawa, Ontario, September 3, 2025

PRESENT: The Honourable Mr. Justice Thorne

BETWEEN:

DANIEL FERNANDEZ PORRAGAS
ARANZA MARQUEZ SEPULVEDA

Applicants

and

THE MINISTER OF CITZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision by the Refugee Appeal Division [“RAD”], confirming a finding by the Refugee Protection Division [“RPD”] that they are neither Convention refugees nor persons in need of protection. They allege that the RAD’s decision was unreasonable because it misapprehended evidence and erred in its assessment of the agent of harm’s means and motivation to locate the Applicants in the proposed internal flight alternative [“IFA”].

[2] For the following reasons, this application is dismissed, as I do not find the decision of the RAD unreasonable.

II. Background

[3] The Applicants are Mexican citizens. They state that from 2014 to 2021, the Principal Applicant, Mr. Porragas, and his immediate and extended family, and then later the Associate Applicant Ms. Sepulveda, experienced a series of disparate criminal incidents. These included: in 2014 the Principal Applicant being robbed when he was a university student, and the home of his family later being broken into; in 2015 the Principal Applicant being robbed during a traffic stop; in 2016 the family home being again robbed; in 2016 the Principal Applicant's father receiving an anonymous call saying his sons might be kidnapped; in 2017 the Principal Applicant's brother being threatened; in 2018 the Principal Applicant being robbed at knifepoint in his neighbourhood; in 2019 and 2021 the Applicants' feeling that they were followed by strange vehicles; and in the summer of 2021, the Associate Applicant being sexually harassed and threatened by a man near her property.

[4] In 2021, the car of the Principal Applicant's mother was broken into, with her credit cards being stolen out of it. After this incident, the Applicants decided to leave Mexico. They did so, travelling to Canada in January 2022, where they subsequently claimed asylum. They note that 15 months later, in April 2023, a wealthy uncle of the Principal Applicant began receiving extortion demands from individuals claiming to be from the La Familia Michoacana cartel ["LFM"], and the Applicants now state that they believe that this group, or one allied to it, was likely behind all of the incidents over the years.

[5] The RPD and the RAD each found that the Applicants were neither Convention refugees nor persons in need of protection, holding that they had an IFA in the city of Monterrey which they could safely and reasonably relocate to within Mexico. On its independent assessment of the evidence the RAD found that, on a balance of probabilities, the agents of harm were not motivated to locate the Applicants in Monterrey. In essence, the RAD found that the Applicants had not established that the various criminal incidents were linked or the work of one criminal group which was targeting their family, and that while the Applicants believed that it was LFM or an affiliated group that were the culprits, this was mere speculation unsupported by evidence. Accordingly, the RAD noted that there was no evidence indicating that the LFM or any such group was involved, and that the Applicants had not recognized or been able to identify any of the disparate criminals they had encountered. Ultimately, the RAD determined that the Applicants had not established that any criminal group would be motivated to locate, pursue and harm them across the country, were they to return to Mexico and relocate to Monterrey. Having found that this motivation had not been established, the RAD did not go on examine the capacity or means of the unknown assailants find the Applicants. The RAD also found that it was reasonable for the Applicants to relocate and live in the proposed IFA, on the evidence provided.

III. Issue and Standard of Review

[6] The sole issue at play in this matter is whether the decision under review is reasonable.

[7] In this respect, the role of a reviewing court is to examine the decision maker's reasoning and determine whether the decision is based on an "internally coherent and rational chain of analysis" and 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; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 64. Although the party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100), the reviewing court must assess "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" *Vavilov* at para 99.

IV. Legal Framework

[8] The underlying basis for an IFA is the notion that refugee claimants should seek safety elsewhere in their home country, before seeking protection in Canada. The test for the determination of an IFA is well-established, and holds that an individual who faces a risk of harm in one part of a country may only be found to have an IFA in another part of that country if two criteria are met:

1. There must be no serious possibility of the claimant being persecuted, or subject to a personalized risk of torture, risk to life, or risk of cruel and unusual punishment in the part of the country where the IFA exists; and

2. It must not be unreasonable for the claimant to seek refuge in the IFA, considering all of their particular circumstances.

[9] Under the first part of this test, a serious possibility of persecution, or a risk of torture, risk to life, or risk or cruel and unusual punishment can only be found if it is demonstrated that the agents of harm have both the means and motivation to search for an applicant in the suggested IFA: *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46, citing *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43. With respect to

the second part, the threshold to establish unreasonableness is very high, requiring "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area": *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2001 2 FC 164, 2000 CanLII 16789 (FCA) at para 15. Once an IFA is proposed, the onus is on the claimant to prove that they do not have a viable IFA: *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 9; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 20.

V. Analysis

A. *The RAD decision was reasonable*

[10] The Applicants essentially concede the second part of the IFA test, presenting no arguments with respect to this issue. Instead, they center their arguments on the Agent of Harm's ["AOH"] means and motivation to locate them in the proposed IFA. In this respect, they raise two central arguments.

[11] First, they argue as unreasonable the RAD's finding that the Applicants had failed to establish that all of the alleged criminal incidents involving themselves and their other family members were linked to the same agents of harm. The Applicants assert that the RAD came to this conclusion for two reasons. First, because the Applicants and their family members "did not recognize the faces of the individuals" who were involved in the criminal incidents against them. And second, because the RAD found that as there was generally a high level of crime in the Applicants' neighbourhood, the Applicants were likely not personally targeted for criminal victimization, but had rather experienced the various incidents as part of a broader general pattern

of crime in that area. The Applicants state that it was unreasonable of the RAD to expect that the Applicants and their family would be able to recognize and remember the faces of their many assailants, or to assume that criminal groups in Mexico operated in such a way that victims would be harmed by the same parties repeatedly. The Applicants assert that in relying on these unfounded assertions, the RAD had failed to demonstrate a rational chain of analysis, and had rendered an unreasonable decision.

[12] I do not find these arguments persuasive. With respect, in this argument Counsel for the Applicants clearly misconstrues the reasoning of the RAD, in characterizing it as finding that the Applicants had been unable to establish that all of their incidents were linked and caused by the same organization merely because they had not been able to recognize and remember the faces of their assailants. The RAD did not establish any such requirement, but had rather pointed out that there was no evidence to indicate that the large number of disparate criminal incidents that had allegedly befallen the Applicants and their extended family over the years had been somehow linked or committed by the same group. In doing so, the RAD noted that even in their own evidence with respect to the various incidents, the Applicants had not stated that there was any indication that the same people or group was involved, and nor had there been any other indicia that this was the case, such as the Applicants recognizing the assailants or remembering that any of the crimes had been committed by the same people. As the RAD correctly pointed out, while the Applicants may have believed that the same people or group was involved in all of the various criminal incidents they experienced, the onus was on the Applicants to present evidence indicating that this was the case. This simply was not done.

[13] Similarly, the Applicants also misconstrued the RAD's finding as somehow resting on an assumption that Mexican criminal groups operated such that their victims would encounter the same assailants. This was also done in the context of arguing that the RAD merely noting that the Applicants had admitted that they did not recognize any of the assailants as individuals who had formerly victimized them was somehow unreasonable. Again, this digression deflects from the actual finding of the RAD, that no evidence was presented that indicated the assailants were part of the same group, or that such an entity was coordinating the disparate incidents experienced by the family over the years. It seems clear that the RAD was not assuming or making any commentary on how Mexican criminal entities operate, but again was rather noting the lack of evidence presented that indicated that a central group was involved or targeting the Applicants. As it noted, the RAD could not simply accept the speculation of the Applicants that this was so, without supporting evidence.

[14] The Applicants also contend that the RAD had ignored evidence and misapprehended the facts in finding that the criminal incidents experienced by the Applicants and their family may have been the result of the generalized pattern of crime in the high crime area where they had lived, rather than indicating that the family had been particularly targeted. The Applicants submit that in coming to this conclusion, the RAD had not paid heed to the 2016 incident where the Principal Applicant's father received a warning that his sons might be kidnapped, or focused on the fact that since the Applicants had left Mexico, there had been incidents where their family's home had been marked by chalk, unlike other homes in the neighbourhood. While I can appreciate that the Applicants have a different perspective on the information that was before the RAD, this effort to have the Court re-evaluate the evidence does not correspond with its role on judicial review. The

RAD did not disregard or ignore evidence that ran contrary to its conclusions. Rather, the Applicants merely disagree with the way the RAD weighed the evidence and are essentially asking this Court to also do so and displace the RAD's conclusion. That is not the role of this Court on judicial review: *Vavilov* at para 125.

[15] In its decision, the RAD mentioned all of the incidents cited by the Applicants, but also noted that the Principal Applicant had testified that their family had lived in a particularly high crime area where criminal victimization was relatively common. It further noted the long gaps between many of the criminal incidents, the disparate nature of the many incidents, and the lack of any evidence indicating the incidents were linked or that they had been committed by the same or affiliated entities. For the RAD, consideration of all of these factors led to the conclusion that it was more likely that the Applicants' family had simply been unfortunate victims of the general criminal activity in their area, rather than having been personally targeted by an unknown criminal organization. This is a rational chain of analysis that can be followed without encountering any fatal flaws in its overarching logic. I do not find that it is unreasonable.

[16] Finally, the Applicants contend that the RAD erred when it did not consider whether the Applicants' agent of harm possessed the means to locate and pursue them to Monterrey. The RAD concluded this was unnecessary, once it had determined that the agents of harm lacked the motivation to seek to pursue the Applicants. The Applicants assert that it was unreasonable for the RAD to do this, calling that reasoning irrational. They submit that means and motivation cannot be assessed as two distinct categories and brand the RAD's failure to also consider the capacity of the agents of harm a reviewable error. In essence, the Applicants assert that "means" and

“motivation” are inextricably linked and interrelated. By this, the Applicants posit that the means of a group are a component of its calculation as to whether it will pursue a target. That is, if an agent of harm has the means to easily locate someone, their motivation to find that person need not be excessive for them to decide to do so. Based upon this, the Applicant asserts it was unreasonable for the RAD to treat “means” and “motivation” as disjointed factors within the first prong IFA analysis, and that it erred in not also considering the means of the alleged agent of harm.

[17] I note that in oral argument, counsel for the Applicant clarified that they were not positing that agents of harm with extensive means should be automatically taken to also possess the motivation to pursue any targets. Instead, she stated that the relationship between motivation and means should be kept in mind in assessing the first prong of the IFA test, as in certain situations one could influence the other.

[18] As I have noted before, it is not clear how keeping this in mind would impact the functional analysis of the means and motivation in this, or any matter. It remains true that regardless of their means, an agent of harm would only pursue a target in circumstances where they possessed sufficient motivation to do so. The finding of the RAD, and the issue faced by the Applicants in this matter, is that there was little to no evidence indicating that there was one powerful group or entity behind all of the criminal incidents endured by the Applicants, much less that any such entity had the motivation to pursue them throughout Mexico or to the proposed IFA city of Monterrey. The Applicants have not established that this finding of the RAD was unreasonable.

[19] More generally, I also note that to the extent that this nebulous means and motivation argument is intended to indicate that motivation should simply be assumed when the agent of harm is one of great means, this is surely conceptually incorrect. It is also squarely at odds with this Court's jurisprudence on the first part of the IFA test, the oft-cited summary of which was provided by my colleague Justice McHaffie in *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at paragraph 13:

> It is important to note that there is a difference between a persecutor's *ability* to pursue an individual throughout a country and his *desire* to do so or *interest* in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution.

[20] I see no reason to depart from this analysis. On a basic conceptual level, there is indeed a distinction between one's ability to do something and their desire to do it. This distinction matters for decision makers tasked with evaluating a possibility of harm. An agent with the means to locate someone, but no interest in doing so, logically presents a low risk of harm; an agent that lacks the means to locate someone despite a strong interest in doing so also logically presents a low risk. In any event, decision makers are expected to abide by that distinction in their analysis of the first prong (see e.g. *Belhedi v Canada (Citizenship and Immigration)*, 2023 FC 1449 at para 33; *Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 at para 30; *Sachdeva v Canada (Citizenship and Immigration)*, 2024 FC 1522 at para 56; *Fuentes Hernandez v Canada (Citizenship and Immigration)*, 2024 FC 1682 at para 22).

[21] More generally, it is also worth reiterating that "[any] precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide" (*Vavilov* at para 112). It would accordingly have been incorrect for the RAD to conduct the IFA analysis without due regard for precedent on the matter of means and motivation.

[22] Beyond this, I also note that in this case it would seem to be functionally problematic, if not impossible, to assess the means of the agent of harm, given that the RAD reasonably determined that the evidence did not support the speculation that the various criminal incidents were linked or had been committed by a common entity, or much less that it had been established that they had been the work of the LFM. Ultimately, an agent of harm's motivation must be assessed and borne out in the evidence. Though the Applicant concedes that there is little such evidence in this matter, it stresses that an expert opinion letter in its evidence opines that the frequency of criminal incidents faced by the extended family of the Applicants goes beyond the norm in Mexico, and that this could indicate that the family was targeted by an unknown organization. The RAD was privy to this evidence, and rather decided that given the disparate incidents, the years between them, the lack of any evidence as to the identity of the attackers or of an interrelation between them, the incidents had instead been due to the general high crime area in which the family resided. Again, the Applicant cannot invite this Court to reweigh that evidence and substitute its own assessment of that evidence for that of the RAD.

[23] For the reasons above, I find that the Applicant has failed to establish that the RAD's decision on the first prong of the IFA test was unreasonable. The RAD's decision is well organized,

detailed and explains its reasoning clearly and fully in engaging with the arguments of the Applicant, in this regard.

[24] I also note that the Applicant did not make submissions with respect to the second part of the IFA test, and as such, there is also no basis on that ground to disturb the RAD's findings.

VI. Conclusion

[25] For the reasons set out above, this application for judicial review is dismissed. The parties proposed no question for certification, and I agree that none arises.

JUDGMENT in IMM-17716-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

3. No costs are awarded.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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