

Federal Court



Cour fédérale

Date: 20250909

Docket: IMM-17772-24

Citation: 2025 FC 1491

Toronto, Ontario, September 9, 2025

PRESENT: Madam Justice Go

BETWEEN:

DIEGO GUDINO GUTIERREZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Diego Gudino Gutierrez [Applicant], a citizen of Mexico, last arrived in Canada on a visitor visa in November 2017 and remained in Canada after his visa expired in May 2018. In February 2021, the Applicant made a refugee claim alleging risks from criminal cartels in Mexico.

[2] The Applicant alleges that his brother disappeared in 2012 and, in the same year, the Applicant was kidnapped by members of the Los Caballeros Templarios [LCT] to get information about his brother's whereabouts. The Applicant claims he was kidnapped again in 2017, and again the kidnappers asked about his brother. The Applicant further alleges that he was cautioned and threatened by the police on several occasions not to dig into the matter when he sought a follow-up investigation into his missing brother.

[3] The first Refugee Protection Division [RPD] panel refused the Applicant's claim due to credibility concerns and concluded that the Applicant had Internal Flight Alternatives [IFA]. On appeal, the Refugee Appeal Decision [RAD] ordered a new hearing. After a second hearing, the RPD once again refused the Applicant's claim. The Applicant appealed the RPD's second refusal.

[4] In a decision dated August 27, 2024 [Decision], the RAD affirmed the RPD's second refusal finding as follows: a) the Applicant was not credible in establishing the Cartel Jalisco Nueva Generacion [CJNG] as agents of harm, b) the Applicant's delay in making a refugee claim undermined his credibility, and c) the Applicant's evidence about his efforts to hide out from the cartels was inconsistent. The RAD also briefly addressed the issue of the IFA and found that the Applicant has provided insufficient evidence that the agents of persecution are motivated to find him.

[5] The Applicant seeks judicial review of the Decision, submitting that it was unreasonable. For the reasons set out below, I dismiss the application.

II. Issues and Standard of Review

[6] The Applicant raises the following arguments to challenge the Decision:

- a. The RAD erred in its classification of the agent of harm;
- b. The RAD erred in its assessment of the Applicant's explanations for failing to attribute his second kidnapping to the CJNG in his narrative;
- c. The RAD erred in its assessment of the Applicant's explanations for the delay in filing his refugee claim;
- d. The RAD erred in its assessment of the Applicant's attempts to keep a low profile after being threatened;
- e. The RAD and the RPD should have considered the Applicant's imputed political opinion as a ground of persecution; and
- f. The RAD erred in its assessment of the motivation of the agents of harm to pursue the Applicant.

[7] The standard of review in this case is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, considering both its rationale and outcome, is transparent, intelligible, and justified: *Vavilov* at para 15. 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

[8] As some of the Applicant's arguments are tied to each other, I have reorganized the Applicant's arguments and will address them in the following order.

A. *The RAD did not err in its assessment of the omission regarding the CJNG in the Applicant's narrative*

[9] The Applicant argues that the RAD erred by using the Applicant's omission to mention the CJNG in his Basis of Claim [BOC] narrative to impeach his credibility. While acknowledging that this is an important detail, the Applicant describes BOC narratives as "simple statements of the claimant's story" and are a "mere first attempt of the claimant" to explain what had happened to them. The Applicant submits that he did mention "criminals" in his BOC narrative and did not think of naming the CJNG, but he did clarify what he meant by "criminals" at the RPD hearing. The Applicant contends the RAD erred by failing to consider his credibility on the totality of the evidence, and the RAD placed an unreasonable emphasis on the identity – or the lack thereof – of the 2017 kidnappers in the Applicant's BOC. Finally, the Applicant argues he was not inconsistent when he claimed the CJNG was behind his kidnapping. Read in the context of the narrative, the Applicant submits there is an obvious link between "the associates who are criminals with influence" as noted in his narrative and the CJNG, and the RAD erred by failing to consider this reference.

[10] I find the Applicant's arguments unconvincing.

[11] The RAD did not find that the Applicant failed to establish the CJNG as an agent of harm merely because he did not mention the name of the cartel in his BOC narrative. Rather, the RAD cited several reasons for its conclusion.

[12] To start, the RAD rejected the Applicant's submission that the people who kidnapped him in 2012 "were essentially the same people who became the CJNG." Citing objective evidence, the RAD found that LCT was battling against the territorial expansion of the CJNG and did not accept the Applicant's assertion that the LCT has merged or been absorbed into the CJNG. Based on this finding, the RAD went on to conclude there was insufficient evidence to establish that the people who kidnapped the Applicant in 2017 were essentially the same people who identified themselves as members of the LCT when the Applicant was kidnapped and questioned in 2012.

[13] While accepting that the Applicant was questioned in 2012 by members of the LCT who did not threaten the Applicant, the RAD found contradictory evidence about the 2017 kidnappers. Apart from noting that the BOC did not name CJNG, the RAD noted that all three letters of support from the Applicant's family and friend also made no mention of the CJNG.

[14] The RAD therefore found that the Applicant's account of his 2017 kidnappers evolved from his 2021 BOC narrative account of people who "obviously looked like criminals" to his hearing testimony of people who identified as CJNG members. Other than his evolving testimony, the RAD noted that Applicant provided no other evidence that he has been approached or threatened by CJNG at any other time.

[15] It was based on all of the above findings that the RAD concluded the Applicant's account of his 2017 kidnapping inconsistent and not credible. The Applicant's arguments do not address these findings and fail to raise any reviewable errors other than asserting that the RAD disregarded the totality of the evidence, when the RAD did just that.

B. *The RAD did not err in finding the Applicant's delay in filing his refugee claim undermined the Applicant's credibility*

[16] The Applicant submits that the RAD erred by failing to address the explanations he gave for the delay in making his claim, and only referred to the Applicant's statement that he realized nothing would change in 2018 when the new president was elected. The Applicant argues the RAD ignored other explanations, namely, a) the Applicant's explanation that he feared bringing attention to himself for fear of being deported, and b) the release of the son of a cartel leader from prison and the revelation that the military had worked with drug traffickers on the disappearance of 43 students in January 2021.

[17] I find the Applicant's arguments lack merits.

[18] First, my review of the record, including the RPD hearing transcript and the BOC, reveals the Applicant never suggested that he delayed his refugee claim for fear of being deported. After I repeatedly asked her to point out where in the record did the Applicant provide this explanation in his RPD hearing, counsel for the Applicant finally conceded there was none. As the Applicant never raised this concern before the RPD, the RAD did not err in not addressing this "explanation."

[19] Second, while the RAD pointed specifically to the presidential election in July 2018, this explanation was not the basis upon which the RAD determined the Applicant did not have a genuine fear of harm.

[20] Instead, the RAD considered the Applicant's explanation in the context of totality of the evidence including the fact that in both his BOC and his testimony the Applicant indicated that he came to Canada temporarily and hoped to return to Mexico when it became a safer place to live. However, as the RAD noted, for more than three years, the Applicant made no effort to find a way to stay in Canada, and that he made no effort to inquire about the ways he could extend his stay during the six months he was in Canada on a visitor visa. While noting the presidential election in July 2018, the RAD also noted that even when the Applicant's Mexican passport expired in July 2020, he made no effort to look into his options, despite now living in a foreign country without a valid passport. Based on these findings, the RAD concluded that the Applicant's behaviour was "incompatible with a genuine fear of harm." This conclusion was reasonably open to the RAD to make.

C. *The RAD did not err in finding that the Applicant did not keep a low profile*

[21] The RAD found the Applicant's story regarding this plan to keep a low profile due to his fear of the cartels to be contradictory. The Applicant challenges this finding as unreasonable based on the following arguments.

[22] First, the Applicant submits the RAD made an error regarding the amount of time he has remained in his hometown. The RAD found that the Applicant returned home in December 2016

and worked as a supervisor with a trucking company for nearly a year, when in fact the Applicant was unemployed from January 2017 to March 2017, after which he visited Canada and then returned to work for a total of six months in his hometown.

[23] Second, while the first kidnapping attempt in 2012 was the catalyst for the Applicant's troubles, it was not the ultimate reason behind his claim. The Applicant asserts he moved 1,000 kilometers away while continuing to return home to look for his brother and help others. The Applicant claims he took precautions during that time and after his second kidnapping in 2017, and the escalating threats from the police, he abandoned helping others. However, it was unreasonable for the RAD to expect the Applicant to give up his search for his sibling because of threats to remain in hiding. The Applicant continued his search until he was directly threatened in November 2017 by the police and left Mexico for good.

[24] Citing *Gomez Guzman v Canada (Citizenship and Immigration)*, 2022 FC 152 [*Gomez Guzman*] at para 42 and *Mukamusoni v Canada (Citizenship and Immigration)*, 2015 FC 196 [*Mukamusoni*] at para 4, the Applicant submits the Court recognizes that an applicant is not required to give up their pursuit of justice in order to live safely in their home country. As such, the RAD should have been sensitive to the Applicant's motivations in pursuing missing people and it was unreasonable for the RAD to fail to consider "whether the risk at the time was proportionate to abandoning searching for his brother and who was responsible for his likely death."

[25] I reject the Applicant's arguments for the following three reasons.

[26] First, as the RAD noted in the Decision, the Applicant testified that he was aware “the cartel and the police work together.” Despite that awareness, the RAD noted that the Applicant stated he went to the police every four to six months to enquire about their progress on his brother’s investigation, even as the police told him to leave the matter alone. The RAD also noted the Applicant stated that he helped others in their fight and accompanied them to the prosecutor’s office and the media. The RAD concluded that the Applicant’s story of keeping a low-profile was contradictory because, on the one hand, he fled his family home so the cartels would not find him, and on the other hand, he frequently engaged with the police with whom he knew had ties to the cartels. The RAD’s reasoning demonstrated a clear line of analysis, and its conclusion was reasonably open to it in light of the Applicant’s own evidence.

[27] Second, based on the Applicant’s own account, he was in his hometown for nine months. I agree with the Respondent that it was not unreasonable for the RAD to describe nine months as nearly a year. I also agree with the Respondent that the RAD’s reference to nearly a year was not about how long the Applicant worked at the trucking company, but how long he resided in the same region of Mexico. I see no reviewing error arising from the RAD’s finding.

[28] Third, I find the cases cited by the Applicant distinguishable because the RAD in this case did not expect the Applicant to abandon his search for his missing brother. Rather, the RAD focused on the inconsistency between the Applicant’s claim to keep a low profile, on the one hand, and his frequency of engagement with the police on the other, particularly given the link the Applicant himself made between the cartels and the police.

D. *The RAD did not err in its classification of the agent of harm and did not err by not considering imputed political opinion as a ground of persecution*

[29] The Applicant submits that the RAD erred in classifying the Applicant's agent of harm. The RAD stated that the Applicant feared the CJNG; however, the Applicant argues this classification did not reflect the totality of the Applicant's claim, as the Applicant also fears the police and their corruption in working with the cartels. The Applicant submits that the failure to consider the role of the police in his claim caused the RAD to overlook crucial details regarding the Applicant's credibility and his risk if he returns to Mexico. While the RAD did not have to refer to every piece of evidence, the Applicant contends that the police harassment and threats are central to the Applicant's claim and should have been considered: *Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 at para 17.

[30] Relatedly, the Applicant also argues that both the RAD and RPD should have considered the Applicant's imputed political opinion as a ground of persecution. This is because the Applicant repeatedly stated in his claim and testimony about his fear of the police and the cartels as he continued to look for his brother while helping other family members of the disappeared to find justice. His efforts caused the police and cartels to target him.

[31] Citing *Mukamusoni* and *Gomez Guzman*, the Applicant submits his activism in seeking justice for his brother and other families with missing relatives should be considered an imputed political opinion. As such, the RPD and RAD should have considered the claim under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD's failure to do so means that the entirety of the Applicant's risk was not assessed.

[32] I reject the Applicant's arguments.

[33] As the Respondent rightly points out, and I concur, the very first time that the Applicant raises the issue of an imputed political opinion is before the Court. The Applicant's counsel conceded at the first RPD hearing that there was no nexus to any *Convention* ground as the Applicant alleged risk from cartels behaving in a criminal manner. Before the second RPD panel, the Applicant did not reverse his position, and the RPD, in its second refusal, once again found a lack of nexus. I also observe that in his memorandum on appeal to the RAD [RAD memorandum], the Applicant did not challenge the RPD's finding of a lack of nexus. The only issue the Applicant raised before the RAD was whether the RPD's credibility findings were correct.

[34] Similarly, in his 72-paragraph RAD memorandum, the Applicant did not once mention the Applicant's fear of the police as a separate and distinct ground of his claim. While the Applicant mentioned that he faced harassment and menacing threats when he approached the authorities about his missing brother, the thrust of the Applicant's RAD memorandum challenged the RPD's finding that the Applicant did not credibly establish CJNG as an agent of harm and the RPD's rejection of the Applicant's explanations for the delay in filing his claim.

[35] At the hearing, counsel for the Applicant pointed to three specific paragraphs - paras 1, 7 and 60 in the Applicant's RAD memorandum - to argue that the issue was raised before the RAD. Having reviewed these paragraphs, I reject counsel's submission as meritless.

[36] In para 1 of the RAD's memorandum, the Applicant asserts that he is "the subject of the persecution, harassment, and threats by [CJNG] and its associates," and that the Applicant is "persecuted due to investigating and assisting with the authorities about the disappearance of his brother." Nowhere in this paragraph did the Applicant mention his fear of persecution by the police. On the contrary, the statement that he was "assisting with the authorities" implied that the Applicant was cooperating with the police in their investigation.

[37] While both paras 7 and 60 recount the threats from the police, the Applicant still did not identify the police as agents of harm and instead referred to the "perpetrators" who pressed him about his brother's whereabouts in para 7, and noted that the "police continued to be infiltrated by criminal elements" in para 60. As such, I agree with the Respondent that the Applicant never identified his fear of police independently from the CJNG; instead, his alleged fear of the police is tied to his allegation of fear from the CJNG.

[38] I find it improper for the Applicant to raise new issues on judicial review that he never raised before the RPD or the RAD, despite having four opportunities - two RPD hearings and two RAD appeals - to do so. As the Court confirmed in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 636 at para 15 citing *Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321 at paras 23-24 and *Odkunle v Canada (Citizenship and Immigration)*, 2022 FC 786 at paras 31-32, a new argument not argued before the RAD should not be advanced for the first time with the Court on judicial review.

[39] Furthermore, I reject the Applicant's contention that the RAD erred by not analyzing the threats he received from the police, as there was no indication that the Applicant was not credible regarding his interactions with the police, and as such, the RAD should have considered the police as an agent of harm independently from the cartel.

[40] The Applicant's written submission before the Court cites excerpts of exchanges between him and the RPD member during which the Applicant described an incident when he went to seek answers about his brother's disappearance and a police officer came out with his gun and threatened the Applicant that the same thing that happened to his brother would happen to him, if he continued to ask questions for himself and the other families. The RPD member then asked the Applicant if he had any idea why "they might have wanted you to stop going to the police," to which the Applicant replied: "Because the cartel and the police work together. The police gives [sic] the cartel the dirty work to be done."

[41] In the Decision, the RAD acknowledged the Applicant's testimony that "the cartel and the police work together" but impugned the Applicant's credibility for saying, on the one hand, he fled far away so the cartels would not find him, and on the other hand, "he frequently engaged with the police with whom he knew had ties to the cartels." Thus, the RAD did consider the Applicant's allegation against the police based on his own testimony and found it to be lacking in credibility.

[42] In light of its credibility finding, I find the RAD did not err by not considering the police independently as an agent of harm.

E. *The RAD did not err in its assessment of the motivation of the agents of harm*

[43] The two-pronged test for assessing an IFA was set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA), 140 NR 138 [*Rasaratnam*]. With respect to the first prong, the RAD must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists: *Rasaratnam* at page 710. The RAD must consider both the motivation and means of the agents of persecution. In this case, the RAD found there was a lack of motivation for the agents of persecution to go after the Applicant.

[44] The Applicant argues that the RAD overlooked the fact that, by leaving for Canada and not following up on his brother's case as well as aiding others, the Applicant has done what the agents of harm wanted, and therefore, there is no need to continue with the threats. The Applicant further argues that if he returns to Mexico, to remain safe, he would have to give up on his convictions of finding his brother and helping others, when he should not have to stop doing so.

[45] In support of his argument, the Applicant cites *Pimental Colmenares v Canada (Citizenship and Immigration)*, 2006 FC 749 at para 14; *Buyukshin v Canada (Citizenship and Immigration)*, 2015 FC 772 at para 26; *Callender v Canada (Citizenship and Immigration)*, 2020 FC 515 at para 50. In assessing whether the Applicant faces a forward-looking risk, if the Applicant returns to Mexico and continues to pursue his brother's case, the Applicant submits there is a clear motivation from the police and cartels to silence him.

[46] Once again, I find the Applicant's submissions do not reflect the actual findings made by the RAD.

[47] The RAD found the cartels lack motivation to pursue the Applicant based on the evidence including the Applicant's testimony that he was picked up and questioned for a couple of hours by members of the LCT in 2012 and he was again picked up and questioned for a few hours in 2017 by people who "looked like criminals" that he later testified were members of the CJNG. The RAD noted that the Applicant did not indicate that he was threatened or harmed during either of the kidnapping incidents, and that twelve years have passed since his brother's disappearance. The RAD further noted that the Applicant lived in another city in Mexico for three years without any incident, and provided no evidence that either the LCT, the CJNG or anyone else has been looking for him since he left Mexico nearly seven years ago. Based on these findings, the RAD thus concluded there was insufficient evidence that the LCT, the CJNG or the Mexican police are interested in pursuing the Applicant.

[48] The Applicant's arguments do not address any of these findings made by the RAD. The Applicant bears the burden of proof in demonstrating that an IFA either does not exist or is unreasonable in the circumstances. The RAD's conclusion that the Applicant failed to discharge his burden was a reasonable finding that was open to the RAD in view of the evidence.

[49] Finally, the fact that the RAD also mentioned in the context of IFA that the Applicant has provided insufficient evidence that the Mexican police are interested in pursuing him does not support the Applicant's contention that the RAD must therefore have considered the police as an

agent of harm. As noted above, I find the Applicant's claim of fear of the police was tied to his fear of the cartels. It was not unreasonable for the RAD to refer to the police in this context of the IFA analysis in light of the Applicant's claim. In any event, given the RAD's overall negative credibility findings, its finding on the IFA was not determinative of the Applicant's claim.

IV. Conclusion

[50] The application for judicial review is dismissed.

[51] There is no question for certification.

JUDGMENT in IMM-17772-24

THIS COURT'S JUDGMENT is that:

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

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-17772-24

STYLE OF CAUSE: DIEGO GUDINO GUTIERREZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 28, 2025

JUDGMENT AND REASONS: GO J.

DATED: SEPTEMBER 9, 2025

APPEARANCES:

Krystyna Jones	FOR THE APPLICANT
Alethea Song	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Zarei Law Professional Corporation Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT