

Federal Court



Cour fédérale

Date: 20250915

Docket: IMM-16563-23

Citation: 2025 FC 1523

Toronto, Ontario, September 15, 2025

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

**ANA KAREN AGUILLON GRACIA
VICTORIA LIE MONTOYA AGUILLON
SHAITT ANTONIO MONTOYA VIEWEG
HANNIA NICOLE AGUILLON GRACIA
JOSE CRUZ CORDOBA PACHECO
JOSE EMILIANO CORDOBA AGUILLON
PATRICIA ELIZABETH AGUILLON GRACIA
PATRICIA GRACIA URIBE**

Respondents

JUDGMENT AND REASONS

[1] This is an application for judicial review brought by the Applicant [the Minister] of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated December 8, 2023, wherein the RAD reversed the decision of the Refugee

Protection Division [RPD] that the Respondents [Claimants] were not Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Claimants are members of a family, all with Mexican citizenship, comprised of the Principal Claimant, Ana Karen Aguilon Gracia, her common-law partner, her two minor daughters, her minor brother, her adult sister, her mother and her stepfather. The Claimants sought refugee protection following a series of events in Mexico which caused them to fear “criminal elements” in their home state of Queretaro. Specifically:

- A. In January 2016, the Principal Claimant’s ex-partner, a taxi-driver, was murdered in Queretaro by unknown individuals.
- B. In the aftermath of the murder, the Claimants noticed that they were being monitored. They saw vehicles with tinted windows parked outside their home and noticed that suspicious vehicles had also followed them whenever they left.
- C. There were multiple attempts to break into the Claimants’ home, the last of which occurred in September 2021. The Claimants also heard footsteps on the roof of their home on multiple occasions.
- D. In November 2020, the Principal Claimant was grabbed by the wrist by an unknown man when exiting a store, but she managed to escape.
- E. In September 2021, three men attempted to kidnap the Principal Claimant’s brother and mother in Queretaro.

F. After a number of the Claimants fled to Canada, the Principal Claimant's mother and sister moved in with another family member in Queretaro. They then noticed that one of the same vehicles that had been following them at their former residence was observing them at this new residence. They then relocated to Mexico City, where they also noticed further suspicious vehicles.

[Collectively, the Incidents.]

[3] The RPD found that the Claimants were neither Convention refugees within the meaning of section 96 of the *IRPA*, nor persons in need of protection within the meaning of subsection 97(1) of the *IRPA*. The RPD found the Claimants to be credible witnesses as it relates to their allegations of harm but raised credibility concerns regarding the Claimants' speculations about the identity of the agents of harm and their motivation to harm them. At the hearing before the RPD, the Principal Claimant testified that she believed that all of the Incidents were connected and that the Claimants were targeted, but she could not identify the agent of harm or explain why the Claimants were being targeted by the agent of harm.

[4] The RPD accepted that the Incidents occurred but found that it was not credibly established that the Incidents were connected or related given the time frames of the Incidents being so widely spaced out, the unknown identity of the assailants and the unknown motivation of the assailants. Rather, the RPD considered it more likely than not that after these random Incidents, the Claimants decided to misleadingly claim that the Incidents were part of a repeated effort to specifically target them by a powerful yet unknown Mexican entity. Given the country condition evidence about general violence in Mexico, the unknown identity of the assailants and

the unknown motivation for the Incidents, the RPD concluded that the Incidents were unrelated and that the Claimants had not established that they have been targeted and are continuing to be pursued in Mexico. Based in large measure on this determination, the RPD went on to find that the Claimants had a viable internal flight alternative [IFA] in Mexico.

[5] The Claimants appealed the RPD's determination to the RAD. On their appeal, the Claimants sought to introduce new evidence in the form of: (a) testimony from taxi drivers in Queretaro attesting that they are targeted for extortion by the Cartel Jalisco New Generation [CJNG]; (b) a letter from the Principle Claimant's grandmother; (c) a letter from the Principal Claimant's step-grandfather; (d) a handwritten death threat note purportedly authored by CJNG; and (e) a handwritten note purportedly authored by Queretaro prosecutors.

[6] The RAD refused to admit the testimony from the taxi drivers on the basis that it had been reasonably available at the time of the hearing before the RPD but admitted the balance of the new evidence.

[7] Relying on the newly admitted death threat note and the letter from the Principal Claimant's grandmother, the RAD found that the RPD came to an incorrect conclusion on the first prong of the IFA test based on the RPD's finding that the Claimants could not identify their agent of harm. The RAD was satisfied that CJNG is the Claimants' agent of harm. The RAD went on to find that CJNG had the means and the motivation to locate the Claimants anywhere in Mexico and as such, there is no viable IFA for the Claimants. As a result, the RAD set aside the

decision of the RPD and substituted its own determination that the Claimants were persons in need of protection.

[8] The Minister asserts that the RAD's decision is unreasonable on the basis that: (a) the RAD failed to properly assess the new evidence and in particular, the death threat note; and (b) the RAD failed to explain how the new evidence was sufficient to establish that CJNG was the Claimants' agent of harm.

[9] The parties agree and I concur that the decision is reviewable on a standard of reasonableness. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[10] I find that the RAD's decision falls far short of the requisite degree of justification, intelligibility and transparency required of a reasonable decision as it contains no rational chain of analysis whatsoever in relation to the key findings made therein.

[11] I will begin with the RAD's decision to admit the new evidence. Subsection 110(4) of the *IRPA* provides that the RAD can only consider new evidence if: (a) it arose after the RPD's decision; (b) if the evidence was not reasonably available at the time; or (c) the person could not reasonably have been expected to present it at the time of the RPD's negative decision. Proposed new evidence before the RAD must meet both the express statutory requirements of subsection 110(4) and the factors set out in *Raza-Singh* framework — namely, that the new evidence be credible, relevant, new and material [see *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 38–49; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 13–15].

[12] In relation to whether the evidence is credible, the RAD is required to consider whether the evidence is credible based on its source and the circumstances of its creation. This analysis must account for, among other things, circumstances suggesting implausibility in the evidence's provenance or acquisition, which may arise from suspicious temporal correlation between the evidence's emergence and the negative RPD decision [see *Rahman v Canada (Citizenship and Immigration)*, 2025 FC 22 at para 29].

[13] While the RAD provided reasons for refusing to admit the new evidence from the taxi drivers, it failed to provide any justification for its determination that the balance of the new evidence was admissible. The reasons merely state:

The RAD is admitting the rest of the new items as new evidence because they arose after the RPD Decision and therefore pass the requirements of IRPA subsection 110(4) and because the RAD finds them to be new, credible and relevant.

[14] The RAD's failure to conduct an assessment of the admissibility of the balance of the new evidence constitutes a fatal break in the rational chain of analysis required of a reasonable decision. In the case of the death threat note, this is particularly problematic. According to the letter from the Principal Claimant's grandmother, the death threat note was posted on her door on October 4, 2023, and as translated into English, stated as follows:

STOP LOOKING FOR THREE LEGS TO THE CAT WITH
WHAT HAPPENED TO THE M-47, IF YOU DO NOT WANT
TO BE THE NEXT TO BE VEILED. IF WE FIND YOU, WE
ARE GOING TO KILL YOU.

CJNG

[15] While the RAD was obligated to assess the credibility, relevance and materiality of the death threat note, I will focus on the credibility of this evidence. There is certainly an argument to be made that the death threat note is of a suspiciously convenient nature, given that it was expressly "signed" by CJNG, was made within weeks of the negative RPD decision that turned on the Claimants' inability to establish the identity of their agent of harm and after months, if not years, of no incidents involving the purported agent of harm. The RAD was under a clear duty to assess the credibility of this evidence, which it failed to do.

[16] The Claimants repeatedly emphasize in their written representations that they were found to be credible witnesses, seemingly suggesting that this credibility finding is somehow sufficient for the purpose of the assessment of the credibility of the new evidence itself. There is no merit to this suggestion. The *Raza-Singh* framework applies to the assessment of all new evidence, regardless of any credibility findings made vis-à-vis a claimant. The credibility of the new evidence is a separate determination from the credibility of the Claimants. Moreover, contrary to

the Claimants' submission, the RPD did not find that the Claimants were credible witnesses. Rather, the RPD found that the Claimants were credible witnesses as it related to their allegations of harm and that they testified in a candid manner, but went on to find that the Claimants had misleadingly claimed that the Incidents were part of repeated effort by a powerful Mexican entity to target them.

[17] The RAD's failure to assess the admissibility of the balance of the new evidence is particularly troubling given that the RAD goes on to rely on the death threat note and the grandmother's accompanying letter to reverse the RPD's decision. The RAD found that this new evidence established that CJNG is the Claimants' agent of harm, that all of the Incidents were perpetrated by CJNG, that CJNG was personally targeting the Claimants and that CJNG had the motivation to search for the Claimants anywhere in Mexico. However, these findings suffer from the same lack of justification, with the RAD failing to explain how the death threat note and the grandmother's letter establish any of these findings, instead merely stating:

Based on the new letter from the principal appellant's grandmother and the new death threat note left on her door by CJNG, the RAD is satisfied that CJNG is the appellants' agent of harm, that it was the perpetrator behind all of their past incidents of harm, and that it is seeking to kill them and/or seriously harm them if it ever finds them in Mexico.

[Footnote omitted.]

[18] In light of the RAD's failure to provide a justified, intelligible and transparent decision, the application for judicial review shall be granted. The RAD's decision shall be set aside and the appeal shall be remitted to a differently-constituted panel of the RAD for redetermination.

[19] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-16563-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted, the decision of the Refugee Appeal Division is set aside and the matter is remitted to a differently-constituted panel of the Refugee Appeal Division for redetermination.
2. The parties proposed no question for certification and none arises.

“Mandy Aylen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16563-23

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
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PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 15, 2025

JUDGMENT AND REASONS: AYLEN J.

DATED: SEPTEMBER 15, 2025

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