

Federal Court



Cour fédérale

Date: 20251003

Docket: IMM-3400-24

Citation: 2025 FC 1635

Ottawa, Ontario, October 3, 2025

PRESENT: Madam Justice Conroy

BETWEEN:

**HUMBERTO TAVIRA SILVA, JOSE MANUEL TAVIRA SILVA, MA LEONOR
HIGUERA VAZQUEZ, MARIA FERNANDA TAVIRA SALGADO, GLORIA
CRISTAL TAVIRA SALGADO, MANUEL AMIR LEVIT TAVIRA SALGADO,
MARICELA SALGADO FARFAN**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a January 8, 2024 decision [Decision] of the Refugee Appeal Division [RAD]. The RAD upheld a decision of the Refugee Protection Division [RPD] which found the Applicants are not Convention refugees or persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD found that the Applicants have a viable internal flight alternative [IFA] in Merida, Mexico.

[2] For the reasons that follow, I dismiss the judicial review.

I. Background Facts

[3] The Applicants are citizens of Mexico. The Principal Applicant, Humberto Tavira Silva, and the Associate Applicant, Jose Manuel Tavira Silva, are brothers. The Applicants state that they were threatened by the Jalisco New Generation Cartel [CJNG].

A. *Principal Applicant*

[4] The Principal Applicant started a billiards business in Guerrero State in November 2018. In November, 2019, several armed men arrived at the billiards business, searching for the Principal Applicant, who was away. The armed men put all the customers against the wall and listed their names on the wall. The armed men left a phone number for the Principal Applicant to call.

[5] The Principal Applicant phoned the number. The person who answered the phone made it be known they were a member of the CJNG. He stated that the CJNG were the new owners of the plaza where the billiards business was located. He demanded that the Principal Applicant sell drugs at his business in exchange for protection. The Principal Applicant refused and was threatened.

[6] The next day, the same armed individual returned to the billiards business while the Principal Applicant was out of town. They threatened Ma Leonor Higuera Vazquez, the Principal

Applicant's spouse and a Co-Associate Applicant in this matter, when she told them that the Principal Applicant was away.

[7] The CJNG continued to search for the Principal Applicant. They tracked his family members and approached his father. As a result, the Principal Applicant and his family fled to Merida on December 23, 2019.

[8] In approximately December 2020, the Principal Applicant received a phone call from the same CJNG members. The CJNG members stated where the Principal Applicant was staying in Merida, threatened to harm his children, and demanded that the Principal Applicant pay them 20,000 MXN.

[9] On March 11, 2022, the Principal Applicant and his spouse departed Mexico and sought refugee protection in Canada.

B. *Associate Applicant*

[10] The Associate Applicant ran a discount store near the Principal Applicant's billiards business. The CJNG approached the business and left a phone number for the Associate Applicant to call. The Associate Applicant did not call the number. The following day, the CJNG threatened the Associate Applicant by leaving photographs of their murder victims on the windshield of his truck. The Associate Applicant then closed his store and fled to Merida on December 22, 2018.

[11] The Associate Applicant remained with his family in Merida for two years. The Associate Applicant's family members include Maricela Salgado Farfan, the Associate Applicant's spouse and a Co-Associate Applicant in this matter; Maria Fernanda Tavira Salgado and Gloria Cristal Tavira Salgado, the Associate Applicant's children and Co-Associate Applicants in this matter; and Manuel Amir Levit Tavira Salgado, the Associate Applicant's child and the Minor Applicant in this matter.

[12] In April 2020, the Associate Applicant returned to Guerrero State without his family to work with his cousin who was a chiropractor. During this time, the Associate Applicant and his cousin were stopped several times at roadblocks and forced to treat cartel members. On one occasion, members of the CJNG asked the Associate Applicant if he was one of the Tavira brothers. He stated that he was not.

[13] This exchange prompted the Associate Applicant to flee to Acapulco, another city in Guerrero State. The Associate Applicant alleges that the CJNG called him upon his arrival to "welcome" him to Acapulco, prompting him to relocate.

[14] In October 2021, the Associate Applicant and his family arrived in Canada and claimed refugee protection.

[15] On September 5, 2023, the RPD refused the Applicants' refugee claims. The determinative issue was the existence a viable IFA in Merida. The Applicants appealed the RPD's decision.

II. The Decision Under Review

[16] On January 8, 2024, the RAD dismissed the appeal.

[17] On appeal, the RAD admitted new evidence filed by the Applicants.

[18] The RAD agreed with the RPD and found that the determinative issue was the existence of a viable IFA in Merida. The RAD concluded that while the cartel had the means to locate the Applicants in Merida, it lacked the motivation to do so.

[19] In making this determination, the RAD found “the RPD erred in finding the CJNG does not have the means to locate individuals of interest” in Merida. Based on the National Documentary Package [NDP] and the Applicants’ new evidence, the RAD determined “that the CJNG has extensive reach that extends into the Yucatan state, including Merida” (RAD decision at para 25).

[20] However, the RAD found that Applicants had failed to demonstrate the CJNG would be motivated to locate them in Merida. It set out three reasons for this conclusion.

[21] First, the RAD determined that the Appellants did not have the profile of individuals the CJNG would be motivated to locate. In making this finding, the RAD focused on an excerpt from the NDP stating that “criminal groups in Mexico are motivated to track certain individuals because they steal or lose money, over personal rivalries, political reasons or due to ‘personal vengeance; perceived betrayal; public exposition of relationships with public officials, politicians

or investments; or cooperation with authorities as informants or collaborative witnesses” (RAD decision at para 18). It concluded that “failing to pay an extortion fee is not an example of steeling or losing CJNG money” (RAD decision at para 19).

[22] Second, the RAD found that the CJNG did not demonstrate ongoing motivation to locate the Principal Applicant in the 14 months between December, 2020 and March, 2022, when he left for Canada. It also found that the cartel’s last contact with the Associate Applicant was while he was working with his cousin in Guerrero in 2020.

[23] Finally, the RAD found the evidence on the record did not demonstrate that the CJNG had contacted the Applicants’ family members who remain in their hometown of Guerrero.

[24] The RAD agreed with the RPD’s conclusion that the conditions in Merida were such that it would be reasonable for the Applicants to seek refuge there.

III. Issues

[25] The Applicants argue that the RAD’s conclusion that the CJNG lack the motivation to cause the Applicants harm was unreasonable.

[26] There is no dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

IV. Analysis

[27] A viable IFA will negate an otherwise meritorious claim for refugee protection under either section 96 or 97 of the IRPA: *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 7.

[28] The RAD applied the correct two prong test to determine if Merida is a viable IFA:

1. Whether there is a serious possibility that the claimants will be persecuted by the CJNG in Merida. This risk assessment considers whether the agents of persecution have both the “means” and the “motivation” to cause harm.
2. Whether it is reasonable in all circumstances for the claimants to seek refuge in the IFA: *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 at p 710; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589; *Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 at para 17.

[29] Refugee claimants bear the onus of establishing that a proposed IFA is not viable. This onus can be discharged by defeating at least one prong of the two-pronged IFA test: *Aigbe v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 9.

[30] As noted, the Applicants’ arguments focus solely on the RAD’s assessment of the CJNG’s motivation to locate them in Merida.

[31] The Applicants’ take issue with the RAD’s reliance and interpretation of a select quote from the country condition evidence to conclude that the Applicants did not fit the profile of individuals an organized crime group would pursue. The Applicants argue that the RAD was

unreasonable in its conclusion that refusing to pay an extortion fee is not an example of “stealing or losing money”.

[32] The Applicants point to objective evidence before the RAD which shows that failing to pay an extortion fee is a source of risk. In their first disclosure package to the RPD, the Applicants included a news article which states that the CJNG is “big on extortion and can turn to violence if victims refuse to cooperate.” The country condition evidence confirms this risk. According to the Mexico Peace Index, 2022, there was “a 26 percent rise in extortion cases from 2017 to 2019... Business owners and employees risk physical aggression or the destruction of property if the terms of the extortion are not met”

[33] The Applicants further argue that because of the increasing presence of the CJNG in the Yucatan state in the past years, it was an error for the RAD to consider the length of time the Applicants were in Merida in the past without being located by the CJNG. They say the RAD failed to conduct a proper forward-looking risk assessment.

[34] Taken as a whole, I conclude that the RAD’s reasons on the motivation of the CJNG are intelligible, justifiable and transparent (*Vavilov* at para 95).

[35] I interpret the Applicants’ arguments with respect to the RAD’s analysis of the country condition evidence as an invitation to re-weigh the evidence that was before the RAD, which is not the Court’s role on judicial review (*Vavilov* at para 125).

[36] Further, it was open to the RAD to conclude there was insufficient evidence to demonstrate a continuing motivation on the CJNG to cause harm. The RAD noted that the most recent contact from the CJNG was in late 2020, and that there was no evidence of CJNG contact with the Principal Applicant's brother, who still resides in their hometown in Guerreo, since the Applicants fled for Canada.

[37] As noted by the Respondent, an absence of evidence can reasonably support a conclusion that there is a lack of ongoing interest in the applicant and therefore an IFA (*Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 16). The burden was on the Applicants to demonstrate the continuing motivation of the CJNG to harm them. The RAD's finding that this burden was not met is reasonably supported by the evidence before it (*Nawaz v Canada (Citizenship and Immigration)*, 2022 FC 306 at para 28).

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The style of cause is hereby amended to correct the spelling mistakes in some of the Applicants' names.
3. There is no question for certification.

"Meaghan M. Conroy"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3400-24

STYLE OF CAUSE: HUMBERTO TAVIRA SILVA et Al. v.MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 25, 2025

JUDGMENT AND REASON: CONROY J.

DATED: OCTOBER 3, 2025

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