

Federal Court



Cour fédérale

Date: 20260106

Docket: IMM-19122-24

Citation: 2026 FC 5

Ottawa, Ontario, January 6, 2026

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

A.B. AND OTHERS

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Immigration and Refugee Board's Refugee Appeal Division [RAD] rejected the applicants' refugee protection claim on the ground that state protection would be available to them in Spain. In my view, that decision is unreasonable because it does not truly take into account the very particular nature of the threat made by a transnational criminal organization against the applicants, and because it disregards certain of this Court's crucial teachings regarding state protection.

I. Background

[2] As the applicants' identities are protected by an anonymity order, only the facts essential to understanding these reasons are summarized below.

[3] The applicants are members of the same family. They are citizens of a country in Latin America, which it is unnecessary to name. The father—whom I will refer to as the principal applicant—and the children also hold Spanish citizenship.

[4] While the family was living in the Latin American country, a transnational criminal organization active not only in that country, but also in Spain, threatened to kill the principal applicant. Members of the applicants' family who live in Spain were approached by representatives of the criminal organization who were looking for the principal applicant. The evidence shows that this criminal organization has recently strengthened its presence in Spain and has carried out several murders there.

[5] The applicants came to Canada and claimed refugee protection. Both the Refugee Protection Division [RPD] and the RAD rejected their claim.

[6] Several of the RAD's factual findings are worthy of note. The RAD did not challenge the applicants' credibility. It noted that the criminal organization had [TRANSLATION] "intensified its efforts to search for [the principal applicant] in Spain". It recognized that the organization had the means and motivation to find the applicants anywhere in Spain. It also concluded that

criminal organizations such as the one at issue here have a significant presence in Spain and that the authorities have not always been able to prevent murders apparently committed by these gangs' hit men, which happens frequently.

[7] Nevertheless, the RAD rejected the refugee protection claim because it found that state protection was available for the applicants in Spain. It noted that Spain is a highly democratic country, which gives rise to a strong presumption that it can protect its nationals. Although the RAD acknowledged that the criminal organization at issue and other similar organizations have increased their presence in Spain over the past few years, it pointed to the recent adoption of measures aimed at fighting this type of criminality, adding that [TRANSLATION] "it would be premature to conclude that they have proved to be ineffective". The RAD underscored that there is no [TRANSLATION] "complete breakdown of the state apparatus" in Spain and that [TRANSLATION] "there is no valid reason to declare a complete loss of confidence in [the Spanish authorities'] ability to protect people in Spain who are being targeted by these gangs". The RAD therefore found that the applicants had not rebutted the presumption that they could avail themselves of state protection.

II. Analysis

[8] I am allowing the application for judicial review because the RAD disregarded the constraints that bore on its decision, in particular those flowing from the case law, and because its reasoning was not logical.

[9] At this juncture, it is useful to reiterate that the analytical framework that must be applied on judicial review was summarized by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*]. In short, the Court:

... asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision ... (*Vavilov* at paragraph 99).

[10] One of these legal constraints stems from the case law: *Vavilov* at paragraph 112. Hence, the RAD must usually follow judicial decisions regarding the interpretation of the provisions it must apply, including the definitions of “refugee” and “person in need of protection” in sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. If it departs from them, it must provide an explanation: *Vavilov* at paragraph 112; *Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at paragraphs 66–67.

[11] At this stage, it is therefore necessary to provide an overview of the case law regarding the concept of state protection. I will then assess whether the RAD complied with the constraints arising from that case law and justified its conclusion with logical reasoning.

A. *State Protection: Basic Principles*

[12] The leading decision regarding state protection remains *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*]. In that case, the Supreme Court of Canada reiterated the subsidiary nature of the international protection available to refugees (at 709). In other words, every country must ensure that its citizens are protected from persecution or threats to life. It is only where this protection fails that a citizen of one country may claim refugee protection in

another country. In this sense, a lack of state protection is a component of the definition of “refugee” (*Ward* at 721) and, one might add, the definition of “person in need of protection” in section 97 of the Act.

[13] According to the Supreme Court, the starting point of the analysis is the presumption that every country is capable of protecting its nationals. The burden is on the refugee protection claimant to rebut this presumption with clear and convincing evidence. This evidence may arise from a claimant’s unsuccessful attempts to obtain state protection. A lack of protection may also be inferred from the way individuals in a similar situation have been treated: *Ward* at 724–725.

[14] This Court’s case law has provided additional guidance regarding the concept of state protection. Two principles emerging from that case law are particularly relevant here.

[15] First, state protection must be effective at a concrete or operational level. It is not enough for the state to make certain efforts to ensure protection if those efforts do not translate into concrete protection for the claimant. What matters is the result, not simply the intention. See, in this regard, *Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421 at paragraph 18, [2014] 4 FCR 482; *AB v Canada (Citizenship and Immigration)*, 2018 FC 237 at paragraph 17 [AB]; *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at paragraph 21; *Ruszo v Canada (Citizenship and Immigration)*, 2019 FC 397; *Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at paragraph 25; *Cervenakova v Canada (Citizenship and Immigration)*, 2021 FC 477 at paragraph 26; *Whyte v Canada (Citizenship and Immigration)*, 2023 FC 1420 at paragraph 21; *Cardenas Medina v Canada (Citizenship and Immigration)*, 2024

FC 388 at paragraph 24; *Brown v Canada (Citizenship and Immigration)*, 2025 FC 1943 at paragraph 55 [*Brown*]. It is not always easy to succinctly describe what constitutes adequate or effective protection. While perfect or complete protection is not required, my colleague Justice Russel Zinn has asserted that “‘adequate’ state protection is a level where it is far more likely than not that the individual will be protected”: *Sandoval Salamanca v Canada (Citizenship and Immigration)*, 2012 FC 780 at paragraph 17.

[16] Second, state protection must be assessed *in concreto*, namely, by taking into account all the relevant circumstances, such as the profile of the claimant, the identity of the agent of persecution and the nature of the threat: *Gonzalez Torres v Canada (Citizenship and Immigration)*, 2010 FC 234 at paragraphs 37–38, [2011] 2 FCR 480 [*Gonzalez Torres*]; *Jaworowska v Canada (Citizenship and Immigration)*, 2019 FC 626 at paragraph 45; *Matthias v Canada (Citizenship and Immigration)*, 2023 FC 619 at paragraph 26; *Ralek Horodiuk v Canada (Citizenship and Immigration)*, 2025 FC 112 at paragraph 23 [*Ralek Horodiuk*]; *Brown* at paragraph 30. We cannot limit ourselves to an assessment *in abstracto*, which would lead to a finding that state protection is either available or unavailable across a country without considering the claimant’s specific situation. As counsel for the Minister stated at the hearing, the analysis of state protection must be [TRANSLATION] “tailored” rather than [TRANSLATION] “one-size-fits-all”.

B. *The RAD's Reasoning*

[17] In my view, the RAD's decision is unreasonable, because the RAD ignored the constraints stemming from the case law regarding state protection and its reasoning was illogical in several respects.

(1) The Application of an Unrealistic Test

[18] The RAD's first error was to use concepts that find no support in the case law to impose on the applicants an unrealistic burden of proof for rebutting the presumption of state protection. In doing so, the RAD applied the presumption established in *Ward* as though it were practically irrebuttable, at the very least with respect to [TRANSLATION] "highly democratic" countries.

[19] Indeed, in response to the applicants' arguments regarding the presence of corruption within the police, the RAD stated that [TRANSLATION] "that does not mean that [this is] a situation where there has been a complete breakdown of the state apparatus". Yet an applicant does not have to show that the state apparatus has completely broken down to rebut the presumption of state protection. In fact, the expression "complete breakdown of the state apparatus" is used to describe situations where there is no presumption of state protection: *Ward* at 725, citing *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 605 (CA). It is not logical to require evidence that such a breakdown has occurred to rebut the presumption, because if the presumption applies, it is precisely because there has been no breakdown. This illogicality, which amounts to an impossible burden of proof, makes the RAD's decision unreasonable.

[20] Furthermore, another excerpt from the decision demonstrates that the burden of proof was unrealistically elevated. In that excerpt, the RAD asserts that:

[TRANSLATION]

. . . despite the evidence of the issues that the Spanish authorities have encountered to date in fighting criminality caused by transnational gangs, there is no valid reason to declare a complete loss of confidence in their ability to protect people in Spain who are being targeted by these gangs . . .

[21] Yet there is no basis for the requirement that there be a [TRANSLATION] “complete loss of confidence” in law enforcement authorities. Rather, the test is whether the protection is effective or adequate. However, the RAD never addresses that issue, except to assume that protection is adequate when there is no [TRANSLATION] “complete loss of confidence” or [TRANSLATION] “complete breakdown of the state apparatus”. The conclusion simply does not follow from the premise.

[22] I suspect that the RAD was led to make these errors because Spain is a [TRANSLATION] “highly democratic” country, which the RAD underscored several times in its reasons. It is true that certain decisions of this Court suggest that the strength of the presumption of state protection or the quality of the evidence needed to rebut that presumption depends on the “level of democracy” of the country in question. However, nothing in *Ward* requires that immigration decision-makers determine the “level of democracy” of the country concerned, an exercise that could prove to be particularly thorny. As I explained in *AB* at paragraph 22, this type of analysis is likely to draw attention away from the real issue, which is the availability of adequate protection at an operational level for a person in the applicant’s situation.

[23] As a matter of fact, the democratic character of a country and the availability of adequate protection for its citizens are likely to be highly correlated. It is nevertheless possible for a democratic country to be unable to adequately protect certain individuals in unusual situations: *Gonzalez Torres* at paragraph 39. *Ward* provides one example: by reason of the nature of the threats against Mr. Ward and the capabilities of the organization he feared, Ireland—a democratic country—was unable to provide him with adequate protection. This shows that the ability of democratic countries to protect their citizens in the vast majority of cases is the conclusion of the analysis, not its premise. That is why state protection must be assessed *in concreto*—that is, by considering the specific circumstances of each case instead of relying on generalizations based on the “level of democracy.”

[24] In short, the RAD rendered an unreasonable decision by applying an unrealistic burden of proof that is in no way supported by this Court’s case law.

(2) Efforts and Result

[25] The second error the RAD made was to depart from the requirement of effective protection. Rather, the RAD relied on recent initiatives undertaken by Spain to fight organized crime, the results of which had not been demonstrated, and gave a form of benefit of the doubt to the Spanish police.

[26] In this regard, the RAD wrote the following:

[TRANSLATION]

The appellants criticize the RPD for only addressing the steps Spain has taken to fight criminality and neglecting to assess their

effectiveness. Nevertheless, these steps clearly illustrate the state's willingness to crack down on criminal gangs. As these measures are relatively recent, it would be premature to conclude that they have proved to be ineffective. Although the lack of cooperation between various organizations is a challenge, I do not consider it an insurmountable obstacle.

[27] The RAD went on to write the passage quoted above:

[TRANSLATION]

Rather, I consider that despite the evidence of the issues that the Spanish authorities have encountered to date in fighting criminality caused by transnational gangs, there is no valid reason to declare a complete loss of confidence in their ability to protect people in Spain who are being targeted by these gangs, as is the case for the appellants.

[28] Here, the RAD made the mistake that this Court has repeatedly cautioned against.

Although the RAD noted the nature and severity of the threat against the applicants, it minimized the situation by relying on recent initiatives even though it acknowledged that their effectiveness had not been demonstrated. In so doing, it avoided the core issue, which is whether the applicants can avail themselves of effective protection at the operational level. Therefore, the RAD disregarded the legal constraint flowing from this Court's consistent case law, which makes its decision unreasonable.

(3) A Truncated Analysis

[29] The two errors described above resulted in truncated reasoning that is unintelligible and unreasonable. In essence, the RAD began acknowledging that the applicants' fears are credible. It also recognized that the criminal organization has the means to target their lives in Spain and

that it has in fact already taken steps to find them there. Nevertheless, it found that the applicants would be protected, essentially because there is no [TRANSLATION] “complete breakdown of the state apparatus” or [TRANSLATION] “complete loss of confidence” in the law enforcement authorities and because certain recent measures apparently reflect a willingness to fight transnational criminality.

[30] Respectfully, the conclusion does not follow from the premises. At the risk of repeating myself, a lack of breakdown or complete loss of confidence does not support the finding that the applicants would be protected from the very specific type of threat they face. The same is true regarding the recent measures Spain has adopted. In other words, the RAD first engaged in an analysis *in concreto* that took the applicants’ personal situation into account, then suddenly fell back into an analysis *in abstracto* focusing only on the situation across Spain.

[31] In doing so, the RAD seems to have misapprehended the purpose of state protection. It is not to give a foreign country’s law enforcement authorities the chance to prove themselves. Rather, it is to ensure that the subsidiary nature of the international protection afforded to refugees and persons in need of protection is respected. Furthermore, the RAD forgot the wise words of Justice La Forest of the Supreme Court, who stated that it would not be reasonable to require a person to risk their life merely to demonstrate that state protection is ineffective: *Ward* at 724.

[32] At the hearing, counsel for the Minister argued that the applicants should have sought Spain’s protection and that certain family members living in Spain had escaped the criminal

organization's attention. However, the RAD concluded that because the applicants are not currently in Spain, they cannot be expected to approach the Spanish authorities. In addition, the RAD never doubted the seriousness of the threats against the applicants. On judicial review, the Court cannot rely on grounds other than those given by the administrative decision-maker to support its decision: *Vavilov* at paragraph 96. Therefore, I cannot give effect to the submissions of counsel for the Minister.

C. *New Evidence*

[33] The RAD admitted a significant portion of the new evidence brought by the applicants, but it rejected certain documents concerning the murder of the female applicant's brother. The RAD stated that because this murder had taken place in the Latin American country, it was not relevant to the issue of the protection that Spain could provide the applicants. I must confess that I do not understand the RAD's logic. State protection must be assessed *in concreto*. This means that the RAD had to consider the motivation of the criminal organization threatening the applicants. This organization has branches in both Spain and the Latin American country. Its motivation to kill a member of the applicants' family in Latin America is certainly a factor relevant to analyzing the seriousness of the threat this organization represents for the applicants in Spain and the ability of the Spanish authorities to counter that threat. As a result, the rejection of this evidence was unreasonable.

D. *Exclusion under Article 1E*

[34] Unlike the principal applicant and their children, the female applicant—the principal applicant’s spouse—is not a citizen of Spain. The RAD found that her refugee protection claim was excluded under section 98 of the Act and Article 1E of the *Convention Relating to the Status of Refugees* because she had already had permanent resident status in Spain and it would be possible for her to acquire that status again.

[35] As I explained in *Ralek Horodiuk*, however, the premise of such reasoning is that the excluded person does not have a reasonable fear of persecution in the country where that person is a permanent resident. In this case, the parties agree that if the RAD’s finding on state protection is unreasonable, it undermines the finding regarding exclusion under Article 1E as well. Therefore, I do not need to address this issue any further.

III. Conclusion

[36] As the RAD’s decision is unreasonable, it will be set aside and the matter will be referred back to it for redetermination.

JUDGMENT in IMM-19122-24

THE COURT’S JUDGMENT is that:

1. The confidentiality order issued by Associate Judge Kirkland G. Shannon in the present matter is confirmed, and the style of cause is amended to refer to the applicants as “A.B. and others”.
2. The application for judicial review is allowed.
3. The decision rendered by the Refugee Appeal Division is set aside, and the matter is referred to a different member of the Refugee Appeal Division for redetermination.
4. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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