

Federal Court



Cour fédérale

Date: 20260203

Docket: IMM-476-25

Citation: 2026 FC 154

Toronto, Ontario, February 3, 2026

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

**CRISTIAN MICHAEL VARGAS TOLENTINO
AND SILVIA VALVERDE FLORES**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Cristian Michael Vargas Tolentino [the Principal Applicant] and Silvia Valverde Flores [the Co-Applicant] [collectively, the Applicants], seek judicial review of a decision of the Refugee Appeal Division [RAD] dated December 20, 2024 [the Decision], refusing their claims under section 96 and subsection 97(1) of the *Immigration and Refugee*

Protection Act, SC 2001, c 27. The Applicants are citizens of Mexico who fear persecution by the *Cártel de Jalisco Nueva Generación* [CJNG]. The RAD found that the Applicants had a viable internal flight alternative [IFA].

[2] For the more detailed reasons that follow, I am granting this application as the Applicants have shown that the RAD failed to account for material contrary evidence in assessing the evidence of the CJNG's motivation to pursue the Applicants, a failure that has significant consequences given that the RAD acknowledged that the CJNG are present in the proposed IFA.

II. Facts

A. *The Applicants' fear of persecution*

[3] The Principal Applicant owned and operated three restaurants in Mexico until December 2021, when one of the restaurant employees was involved in an armed extortion attempt by members of the CJNG. After the Principal Applicant reported the incident to the police, he received a death threat graffitied onto the restaurant curtains. He reported the incident to the police; however, they failed to respond, which the Principal Applicant attributes to the fact that the police were working with the CJNG. The Principal Applicant closed the restaurant and moved to Monterrey, Mexico to stay with the Co-Applicant and her cousin, while his father operated the remaining two restaurants.

B. *Continued threats and harm*

[4] The Principal Applicant's father was informed by restaurant employees that two men came to the restaurant asking for the Principal Applicant on two occasions in June 2022. Within days of the last visit, one of the female employees [Employee], was shot by two people on motorbikes and died. The police advised the Principal Applicant to close the restaurant, which he did, and his father closed the remaining restaurant. The Principal Applicant claims that the case was closed in 15 days, and no one was arrested for the Employee's murder, which was classified as femicide.

[5] On July 1, 2022, after the Principal Applicant decided to reopen his restaurants, his father received a phone call from the CJNG stating that two people came to the restaurant in search of the Principal Applicant for a matter they said was urgent. They warned that if the Principal Applicant did not contact them, the next attack would be against his family. The Principal Applicant claims that he has not operated his restaurants since July 1, 2022.

[6] The Principal Applicant fled Mexico on February 17, 2022, followed by the Co-Applicant on October 18, 2022.

C. *The Applicants' refugee claims are rejected*

[7] The Applicants made refugee claims in Canada in November 2022. The Principal Applicant explained in his basis of claim form that he would be killed by the CJNG because he

filed a report with the police. He alleged that he could not move to another part of the country because the CJNG controls the whole country.

[8] The Refugee Protection Division [RPD] found that the Applicants are not Convention refugees or persons in need of protection. The RPD considered that the Applicants' claims lack credibility; alternatively, the RPD considered there to be a viable IFA.

[9] The Applicants appealed the RPD's decision to the RAD. The Applicants argued, *inter alia*, that the RPD panel did not consider evidence and erred in their IFA analysis.

[10] The RAD upheld the RPD decision finding that the determinative issue was the finding of a viable IFA where the Applicants would be safe and where it would not be unreasonable to relocate to. While the RAD acknowledged CJNG's presence in the IFA, it noted that it is "mostly used" as a "haven" for families of organized crime and cartels and it considered that the Applicants had not established on a balance of probabilities that the CJNG would pursue them there. The RAD found that "[a] more serious betrayal or harm to the cartel is needed before the cartel would use its resources to pursue a person across all of Mexico."

III. Issues and Standard of Review

[11] The Applicants have raised issues going to the reasonableness of the Decision.

[12] When assessing the reasonableness of an administrative decision, a court conducting judicial review, must examine the outcome of the decision, together with the reasons provided by

the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 116 and 94 [*Vavilov*]) with a view to determining whether it is based on internally coherent reasoning that is rational and logical and is justified in relation to the relevant factual and legal constraints that bear on the decision maker (*Vavilov* at paras 99 and 102).

IV. Analysis

[13] Based on the RAD's assessment of the content of the National Documentation Package [NDP], the RAD determined that the Applicants do not fit the profile of the types of individuals that the CJNG would pursue as the Principal Applicant did not witness anything that would threaten the CJNG and it is unlikely for cartels to track an individual across the country for not paying an extortion demand. The RAD considered there to be no evidence that the Applicants' family members have been in contact with the CJNG apart from the Principal Applicant's father receiving a phone call.

[14] The Applicants argue that the NDP contained evidence that contradicts the RAD's finding and supports the Applicants' submission that the CJNG often retaliates against those who file police reports against them:

- (a) NDP item 7.8 states that the CJNG is "active" in the identified IFA and has the ability to track and retaliate against people who relocate to this area;
- (b) NDP item 7.15 states that "making a complaint to a state authority against a gang would lead to pressure to drop the complaint and almost certainly lead to death if the individual did not comply;" and
- (c) NDP item 7.53 states that individuals who can become targets for criminal networks include victims of extortion who stop

paying extortion fees and that, “in most instances, the primary goal is to assert the power of the criminal group, ensuring that the group appears to have the capacity to enforce the threats that it makes.”

[15] I agree with the Applicants that the contrary evidence highlighted by the Applicants should have been addressed by the RAD as it is material to its conclusion on the CJNG’s motivation to pursue the Applicants (*Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 at para 17, *Campos v Canada (Citizenship and Immigration)*, 2022 FC 1641 at paras 67-68), particularly in the context of the RAD’s acknowledgment that the CJNG have a presence in the IFA.

V. Conclusion

[16] Having found that the Decision is not justified on the facts and the law that constrained the RAD, I am granting this application and remitting the matter back for reconsideration.

JUDGMENT in IMM-476-25

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The decision of the RAD dated December 20, 2024, is set aside and the matter is remitted back for redetermination by a different decision maker; and
3. There is no question for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-476-25

STYLE OF CAUSE: CRISTIAN MICHAEL VARGAS TOLENTINO AND
SILVIA VALVERDE FLORES v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 28, 2026

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: FEBRUARY 3, 2026

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