

Federal Court



Cour fédérale

Date: 20200326

Docket: IMM-2218-19

Citation: 2020 FC 428

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 26, 2020

PRESENT: The Honourable Mr. Justice McHaffie

BETWEEN:

ABRAHAM GONZALEZ LEON

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Refugee Appeal Division (RAD) determined that Abraham Gonzalez Leon was not a person in need of protection, despite the threats he had received from criminal groups in Mexico, because there were internal flight alternatives (IFAs) in Mexico City and the State of Baja California. The RAD determined that even though these groups had the ability to find him

elsewhere in Mexico, the evidence demonstrated that they had neither a desire to pursue him nor an interest in doing so.

[2] I am of the view that the RAD's decision was reasonable. The weight attributed by the RAD to the lack of evidence that these groups had taken measures to contact or find Mr. Gonzalez Leon was justified. Despite Mr. Gonzalez Leon's arguments, the RAD did not base its findings on inappropriate speculation, and it took into account the arguments and evidence presented by Mr. Gonzalez Leon.

[3] The application for judicial review is therefore dismissed.

II. Mr. Gonzalez Leon's claim for refugee protection

[4] Mr. Gonzalez Leon is a farmer in the State of Guanajuato in Mexico. While working on his father's farm, he was threatened and subjected to extortion several times by two rival criminal groups: Los Zetas and the *Cártel Jalisco Nueva Generación* (CJNG). Following these threats, he fled to Canada, where he made a claim for refugee protection upon his arrival.

[5] The Refugee Protection Division (RPD) rejected Mr. Gonzalez Leon's claim on the basis that he had IFAs in Mexico City and Baja California. In reaching this conclusion, the RPD assessed Mr. Gonzalez Leon's claim only under paragraph 97(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), considering section 96 inapplicable because the fear had no nexus to one of the five grounds in the definition of "refugee" set out in the

Convention, and considering paragraph 97(1)(a) inapplicable because the perpetrator of the alleged prejudice was not a state representative.

[6] The RAD confirmed the RPD's decision. It accepted that Los Zetas and the CJNG had the ability to find Mr. Gonzalez Leon anywhere in Mexico but did not believe that he had demonstrated a serious possibility of persecution in the proposed IFAs, since there was no evidence that Los Zetas or the CJNG wished to pursue him or had any interest in doing so.

III. Issue

[7] The sole issue raised by Mr. Gonzalez Leon is whether the RAD's finding that Mexico City and Baja California constituted IFAs was reasonable.

IV. The RAD's finding that an IFA exists was reasonable

A. *Standard of review and analytical framework*

[8] The RAD's findings of fact and assessment of the IFA are questions of fact or questions of mixed fact and law reviewable on a standard of reasonableness: *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at paras 11, 19. Although the parties' arguments were filed before *Vavilov*, that case confirms that the standard applicable to the analysis of these questions is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[9] For an IFA to be established, the RAD must be persuaded, on a balance of probabilities, that (1) there is no serious possibility of the claimant being persecuted in the part of the country in which it finds an IFA exists; and (2) in all the circumstances, including circumstances particular to him, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at pp 709–711. The *Rasaratnam* analysis was developed for Convention refugees within the meaning of section 96 of the IRPA, but the requirement in subparagraph 97(1)(b)(ii) that a person in need of protection face a risk “in every part of that country” means that the existence of an IFA is equally fatal to claims for refugee protection made under section 97: *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at para 16; *Barragan Gonzalez v Canada (Citizenship and Immigration)*, 2015 FC 502 at paras 45–46.

[10] Before this Court, Mr. Gonzalez Leon bears the burden of demonstrating that the RAD’s finding that an IFA existed was unreasonable: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 594, 597–98.

B. *Prong 1: Serious possibility of persecution for the claimant in the proposed internal flight alternative*

[11] In my view, the RAD did not err in its assessment of the first prong of the IFA text. The RAD reasonably found that (1) there was no serious possibility of persecution in Mexico City or Baja California, given the lack of evidence that Mr. Gonzalez Leon’s persecutors wished to pursue him; and (2) Mr. Gonzalez Leon’s explanations were insufficient to justify this lack of evidence and, therefore, to establish a serious possibility of persecution.

(1) Evidence of desire of Los Zetas and the CJNG to pursue Mr. Gonzalez Leon

[12] The RAD upheld the RPD's finding that there was no serious possibility of persecution in the IFA because the evidence shows that the criminal groups that allegedly threatened Mr. Gonzalez Leon do not have [TRANSLATION] "the time or motivation to look for him in such a vast country as Mexico". Mr. Gonzalez Leon is challenging this decision, pointing to evidence indicating that Mexico City and Baja California are located within the zones of influence of Los Zetas and the CJNG, and that these are dangerous and violent criminal groups.

[13] It is important to note that there is a difference between a persecutor's *ability* to pursue an individual throughout a country and his *desire* to do so or *interest* in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution.

[14] According to the evidence on the record, Los Zetas and the CJNG are national groups with networks throughout Mexico. Clearly, they have the ability to pursue Mr. Gonzalez Leon in the proposed IFAs if they wish to do so. The RAD does not deny this. It analyzed the evidence on this point and accepted the statement that these are groups active in Mexico that commit violent crimes and have the means to locate somebody in Mexico if they wish to.

[15] However, this finding by the RAD with respect to the ability of these groups to find Mr. Gonzalez Leon does not alter the real issue: the RAD concluded that the evidence

demonstrated that these groups had no *motivation* to pursue him in the proposed IFAs. There is no serious possibility of persecution for a claimant in a proposed IFA where there is no evidence that the persecutors have any interest in pursuing him or her, regardless of the reach of these criminal groups.

[16] Mr. Gonzalez Leon presented no evidence that Los Zetas or the CJNG were interested in pursuing him, despite the approximately two-year period that had elapsed between his departure and his hearing before the RAD. There is nothing on the record to indicate that these groups have tried to contact, find, threaten or extort money from Mr. Gonzalez Leon since his departure, whether by visiting the farm or through his family or spouse. This absence of evidence is an element that can reasonably support a finding of a lack of ongoing interest in pursuing the applicant and therefore a finding of an IFA: *Roy v Canada (Citizenship and Immigration)*, 2012 FC 434 at para 26; *Deb v Canada (Citizenship and Immigration)*, 2015 FC 1069 at paras 17–18.

[17] Mr. Gonzalez Leon claims that the RAD's finding with respect to the risk of persecution is erroneous because the RAD [TRANSLATION] "based its decision on speculation". He argues that the RAD did not consider the evidence of the ability of Los Zetas and the CJNG to pursue him but instead put forward theories that these groups were not pursuing Mr. Gonzalez Leon because they had not approached members of his family or other people close to him.

[18] The RAD noted that the criminals threatening Mr. Gonzalez Leon had never returned to his farm and had never again approached members of his family to harm them or to find him. Contrary to Mr. Gonzalez Leon's arguments, the RAD was not merely [TRANSLATION]

“speculating” when it drew from these facts a finding that the criminals had no ongoing interest in pursuing Mr. Gonzalez Leon and that they would not find him in Mexico City or Baja California. This was a reasonable inference given the complete lack of evidence of efforts to find him: *Rofriguez Llianes v Canada (Citizenship and Immigration)*, 2013 FC 492 at para 10.

[19] Mr. Gonzalez Leon argues that this finding is contrary to those of Justice Hughes in *Mendoza*, on which he relies particularly: *Mendoza v Canada (Citizenship and Immigration)*, 2014 FC 715. In my view, the RAD’s finding is not incompatible with *Mendoza* for the following reasons.

[20] Like Mr. Gonzalez Leon, the Mendozas fled Mexico following threats of extortion from Los Zetas. Twice, this Court decided that the recognition of an IFA elsewhere in Mexico was unreasonable, since the RPD’s findings were based on speculation: *Mendoza* at paras 7–12. In reaching this conclusion the second time, Justice Hughes focused on the fact that the RPD had made speculations based on the Mendozas’ credibility, an issue that the RPD had not raised.

[21] In particular, evidence was submitted to the effect that Los Zetas had an ongoing interest in pursuing the Mendozas after they had left the country. They broke into the Mendozas’ house to leave a note there and contacted family members several times to inquire about their whereabouts: *Mendoza* at paras 6, 8. The RPD undermined the Mendozas’ credibility and rejected this evidence because the events conflicted with its expectations regarding the conduct of Mexican cartels. Justice Hughes rejected this speculative analysis, highlighting the fact that

the RPD had announced at the outset of the hearing that credibility would not be an issue unless the RPD raised it, which it did not do: *Mendoza* at paras 9–11.

[22] *Mendoza* does not stand for the principle that the mere ability of criminal groups to find somebody means that it would be unreasonable to find that an IFA exists in the circumstances. Nor does it stand for the principle that somebody who has been threatened by Los Zetas and/or the CJNG cannot have a viable IFA in Mexico, even if there is no evidence that these groups are still searching for that person.

[23] The case law of this Court recognizes that an IFA can be reasonable if there is no evidence that a violent group is interested in pursuing a claimant. In *Rofriguez Llianes*, the applicant feared for his life because he was in a romantic relationship with the partner of a member of Los Zetas: *Rofriguez Llianes* at paras 1, 4. The applicant argued that there was no IFA in Mexico, given the violence of Los Zetas, their ties with the Mexican police and their infiltration in the many regions. This argument was rejected by Justice Mactavish, who confirmed that it was “entirely reasonable for the Board to look to the fact that no one had ever contacted the applicant’s wife or children in his hometown in an effort to locate him as evidence of the fact that no one . . . [was] interested in the applicant”: *Rofriguez Llianes* at paras 7–10.

[24] Conversely, this Court recognized in *Silva Fuentes* that an IFA was unreasonable because a decision maker had failed to refer to evidence that Los Zetas were pursuing an individual: *Silva Fuentes v Canada (Citizenship and Immigration)*, 2010 FC 1115. In that decision, the applicants were police officers who had prevented a Los Zetas vehicle from entering an investigation area

in 2001. Following this incident, Los Zetas threatened to kill them. The Board rejected the applicants' claim for refugee protection because there was an IFA. Justice Pinard decided that this decision was unreasonable because there was evidence that the applicants had been threatened again in 2006. On the basis of this evidence, Justice Pinard believed that the "reasoning that [the groups] would not pursue them to Mexico City because he had not pursued them between 2001 and 2006 was unreasonable": *Silva Fuentes* at paras 4, 8, 12–13.

[25] I do not accept Mr. Gonzalez Leon's argument that the finding that these criminal groups have no desire to locate him is inconsistent with the fact that he was targeted by them in 2017. The fact that he was threatened in certain circumstances does not establish that he will be pursued throughout all of Mexico in the future. As the RAD noted, the evidence does not demonstrate that Mr. Gonzalez Leon is a particular [TRANSLATION] "enemy" of these groups who would be the subject of ongoing interest after his departure from the region. His arguments that he is still a target because the criminal groups are actively seeking funds, that he had tried to report them to the authorities and that members of the CJNG may believe that he chose to cooperate with Los Zetas are mere speculation unsupported by evidence.

[26] In this case, no evidence was presented demonstrating that Los Zetas or the CJNG wished to pursue Mr. Gonzalez Leon or had an interest in doing so. In the absence of any evidence whatsoever on this point, the RAD's decision cannot be characterized as unreasonable.

(2) Mr. Gonzalez Leon's explanations regarding the lack of evidence

[27] Mr. Gonzalez Leon submitted certain clarifications to the RAD to explain why his family had not been approached by one of these groups. For example, he said that his family was not targeted because he himself was the owner of the farm. However, the RAD correctly noted that the evidence, including his Basis of Claim Form and the property assessment of the lot, indicated that his father owned the farm.

[28] Mr. Gonzalez Leon also argues that Los Zetas and the CJNG were not searching for him because they knew that he was outside of Mexico, thanks to [TRANSLATION] "a highly efficient information network". However, beyond Mr. Gonzalez Leon's speculation, there was no evidence that the criminal groups knew that he was in Canada. I recognize the difficulty in obtaining evidence on this subject, but the fact remains that it is simply a theory put forward by Mr. Gonzalez Leon to explain the criminal groups' lack of interest demonstrated in him. The RAD noted that these groups could have used such a network to find people close to Mr. Gonzalez Leon for vengeance or to demand money. Even if this finding by the RAD can be characterized as [TRANSLATION] "speculative", it is not more speculative than Mr. Gonzalez Leon's claim that the groups were not looking for him because they knew he had left the country.

[29] In short, I cannot accept the claim that the RAD erred in its conclusions with respect to the first prong of the analysis as to whether an IFA exists in Mexico City or Baja California.

C. *Prong 2: The conditions in the IFA*

[30] Before the RAD, the claimant has the burden of presenting “actual and concrete” evidence that it would be unreasonable to relocate to the IFA: *Ranganathan v Canada (Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at para 15; *Olvera Correa v Canada (Citizenship and Immigration)*, 2012 FC 243 at para 17. The case law is clear that the burden is very heavy and that “[i]t requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area”: *Ranganathan* at para 15; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at para 12.

[31] The RAD concluded that Mr. Gonzalez Leon’s relocation to Mexico or Baja California would be reasonable. The RAD noted that he could work there, find accommodations there and settle there. Mr. Gonzalez Leon argues that neither Mexico City nor Baja California constitutes a reasonable IFA. He relies on the documentary evidence demonstrating that Los Zetas and the CJNG are violent and active throughout the country, including in Mexico City and Baja California. He therefore believes that the RAD erred in failing to consider this evidence before finding that that there was no risk to his life and safety in the proposed IFA.

[32] With respect to the personal risk to Mr. Gonzalez Leon, the RAD’s finding that the criminal groups are not interested in pursuing him demonstrates that he does not face a risk different from that faced by the population in general on account of the existence of these groups.

[33] As for generalized risk, I am not satisfied that the evidence, which establishes that there are many violent criminal groups in Mexico, including in Mexico City and Baja California, is sufficient to render unreasonable the finding that these areas are reasonable IFAs for Mr. Gonzalez Leon. Accepting that this is the case would be inconsistent with subparagraph 97(1)(b)(ii), which excludes generalized risk in a country as a basis for claiming refugee protection in Canada. Chief Justice Crampton recently addressed this issue in *Hamdan* at paragraph 24:

I agree with the Applicants that the generalized criminal risks in Maracaibo were a relevant factor that the RPD should have considered, at least in respect of the Applicants' claim for protection under section 96 of the IRPA. As to section 97, general risks that are also faced by other individuals in or from a country are explicitly excluded, pursuant to subparagraph 97(1)(b)(ii). It would therefore be anomalous if such risks could nevertheless form the basis for an applicant to take the position that it would be objectively unreasonable to require the applicant to move to an IFA, as contemplated by the second prong of the IFA test. . . .

[Emphasis added.]

[34] A risk to the life and safety of Mr. Gonzalez Leon himself because of the presence of Los Zetas and the CJNG in the IFA is not supported by the evidence. As noted by the RAD, Mr. Gonzalez Leon presented no actual and concrete evidence of conditions that would endanger his life or safety if he were to attempt to relocate temporarily to Mexico City or Baja California. This was a reasonable conclusion given the lack of evidence on this point.

[35] Mr. Gonzalez Leon also argues that relocating is unreasonable because he could not work in the IFAs or find accommodations there. Again, the RAD noted that nothing in the evidence filed established that relocating to Mexico City or Baja California would be unreasonable. The

RAD also noted that there was nothing preventing Mr. Gonzalez Leon from settling in one of the proposed areas and highlighted the fact that two of his sisters lived in Mexico City. Once again, it was the absence of evidence that led the RAD to reject Mr. Gonzalez Leon's argument. In my view, this was reasonable.

[36] I therefore find that the RAD did not err in its assessment that the IFAs were reasonable.

V. Conclusion

[37] The RAD's analysis and its findings that Mexico City and Baja California constitute IFAs, and the resulting determination that Mr. Gonzalez Leon is neither a "Convention refugee" under section 96 of the IRPA nor a "person in need of protection" within the meaning of section 97 of the IRPA, were reasonable. The application for judicial review is therefore dismissed. Neither party proposed a question for certification, and none is certified.

[38] Finally, for the sake of consistency and in accordance with subsection 4(1) of the IRPA and Rule 5(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, the style of cause is amended to designate the Minister of Citizenship and Immigration as respondent.

JUDGMENT in IMM-2218-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. The style of cause has been corrected to reflect the respondent's proper designation.

“Nicholas McHaffie”

Judge

Certified true translation
This 9th day of April 2020.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2218-19

STYLE OF CAUSE: ABRAHAM GONZALEZ LEON V MINISTER OF
CITIZENSHIP AND IMMIGRATION

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