Federal Court

Cour fédérale

Date: 20210430

Docket: IMM-991-20

Citation: 2021 FC 390

Ottawa, Ontario, April 30, 2021

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

EUSEBIO RUIZ LOPEZ
SANDRA LUZ RIOS ARTEAGA
JAIME ANTONIO ESTRADA ESCARCEGA
ERIKA JAZMIN RUIS RIOS
LIZBETH RUIZ RIOS

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family of Mexican nationals who fled Mexico and made refugee claims in Canada.

[2] In this judicial review they are challenging the Refugee Appeal Division (RAD) decision dated January 22, 2020 that found they were neither persons in need of protection pursuant to s.96 and s.97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*] nor Convention refugees (the Decision).

[3] The main ground of appeal to the RAD was that counsel who represented the Applicants at the RPD was incompetent to the point that there was a breach of procedural fairness.

[4] The RAD found the determinative issue was that the Applicants had an internal flight alternative (IFA) in Merida. The Applicants say this finding is unreasonable.

[5] The Applicants seek an order setting aside the Decision and referring the application back for reconsideration by a different member of the RAD.

[6] For the reasons that follow, this application is dismissed.

II. **Background Facts and Timelines**

[7] The Principal Applicant (PA) is accompanied by his wife, two of their three daughters and the husband of one of those daughters.

[8] Before the Applicants left Mexico to come to Canada, a third daughter, and her husband, Javier, arrived in Canada in July 2017 and filed refugee claims for themselves and their minor

child. For simplicity, hereafter those claims will be referred to as the associated claims and those claimants will be referred to as the associated claimants.

[9] The basis of the associated claims was that the associated claimants were being sought by a powerful and well-connected Mexican cartel because Javier had knowledge of the cartel's illegal activities and corruption in the municipal warehouse where he was the manager.

[10] The associated claimants claimed that the cartel could find them anywhere in Mexico.

[11] The Applicants in the present matter claim that after Javier left Mexico they began receiving direct threats from the cartel wanting the Applicants to pressure him to return to Mexico.

[12] The Applicants relocated within Mexico twice to try to escape the threats but say they were unsuccessful. They state that in one city, one of their daughters was targeted for harm when leaving church and in the other city their home was shot at by the same assailants.

[13] The Applicants left Mexico on December 12, 2018 after obtaining Canadian visas. In Canada they claimed to fear the cartel based on the associated claims.

[14] On November 21, 2019, the Refugee Protection Division (RPD) rejected the Applicants' claims.

[15] On January 22, 2020, the RAD dismissed the Applicants' appeal of the RPD decision.

[16] This Application for Leave and Judicial Review was filed on February 10, 2020.

[17] On November 14, 2020 the PA voluntarily returned to Mexico. His family members remain in Canada.

III. Preliminary Issue - Respondent's Motion to Dismiss against the PA because of Mootness

[18] On November 23, 2020, the Respondent filed a motion for dismissal of the judicial review as against the PA on the basis of mootness - he had voluntarily returned to Mexico, the country from which he sought protection.

[19] Ten days after the motion was filed, the judicial review hearing took place. No oral argument on mootness was required at the hearing. The issue was fully argued in the written materials filed by the parties. At the conclusion of the hearing, this issue was taken under reserve. It is now being addressed.

[20] The remaining Applicants submit that the matter is not moot but, even if it is moot, this Court should exercise its discretion to hear the judicial review because the remaining Applicants are parties to the proceedings so an adversarial context still exists.

[21] The leading authority on the issue of mootness is *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*] which sets out a two-stage test.

[22] The first stage is to determine whether the matter is moot in that a live controversy no longer exists. Certainly, the matter is moot as against the Principal Applicant because he can no longer meet the definition of a Convention refugee or of a person in need of protection under sections 96 and 97 of the *IRPA*: *Mirzaee v Canada (Citizenship and Immigration)*, 2020 FC 972, para 28.

[23] The second stage is for the Court to decide whether to exercise its discretion to hear the matter on the merits notwithstanding that it is moot. *Ramoutar v Canada(Minister of Employment and Immigration)*, [1993] 3 FC 370 [*Ramoutar*], discussed the guidance given in *Borowski* to a Court charged with determining whether to exercise such discretion. Mr. Justice Rothstein, then a member of this court, noted at page 4 of *Ramoutar* that determining whether to exercise such discretion involves a multi-part analysis considering the three guiding principles underlying the mootness doctrine. These principles are:

> (1) despite the elimination of a live controversy, does an adversarial relationship between the parties subsist?
>
> (2) is the expenditure of judicial resources justified?
>
> (3) in the absence of a dispute, is a decision by the Court an intrusion into the functions of the legislative branch of government?

A. *Does an Adversarial Relationship still exist?*

[24] The first consideration in determining whether to exercise discretion to hear a matter that is moot is whether an adversarial relationship remains between the parties. This is important to ensure that the issue is well and fully argued by parties who have a stake in the outcome: *Borowski* at page 358.

[25] On behalf of the PA, the argument is made that there is no specific requirement for claimants to be in Canada for a section 96 claim to proceed. However, because he can no longer meet the definition of a Convention refugee or of a person in need of protection under sections 96 and 97 of the *IRPA* I find that there is no live controversy involving the PA. I agree with the Respondent that the PA cannot succeed if the matter is sent back to the RAD for re-determination because he is not outside of his country of nationality nor is he inside Canada. There is no adversarial relationship remaining between the PA and the Respondent.

[26] There is no doubt that the remaining applicants, still being in Canada, have an adversarial stake in the outcome, and they assert there is a live controversy between the parties. That has not been challenged by the Respondent who specifically seeks to find the matter is moot against only the PA.

[27] With respect to the remaining Applicants, there are consequences to them if the Decision is allowed to stand. Unless they are successful in this judicial review they will, in all likelihood, be removed from Canada absent being able to show special or exceptional circumstances.

[28] There is also an ongoing adversarial relationship between the remaining Applicants and the Respondent. Each party put forward a number of arguments and counter-arguments on the merits of the Decision. These were fully argued at the hearing as well as in the factums of the parties.

[29] The foregoing factors point to exercising my discretion to hear this matter on the merits with respect to the remaining Applicants but not the PA.

B. *Is the expenditure of judicial resources justified?*

[30] The second principle to consider is that of the use of scarce judicial resources. At the time the mootness motion was brought, shortly before the judicial review hearing, judicial resources had already been fully engaged. The oral argument on the merits of the Decision continued to engage them.

[31] This principle is, at best, neutral. Fewer resources might have been consumed had the PA left Canada earlier and the motion been able to be heard before the judicial review. As it transpired, by the time the motion was brought, the majority of judicial resources had already been engaged. That was exacerbated by the mootness motion.

C. *Will a decision by this Court intrude on the functions of the legislative branch of government?*

[32] The final principle to consider is whether a decision by this Court would be an intrusion into the functions of the legislative branch of government.

[33] The Supreme Court provided an example of such an intrusion being "[p]ronouncing judgments in the absence of a dispute affecting the rights of the parties": *Borowski* at page 362.

[34] I have found that the remaining Applicants do have a dispute with the Respondent that affects their rights. This therefore weighs in favour of hearing the application on the merits with respect to those Applicants. In addition, the legislative branch has empowered this court to review administrative decisions made by the RAD. The court does not intrude on the legislative branch when it performs the duty assigned to it under legislation.

[35] Considering all of the foregoing, I am satisfied with respect to the Applicants remaining in Canada that the application should be determined on its merits. However, it will not be determined with respect to the PA.

[36] From this point forward, the remaining Applicants will be referred to simply as the Applicants.

IV. **Issues**

[37] The Applicants have raised three inter-related issues which I have reformulated as follows:

1. Was there a breach of procedural fairness as a result of inadequate representation by the Applicants' consultant?
2. Did the RAD reasonably refuse to admit some of the new evidence tendered by the Applicants?

3. Was the IFA finding by the RAD reasonable?

[38] As the issue of new evidence is premised upon and interwoven with the allegations of incompetent counsel these two issues will be considered together under the heading of counsel competence.

V. **Standard of Review**

[39] The RAD reviews the RPD decision on a standard of correctness. The Federal Court of Appeal set out in some detail the nature of the role of the RAD in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] at paragraphs 78 and 79:

> [78] At this stage of my analysis, I find that the role of the RAD is to intervene when the RPD is wrong in law, in fact or in fact and law. This translates into an application of the correctness standard of review. If there is an error, the RAD can still confirm the decision of the RPD on another basis. It can also set it aside, substituting its own determination of the claim, unless it is satisfied that it cannot do either without hearing the evidence presented to the RPD: paragraph 111(2)(b) of the *IRPA*.
>
> [79] I also conclude that an appeal before the RAD is not a true *de novo* proceeding. Recognizing that there may be different views and definitions, I need to clarify what I mean by "true *de novo proceeding*". It is a proceeding where the second decision-maker starts anew: the record below is not before the appeal body and the original decision is ignored in all respects. When the appeal is a true *de novo* proceeding, standard of review is not an issue. This is clearly not what is contemplated where the RAD proceeds without a hearing.

[40] Reasonableness is the standard of review to be applied by this Court to a decision of the RAD: *Huruglica* at paras 30 and 35.

[41] A high degree of deference is required when the impugned findings relate to the credibility and plausibility of a refugee claimant's story, given the RPD and the RAD's expertise in that regard and their role as the trier of fact: *Vall v Canada (Citizenship and Immigration)*, 2019 FC 1057 at paragraph 15.

[42] Recently, the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] extensively reviewed the law of judicial review of administrative decisions. The Supreme Court confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness subject to certain exceptions, none of which apply on these facts: *Vavilov* at paragraph 23.

[43] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*].

[44] *Vavilov* also confirmed, citing *Dunsmuir,* that a reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at paragraph 15.

VI. **The RAD's Analysis of Counsel Competence was reasonable**

[45] The main issue before the RAD was the incompetence of counsel who represented the Applicants at the RPD hearing. The Applicants allege that their counsel did not submit various documents, and but for that, the outcome would have been different.

A. *Overview of the Law of Counsel Competence*

[46] Allegations of incompetence of counsel in immigration matters are not new. A brief review of some of the most relevant jurisprudence follows.

[47] The Supreme Court of Canada in *R v GDB*, 2000 SCC 22 [*R v GDB*] set out at paragraphs 26 and 27, the general approach to be taken when the issue of the ineffectiveness of counsel is being reviewed:

> 26 The approach to an ineffectiveness claim is explained in *Strickland v. Washington*, 466 U.S. 668 (1984), per O'Connor J. The reasons contain a performance component and a prejudice component. For an appeal to succeed, it must be established, first, that counsel's acts or omissions constituted incompetence and second, that a miscarriage of justice resulted.
>
> 27 Incompetence is determined by a reasonableness standard. The analysis proceeds upon a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. The onus is on the appellant to establish the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The wisdom of hindsight has no place in this assessment.

[48] The Federal Court of Appeal has held that "It is settled that an applicant must live with the consequences of the actions of his counsel. [. . .] [t]here is a high threshold governing the

circumstances and evidentiary criteria that must be met before the Court will grant relief under section 18.1 of the Federal Courts Act on the basis of the negligence of counsel.”: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] at para 66.

[49] In this Court, Mr. Justice Southcott has held that “the party making the allegation of incompetence must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would be different”: *Olayinka v Canada (Citizenship and Immigration)*, 2018 FC 975 [*Olayinka*] at para 16.

[50] Finally, this Court has also held that “[a]s a general rule, it is well known that counsel’s conduct cannot be separated from that of the client, because counsel acts as an agent for the client. Indeed, a client who freely chooses representation must accept the consequences of this representation, subject to certain extraordinary cases where conduct of counsel will manifest such negligence that it will warrant overturning a decision on judicial review”: *Pathinathar v Canada (Citizenship and Immigration)*, 2013 FC 1225 at para 38 [*Pathinathar*]. (Internal citations omitted.)

B. *Additional Facts Concerning Allegations Against Former Counsel*

[51] Before the RPD, the Applicants and the associated claimants were both represented by the same Regulated Immigration Consultant (Consultant).

[52] The RPD dismissed the associated claims in July 2018.

[53] The Basis of Claim form in this matter was signed by the Applicants on January 18, 2019. It was received by the Immigration and Refugee Board on February 6, 2019.

[54] Prior to the RAD hearing, the Consultant who was previously acting for the Applicants was replaced by current counsel, who is a lawyer. The lawyer prepared the written submissions to the RAD for both the Applicants and the associated claimants.

C. *New Evidence Accepted and Rejected by the RAD*

[55] In support of their allegation that incompetent counsel had failed to submit evidence that would have changed the outcome of the case the Applicants tendered five pieces of new evidence for consideration by the RAD under subsection 110(4) of the *IRPA*.

[56] The RAD accepted a single bundle of three letters that the RPD had refused to accept. The Applicants say this evidence should have been provided to the RPD but, due to incompetent counsel, it was not. Two of the letters purported to corroborate IFA attempts made by the Applicants and the third confirmed the shooting at their house in Tizimin.

[57] The RAD also accepted as new evidence two affidavits that were sworn after the RPD hearing. The affidavits attested to were from the PA and Javier. They were provided to support the allegations of incompetent counsel.

[58] The final piece of new evidence accepted by the RAD was the record filed by the associated claimants with this court when they were seeking leave to judicially review their

negative RAD decision. It was noted in both written and oral argument that leave was not granted to the associated claimants.

[59] The RAD rejected updated letters from Javier's sister and nephew attesting to ongoing threats from the perpetrators. The RAD also rejected undated photos of injuries reportedly sustained by the nephew in an assault made by the perpetrators.

D. *The RAD's Analysis of the Accepted and Rejected Evidence*

[60] In considering all the evidence submitted by the Applicants, the RAD properly articulated the two stage test to be applied as set out in *Singh* and that stage two requires the RAD to consider the factors set out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385: the conditions set out in subsection 110(4) must be met, and if met, the new evidence must also meet jurisprudential requirements of credibility, relevance, and newness.

[61] The RAD noted that if any of the conditions set out in subsection 110(4) were not met, it had no discretion to allow that evidence. The RAD further noted that the purpose of the new evidence is not to complete a deficient record submitted to the RPD.

[62] The RAD determined that in deciding whether the new evidence met the requirements of subsection 110(4) it was necessary to examine the allegations made against former counsel. The RAD stated that it admitted the new evidence because it was probative to the issue of counsel competence as it had not been submitted to the RPD.

[63] In finding there had been no breach of procedural fairness due to incompetent counsel the RAD began by stating it had perused the file and listened to the audio recording of the RPD hearing.

[64] The RAD acknowledged that former counsel for the Applicants had been notified of the allegation of incompetence and had not responded to it.

[65] The RAD found the explanation by the Applicants that they felt they had “no choice” but to keep their counsel “because the hearing date was only a few weeks away” was not credible. The Applicants had testified that they were in close contact and communication with their daughter and son-in-law as they all resided in the same city.

[66] The RAD determined that the Applicants would have known the associated claimants had lost faith in their counsel as they had filed an application with this court for leave and judicial review of their RAD decision in September 2019 in which they alleged incompetence of their counsel as a ground for review. Yet, on November 2, 2019, the Applicants all signed a Use of Representative Form naming that counsel. Their appeal to the RAD was filed on December 16, 2019.

[67] The RAD found it did not make common sense that the Applicants would maintain the services of counsel in whom the associated claimants had lost faith.

[68] Considering the above-noted facts, the RAD reasonably determined that it was the decision of the Applicants to retain and maintain their relationship with their counsel. On a balance of probabilities, the RAD found that the Applicants "would have been well aware that there were concerns regarding [counsel's] competence" and that they had ample time to seek different representation.

[69] The RAD found that the actions of the Applicants' counsel at the RPD "did not constitute incompetence to a level that has created a breach of natural justice."

E. *Analysis of the Applicant's Position*

[70] The Applicants seize upon the last statement above to argue that the RAD acknowledged the consultant was incompetent, "but not incompetent enough" and that this conclusion is unreasonable and unsupported by the evidence.

[71] However, the Applicants overlooked two important points of law.

[72] First, it was reasonably found by the RAD with justifiable, transparent and intelligible reasons that the Applicants freely chose to keep their counsel even after the associated claimants raised allegations of counsel incompetence. As articulated by Mr. Justice Noël in *Pathinathar*, in that instance, the Applicants must accept the consequences of the representation "subject to certain extraordinary cases where conduct of counsel will manifest such negligence that it will warrant overturning a decision on judicial review": *Pathinathar* at para 38.

[73] The Applicants’ argument that they felt they had “no choice” but to keep the original counsel was reasonably found by the RAD to not be credible for reasons already set out. The upshot is that the Applicants did freely chose to retain the same counsel, even though they were aware of the incompetence allegations, and they must bear the consequences of that choice.

[74] Second, incompetence alone does not result in a breach of procedural fairness. There is also a “but for” test. The incompetence must lead to the conclusion that “but for counsel's unprofessional errors, the result of the proceeding would be different”: *Olayinka* at para 16.

[75] It must be kept in mind that as the Applicants were alleging counsel incompetence they had the onus to prove to the RAD that “but for” counsel’s errors they would have succeeded at the RPD hearing.

[76] In my view, the Applicants have failed to meet that onus.

[77] The RAD properly articulated and applied the “but for” test.

[78] The RAD found several of the key credibility findings made by the RPD had nothing to do with counsel. For example the associated claimants had testified to the material elements of their claim but did not disclose details of the threats to the Applicants either to the RPD or subsequently to the RAD.

[79] The RAD found that nothing prevented the associated claimants from describing the threats to the Applicants in their sworn affidavits to the RAD.

[80] Given that the threats to the Applicants were made at the end of May 2018 the RAD found it suspect that the affidavit sworn on August 23, 2018 by Javier contained no details of those threats. The RAD determined that it was not credible that Javier had not read his affidavit and was not aware of its contents. This was a reasonable finding given that Javier was not an unsophisticated claimant. He had four years of university education, was a teacher, owned businesses and acted as a financial advisor.

[81] The RAD also found that no adequate explanation had been advanced for why the associated claimants failed to share at the RPD hearing details of those threats to their family members. The RAD observed that in July 2018 the wife of the PA came to Canada to visit her daughter, one of the associated claimants, because of the situation she was in and the anguish she felt. She testified that she personally told the associated claimants about the threats the Applicants had been receiving. The RAD found that given the situation was troubling, it was not credible that the threats were not contained in either of the affidavits the associated claimants presented to the RAD.

[82] The RAD made several other similar findings which are not necessary to mention.

[83] With respect to the two updated letters and the photos that were not accepted by the RAD, the Applicants say that the RAD unreasonably refused to accept them. They claim that the

updated letters from Javier's sister and nephew and the undated photos of injuries sustained by the nephew were not tendered at the RPD due to counsel incompetence. The Applicants say counsel failed to advise them of the evidence that would be material to support their application.

[84] The Applicants also say that the RAD ignored their submissions that the evidence should have been provided at the RPD hearing but that it was not.

[85] The answer to the Applicant's last submission is found in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[86] The Applicants take issue with the RAD's statement that the letters post-dated the RPD hearing so it was unclear how counsel could be responsible for not providing the letters. I agree that statement is weak. However, the RAD's observation that it was not credible that the events would not have been mentioned by one of the Applicants given the close communication between the Applicants and Javier, who was notified of the assault and received a picture of the injuries, is reasonable.

[87] It strains credulity that refugees fleeing perceived death threats or serious bodily harm, would not think it relevant, independent of counsel, to provide the evidence of which they are already aware in order to support their claims.

VII. **The RAD's IFA Analysis was Reasonable**

[88] The RAD concluded that the determinative issue was that an IFA existed in Merida.

[89] In considering the viability of Merida as an acceptable IFA city, the RAD identified and applied the two-pronged test set out in *Rasaratnam v Canada (Minister of Employment and Immigration),* [1992] 1 FC 706 (FCA).

[90] The first prong requires the Applicants to prove that, on a balance of probabilities, there is a serious possibility of persecution or risk of harm in the IFA. In other words, the onus is on the Applicants; it is not up to the Respondent to show the Applicants will not be persecuted.

[91] The second prong requires that the Applicants show they could not reasonably seek refuge in the IFA location when considering all the circumstances, including those particular to them.

[92] Whether an IFA is reasonable or not is determined objectively. An applicant must meet a very high threshold to prove the unreasonableness of an IFA. To do so requires actual and concrete evidence proving that there are conditions that would jeopardize the life and safety of a

claimant in travelling or temporarily relocating to a safe area: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 15.

[93] The onus was on the Applicants to establish that the proposed IFA was not viable; to discharge the onus the Applicants were required to meet one prong of the two-pronged test.

[94] The Applicants submitted that the proposed IFA was unreasonable. In support of this allegation, the Applicants say that they relocated to the IFA city which had been suggested to the associated claimants by the RPD but they experienced problems there when someone shot at their house.

[95] The Applicants also say they relocated within Mexico twice and in both instances they were found by the perpetrators. However, the Applicants did not explain how the kidnapping incident in Mexico City or the shooting in Tizimin show that there is a similar risk in Merida.

[96] The RAD accepted two letters submitted by the Applicants that the RPD refused to accept to corroborate their IFA attempts. The letters were assessed by the RAD to be of minimal probative value in identifying their persecutors or the interest and ability of them to track down the Applicants in the IFA as they only reiterated what the Applicants had said in their testimony. Even if the letters had been accepted by the RPD it would not have changed the finding that the IFA was viable for the Applicants.

[97] In rejecting the Applicant's arguments and finding that the IFA was reasonable, the RAD considered that the Applicants had returned to their family residence, in their hometown, Chihuahua, where the threats against Javier originated and where threatening phone calls had been received. The RAD reasonably found that behaviour to be inconsistent with being targeted by the cartel and being at risk of harm throughout Mexico.

[98] Noting that the onus was on the Applicants to show they do not have an IFA the RAD found they had provided no specific details at the RPD or on appeal as to the mechanisms through which the agents of persecution would be able to search for them. They had only provided vague assertions that the cartels are "interconnected" throughout Mexico and have "contacts everywhere".

[99] The first prong of the IFA test was not met. The RAD reasonably concluded that there was insufficient evidence, on a balance of probabilities, that the Applicants faced a serious possibility of persecution or would be subjected to a risk to life, punishment, or torture in Merida.

[100] The Applicants also failed to meet the second prong of the IFA test and did not establish that the IFA of Merida was objectively unreasonable. The Decision noted that the objective test sets a very high threshold for what makes an IFA unreasonable and that the Applicants did not provide actual and concrete evidence to support their claim that it would be unreasonable for them to seek refuge in the IFA.

[101] After an independent assessment of the IFA evidence, the RAD held the Applicants did not show there was a serious possibility that their lives and safety would be in jeopardy in the proposed IFA or that moving to and living in the IFA was unreasonable.

[102] The RAD reasonably found the RPD's conclusion that there was insufficient credible evidence to show the Applicants would be located and harmed in the IFA was correct, and it was supported by the evidence.

VIII. **Conclusion**

[103] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

[104] I have found there are no such exceptional circumstances in this matter.

[105] Provided that there is an internally coherent and rational chain of analysis that is justified in relation to the facts and law, the application of reasonableness review requires the reviewing Court to defer to the decision under review: *Vavilov* at para 85.

[106] I am satisfied the Decision is internally coherent and there is a rational chain of analysis that is justified in relation to the facts and law.

[107] For all the foregoing reasons and upon applying the principles in the jurisprudence referred to, the application is dismissed, without costs.

[108] Neither party suggested a serious question of general importance for certification.

JUDGMENT in IMM-991-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed as moot against the Principal Applicant, Eusebio Ruiz Lopez, without costs.
2. The application is dismissed against the other applicants, without costs.
3. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-991-20
STYLE OF CAUSE:	EUSEBIO RUIZ LOPEZ, SANDRA LUZ RIOS ARTEAGA, JAIME ANTONIO ESTRADA ESCARCEGA, ERIKA JAZMIN RUIS RIOS, LIZBETH RUIZ RIOS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO, CALGARY, ALBERTA AND EDMONTON ALBERTA
DATE OF HEARING:	DECEMBER 3, 2020
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	APRIL 30, 2021

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