

Federal Court



Cour fédérale

Date: 20210512

Docket: IMM-1444-20

Citation: 2021 FC 432

Ottawa, Ontario, May 12, 2021

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**IVAN ALEJANDRO SOTO GALVAN
MONICA MANZO LICEA
TARA ALEJANDRA SOTO MANZO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application by a family of Mexican citizens [the Applicants] challenging a decision by the Refugee Appeal Division [RAD] which denied their appeal from the Refugee Protection Division's [RPD] refusal to grant refugee protection. Both decisions turned on a finding that an internal flight alternative [IFA] was available in Mérida, Yucatán.

[2] The Applicants' claims to protection were based on allegations of gang-related threats and violence that arose in Michoacán. Michoacán is a Mexican province west of Mexico City abutting the Pacific Ocean. The asserted threat was said to be from a local criminal gang known as Los Viagras. The Los Viagras had an affiliation with a larger regional cartel — the La Familia Michoacana — which was active in both Michoacán and the adjoining province of Guerrero.

[3] Both the RPD and the RAD accepted as credible the Applicants' evidence establishing a history of gang-related threats and violence directed at Mr. Soto Galvan. The RPD described that history in a general way as follows:

[9] The panel finds on a balance of probabilities that the claimants have been targeted by the Los Viagras and La Familia Michoacán cartels in Mexico. In making that finding the panel is relying on the principle that a claimant who affirms to tell the truth creates a presumption of truthfulness unless there are reasons to doubt their truthfulness. However, this presumption does not apply to inferences or speculation.

[10] The claimants have provided documents to support their claim. For example, the claimants provided affidavits from the principal claimant's mother, brother, and a neighbour, found at exhibit 6 that relate to the incidents where they were approached by members of Los Viagras who were looking for the claimants. The panel has no reason to doubt the genuineness of these documents and since they relate to the alleged threats by Los Viagras, the panel places significant weight on these documents to support the claimants' allegations and overall claim.

[11] Both claimants testified in a consistent and straightforward manner that was consistent with their basis of claim form and supporting documents. There were no relevant inconsistencies in the claimants' testimony or contradictions between their testimony and the other evidence before us. The panel finds that both claimants are credible witnesses although the panel finds that some of their fears are speculative and not sufficiently supported as will be noted below.

[4] Notwithstanding the acceptance of the Applicants' risk narrative, the RPD concluded that the capacity of Los Viagras to locate and harm them in Mérida was unproven. Because Mérida was a relatively safe and distant location, it was, therefore, reasonable for the family to relocate there.

[5] The RAD took a similar approach to the evidence. It dealt with new evidence of ongoing threats including the kidnapping of Mr. Soto Galvan's brother as follows:

[28] The RAD finds that even if the LV are still motivated to locate the Principal Appellant, two years after he and his family have left the country, the LV had just been informed by the brother that the Appellants are no longer in Mexico. The RAD finds that the LV eventually believed the brother's explanation that he was not the Principal Appellant, and that the Principal Appellant was in Canada, as the LV released the brother from their captivity. On a balance of probabilities, in light of the new evidence, the RAD finds that the LV has less motivation to continue searching for the Appellants given this information, and also given that there is no evidence that their influence extends outside the region of Michoacán.

[29] The RAD does not doubt the authenticity of the affidavits, but finds that the affidavits provide little probative value on the forward-looking risk of persecution by the LV within the proposed IFA, and they are given little weight in that respect. Taking this into account, along with the fact that the LV's influence and power appear limited to the region of Michoacán, the RAD finds on a balance of probabilities, that the Appellants would be safe if they were to relocate to Mérida.

[6] The RAD concluded that, despite the gravity of the well-documented evidence of ongoing threats and violence, the family could find safety in Mérida.

[7] I am not satisfied that the RAD's treatment of the accepted evidence of the ongoing threats against Mr. Soto Galvan through his family and friends in Michoacán was sufficient to

support its finding that he could safely relocate to Mérida. This is an issue of mixed fact and law attracting the reasonableness standard of review.

[8] The safety of an IFA will often be dependent on the nature and depth of the motivation of the agent of harm to locate the victim and to travel to the IFA to exact punishment. An aspect of this involves the ability of a victim to effectively disappear from view within the chosen IFA. These are issues that need to be carefully considered. In this case, they were not.

[9] Mr. Soto Galvan's asserted risk arose out of a gang-related vendetta involving the death of a member of Los Viagras. He was decidedly not the unexceptional victim of a criminal extortion who would probably be quickly forgotten after departure. The evidence here indicated that Mr. Soto Galvan remained in the mind of Los Viagras after he left Michoacán and that gang members were actively searching for him mainly through members of his family still living there. Examples of this conduct are well documented in the record. Mr. Soto Galvan's brother Rafael described his kidnapping in November 2019 as follows:

On Friday, November 8, 2019, I was kidnapped and held for 3 days. I was walking with my cousin in the street in Los Reyes when 5 men wearing army uniform and carrying guns stopped us. One of them said, Ivan, it is good to see you back and as he said this, they grabbed me and put me in a van even before I could say I was not Ivan. In the van they blindfolded me, tied my hands at my back and drove off. I tried protesting telling them I was Rafael and not Ivan but no one was listening. One of the men told me that they knew I would return to Mexico one day but I had made their work easier by coming to see my family. I tried to say I was Rafael but they hit me again so I stopped talking.

Finally, they stopped and took me out of the van and started beating me up. It was in a forest. The men told me they were from the Las Viagras and that I would die a slow painful death in revenge for the death of their brother. They removed my blindfold but my hands remained tied. I knew they were mistaking me for

my brother and I cried telling them I was not Ivan and Ivan was in Canada and if they gave me a chance, I could prove that to them. One of the men asked me for Ivan's address in Canada but I did not have the address. Also, unfortunately, because I had been away from Mexico, I had just applied but I was waiting for my voter's ID. I had nothing to show them so I begged them to call my family members. I had to give them my brother Juan Diego's number. They could not reach him and I was beaten some more. Then I gave them my uncle Jose's number and luckily, they got him. My uncle pleaded with them that they had the wrong person. I could hear him because they put me on the phone on a speaker as they talked to him so that I can talk to my uncle. My uncle was telling them I had just been deported from USA and I had no problems with anybody. They listened but said nothing to me. They put me in a room. After many hours, another man came to the room with the other 3 and said, he is not Ivan and left.

[10] Mr. Soto Galvan's brother, Juan Diego, provided the following narrative:

Ivan made all the arrangements to leave Mexico because he knew that they were looking for him, through a neighbour of him who told him that members of Los Viagras were looking for him.

When Ivan left Mexico, they went looking for him at my mother's house and my mother was forced to flee her home.

On day in July 2019, I was approached by a person who identified himself as a Los Viagras member. He just stopped me in the street out of nowhere, started walking beside me and he said, he had a message for my brother. I was to tell Ivan that they knew he had fled but if he ever returns to Mexico they would find him and he would pay. One soul for one soul. The man did not ask me where Ivan was in Mexico. They seem to already know he was no longer in Mexico. This encounter left me shaken.

[11] A neighbour gave the following declaration:

I know **Ivan Alejandro Soto Galvan** because my carpentry workshop is one block from where he had his mechanic workshop. Ivan Moreno is also a neighbour. I can confirm that a fight broke out at Ivan's workshop in May 2018 with two Cartel's groups "*Los Viagras*" and "*La Familia Michoacán*". Soon after this encounter word got back to us that the Los Viagras had lost 1 man after the fight and have sworn to track and kill Ivan because they blame him for the murder. Then both groups started looking for Ivan and

asking about his whereabouts in the neighbourhood. These groups are a very dangerous people, criminals without soul and rumours. They are all over Mexico we do not have a safe place to live; we have to pay them what they ask us because we know that we cannot hide from them. I pay the Los Viagras 1,000.00 pesos every month, these extortions affect the economy of the merchants, and we don't mess with them because they will kill us without mercy.

I knew that Ivan was safe in Canada, he called me because we were close friends, we see each other a lot because we worked in the same area. And I told him that sometimes when "Los Viagras" came to pick up the extortion they asked me for Ivan. I tell them that I didn't see him at all. I learned from the other people around who also have stores in the same area that people has been asking for him, people form the cartels and for sure we know they are not his clients, we know the appearance of them, they always have a brand new cars and also they always are armed. However, even if I say nothing, these people have informers everywhere and you never know who is talking. I do not have problems with them because I pay them monthly. I don't tell my family about the extortion because I know that my wife will ask me to stop coming to my business but I don't have a choice, I have to support my family, I know that we are always risking our lives, we do know if we will come back home, they are full of surprises.

[12] Mr. Soto Galvan's mother reported the following:

My son Ivan and his family were forced to fee his country Mexico and go to Canada because their lives were at risk since the criminal's groups called "Los Viagras" and "La Familia Michoacán are looking for him and they are going to kill Ivan if they find him. My son told me both groups accuse him of being an informer. I didn't know that until I was able to talk to my son Juan Diego and Ivan.

This problem occurred on 2018. I was living in Fraccionamiento Jardines de San Juan # 27, Los Reyes de Salgado, Michoacán, México. I know when Ivan had this problem, had to leave Mexico because he would not be safe anywhere. On June 10, 2018, around 6 pm somebody knocked on my door when I opened it, at my door were three armed men that identified themselves as members of the "Los Viagras" I was terrified. One of them pushed me inside the house, my partner didn't move, he was frozen seating in the living room. The man asked me for my son Ivan, I told him that I had not seen him for a while and he asked me for his phone number. I told him that he changed phones frequently and I do not have his new

number, he laughed. The other two called him and they started talking. The man approached me again saying: “We are coming back and you are going to have his information and his new number and if you do not collaborate, when we comeback it will be your last day. Tell him that his clients from “Los Viagras” have unfinished business with him.

[13] All of the above evidence was accepted as credible by the RPD and the RAD. It indicates that Los Viagras was strongly motivated to locate Mr. Soto Galvan to exact revenge for his supposed involvement in the death of a gang member. Mr. Soto Galvan had family still living in Michoacán who presumably would know where he would be in Mérida. The fact that Los Viagras were a regional gang is not a complete answer to the risk they represented throughout Mexico. If they could locate Mr. Soto Galvan through his family, they presumably had the means to harm him anywhere in Mexico. Neither the RPD nor the RAD gave these issues any meaningful consideration. Rather, their IFA analysis was cursory and inadequate and, therefore, unreasonable.

[14] For the foregoing reasons, this application is allowed and the RAD decision is set aside. The matter is to be redetermined on the merits by a different decision-maker.

[15] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT IN IMM-1444-20

THIS COURT'S JUDGMENT is that this application is allowed with the matter to be redetermined on the merits by a different decision-maker.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1444-20

STYLE OF CAUSE: IVAN ALEJANDRO SOTO GALVAN, MONICA
MANZO LICEA, TARA ALEJANDRA SOTO MANZO
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
VANCOUVER, BRITISH COLUMBIA (THE COURT)
AND VANCOUVER, BRITISH COLUMBIA
(PARTIES)

DATE OF HEARING: APRIL 28, 2021

JUDGMENT AND REASONS: BARNES J.

DATED: MAY 12, 2021

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