

Federal Court



Cour fédérale

Date: 20210528

Docket: IMM-2159-20

Citation: 2021 FC 508

Ottawa, Ontario, May 28, 2021

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**MARIA DEL SOCORRO SANCHEZ ROVIROSA
GLADYS STEFANY SANTOS SANCHEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Immigration and Refugee Board of Canada, Refugee Appeal Division [RAD], dated March 5, 2020 [the Decision]. In the Decision, the RAD dismissed the appeal and confirmed the Refugee Protection Division [RPD]

decision, which dismissed the Applicants' refugee claim because they have a viable internal flight alternative [IFA] in Mexico City.

[2] As explained in more detail below, this application is dismissed, because the RAD's IFA analysis is reasonable.

II. **Background**

[3] The Applicants are a woman [the Principal Applicant] and her daughter [the Minor Applicant], who are both citizens of Mexico. They claimed refugee protection in Canada based on a fear of persecution and a risk to life at the hands of the daughter's father, referred to in the Decision as EV.

[4] The Principal Applicant was in a relationship with EV for roughly one year and states that he physically and sexually abused her. She ended the relationship when she learned she was pregnant. EV continued to harass her in various ways after their relationship ended. She states that he continued calling her, that she would bump into him in different places, and that he showed up drunk at her residence many times.

[5] In 2018, the Principal Applicant began planning a trip to Canada for herself and her daughter, but she needed EV's consent to travel with their daughter. He initially refused but later signed a document giving consent and another document stating that the Principal Applicant had custody of their daughter, after being given the impression that all three of them would travel to Canada together. The Principal Applicant later told him she did not want to see him anymore and

he became angry and violent. During this altercation, he yelled that he would make her pay for making a fool out of him.

[6] In May of 2018, two men tried to kidnap the Minor Applicant when she was walking home from school. The Applicants believe that EV was behind the kidnapping attempt and state that this made them fear for their safety and led them to make a refugee claim in Canada.

[7] The RPD found most of the Applicants' allegations to be credible but rejected their refugee claim. It found that the Principal Applicant had a nexus to a Convention ground, because she was a victim of gender-based violence, but that her daughter did not have a nexus and that the Applicants have a viable IFA in Mexico City.

[8] The Applicants appealed the RPD's decision to the RAD. In the Decision under review in this application, the RAD dismissed their appeal and confirmed the RPD's decision that the Applicants are neither Convention refugees nor persons in need of protection.

III. **RAD Decision**

[9] The RAD began its analysis by evaluating the RPD's finding that the Minor Applicant did not have a nexus to a Convention ground. The RAD determined that the RPD erred in that finding, because EV's threats against the Principal Applicant involved her daughter as part of an ongoing pattern of gender-based violence.

[10] The RAD then turned to whether the Applicants have an IFA, applying the two-pronged test for assessing an IFA prescribed by *Rasaratnam v Canada (Ministry of Employment & Immigration)* [1992] 1 FC 706 (FCA):

- A. The tribunal must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA;
- B. The conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for the claimant to seek refuge there.

[11] Under the first prong, the RAD found that the Applicants did not establish that they faced a serious possibility of persecution in Mexico City, because they did not demonstrate that EV had the means or continued motivation to locate them there. In the course of this determination, the RAD also considered, but rejected, the Applicants' arguments that the RPD had erred in certain adverse credibility findings. The RAD also determined that the Applicants did not face a serious possibility of persecution in Mexico City on the basis of their gender.

[12] Under the second prong of the test, the RAD found that the Applicants did not establish that it would be unreasonable for them to relocate to Mexico City. The RAD took note of the Applicants' arguments that Mexico is generally unsafe for women and that they would not have social or professional networks in Mexico City or a place to live and would therefore incur undue

hardship. The RAD acknowledged these arguments but considered the Principal Applicant's education, training, and work experience and found that, while relocating would be difficult, it would not rise to the level of being unduly harsh. The RAD therefore concluded that Mexico City provided a suitable IFA for the Applicants and, on that basis, dismissed their appeal.

IV. **Issues and Standard of Review**

[13] The Applicants articulate the issues in this application for judicial review as follows:

- A. Did the RAD err in confirming the RPD's credibility analysis?
- B. Did the RAD err in finding that the Applicants had a viable IFA in Mexico City?

[14] The Applicants submit, and I agree, that the standard of review applicable to these issues is reasonableness. Because the credibility conclusions form part of the IFA analysis, I will consider both issues together.

V. **Analysis**

A. *First Prong of IFA Test – Serious Possibility of Persecution in Proposed IFA*

[15] Under the first prong of the IFA test, the RAD found that the Applicants had not established that they faced a serious possibility of persecution in Mexico City, because they had not established that EV has the means and motivation to locate them there. In the course of this analysis, the RAD made the credibility findings that the Applicants challenge. They submit that

the RAD erred in confirming flawed credibility assessments by the RPD based on omissions in the information she provided at the port of entry [POE] upon arriving in Canada and in her Basis of Claim [BOC] form.

[16] The BOC omission related to the Principal Applicant failing to include in her narrative a reference to having seen EV when she and her daughter were in Mexico City approximately 13 years ago. The RPD found that this omission undermined the credibility of that assertion. The RAD agreed with the RPD that this was a significant detail relevant to the Applicants' allegations and that its omission impugned the Principal Applicant's credibility. The Applicants argue that the RAD erred, because claimants cannot be expected to include every incident in their BOC, particularly given that this detail became significant only when the RPD raised the prospect of Mexico City as an IFA.

[17] The Respondent submits that this argument cannot give rise to a reviewable error on the part of the RAD, as it was not a determinative finding. Rather, the RAD found in the alternative that, even if the Applicants did see EV in Mexico City 13 years ago, this does not establish that he has the means and motivation to locate them in that city now. The RAD concluded that there was nothing in the record to suggest that this was anything more than a chance encounter, that there was no indication that EV even saw them, and that there was no reason to suggest that he tracked them to Mexico City.

[18] The Applicants also challenge the reasonableness of this alternative analysis, arguing that the finding that EV locating them in Mexico City was a chance encounter was speculation and

that, if he located them in Mexico City once, there is no reason he could not do so again. I find no reviewable error based on these arguments. The RAD's finding does not represent a speculative conclusion that seeing EV in Mexico City was a chance encounter but rather a conclusion that the Applicants had not satisfied their burden to show otherwise. There is no basis for the Court to find the RAD's conclusion, that there was no evidence that EV had tracked them down, to be unreasonable.

[19] Given the reasonableness of this alternative analysis, I agree with the Respondent that whether the RAD reasonably addressed the credibility point surrounding the BOC narrative cannot impact the reasonableness of the first prong of the IFA assessment.

[20] In so concluding, I have considered the Applicants' argument that the RAD's reasoning demonstrates an inconsistency or circular logic. They submit that the RAD's conclusion that the encounter in Mexico City was a significant detail relevant to the Applicants' allegations, such that its omission impugned the Principal Applicant's credibility, is inconsistent with the RAD's subsequent conclusion that the encounter was not significant enough to undermine the reasonableness of the IFA.

[21] I find no logical error in the RAD's reasoning. The encounter with EV in Mexico City was clearly an event that required assessment, such that its omission raised a credibility concern. However, that assessment demonstrated no basis to conclude that EV wished to, or was able to, locate the Applicants in Mexico City. Having considered the Applicants' argument as to the link between this credibility analysis and the conclusion on the first prong of the IFA test, as well as

the reasonableness of the RAD's alternative analysis, I find no basis for the credibility analysis to affect the reasonableness of the RAD's conclusion on the test.

[22] The other credibility finding challenged by the Applicants surrounds the Principal Applicant's failure to indicate at the POE that she believed EV was behind the kidnapping attempt on her daughter. The RPD found that this omission undermined the credibility of her assertion that EV was responsible for that incident. The RAD agreed with the RPD that this omission was significant. The Applicants argue that the RAD misinterpreted case law upon which they relied in the appeal, to the effect that it is an error to impugn an applicant's credibility based solely on a lack of detail in a POE interview (see *Cetinkaya v Canada (Citizenship and Immigration)*, 2012 FC 8 at paras 50-51). They also submit that the RAD unreasonably failed to accept the Principal Applicant's explanation for the omission that, while at the POE, she was scared and all she could think of was keeping her daughter safe.

[23] As with the adverse credibility analysis surrounding the BOC omission, the RAD made alternative findings in relation to the POE omission. It held that, even accepting that the Applicants believed that EV was behind the kidnapping attempt, there was no clear indication of this fact, particularly given the objective evidence that kidnapping attempts are quite frequent in Mexico. The Applicants also challenge this alternative finding, as inconsistent with the evidence that EV repeatedly threatened to harm the Minor Applicant.

[24] However, the RAD further held that, even if it accepted that EV was responsible for the kidnapping, this did not establish that he would have the means to locate the Applicants in

Mexico City. I therefore turn to the Applicants' arguments in relation to this latter finding, because, if it is reasonable, any flaw in the adverse credibility finding or the finding on the lack of evidence that EV orchestrated the kidnapping cannot amount to a reviewable error.

[25] In concluding that EV's involvement in the kidnapping attempt did not establish means of locating the Applicants in Mexico City, the RAD noted there was no evidence that the kidnapping involved organized crime or state actors. The Applicants submit that there is no requirement for an agent of persecution to be connected to state actors or organized crime to find that they have the means to locate a person. They argue that EV is an accountant, meaning he has income, and he has been to the proposed IFA in the past where he found the Applicants.

[26] In my view, these arguments do not undermine the reasonableness of the RAD's analysis. I do not read the Decision as suggesting a requirement for an agent of persecution to be connected to state actors or organized crime in order to support a finding that they have the means of locating a claimant. The RAD canvassed that point, because such a connection could support such a conclusion. The RAD also noted that the kidnapping attempt was a few blocks from the Applicants' home, which was not indicative of ability on the part of EV to locate them in the IFA. Also, to the extent the Applicants rely on EV having found them in Mexico City in the past, this is inconsistent with the RAD's finding that there is no evidence this was anything other than a chance encounter or that EV even saw them on that occasion. The RAD also considered the nature of EV's employment, in a financial position in a hotel, but concluded there was nothing in the record to suggest he held any type of position that would assist him in locating the Applicants.

[27] Regarding the RAD's finding that the Applicant's had not established that EV had a continuing motivation to locate them, they argue this conclusion is inconsistent with EV having threatened them for two decades. They rely on *AHA v Canada (Citizenship and Immigration)*, 2020 FC 787 [*AHA*], in which Justice Shore found unreasonable the RAD's conclusion that the agent of persecution in that case lacked the motivation to locate the claimants in an IFA. Like the present case, *AHA* involved a context of domestic violence in Mexico, and Justice Shore concluded the RAD had overlooked the dynamics of family violence and harassment, which should have informed its analysis.

[28] I agree with the Applicants that the dynamics of domestic violence can support a finding of continued motivation on the part of the abuser. However, this does not translate into a conclusion that it is unreasonable for the RAD to find otherwise on the facts of a particular case. As the Respondent notes, the conclusions in *AHA* on the motivation and means of the ability of the agent of persecution to locate the claimants turned in part on his contacts with criminals and police officers and the mobility of his employment, factors not present in the case at hand. In the present case, the RAD noted the absence of any evidence, following their departure from Mexico, that EV had attended their former residence or otherwise made efforts to contact them. There is no basis to find the RAD's analysis and conclusion on this point unreasonable.

[29] As noted above, having concluded that the RAD reasonably found that EV did not have the means or motivation to locate the Applicants in Mexico City, I need not consider the Applicants' arguments on the adverse credibility finding in relation to the POE omission or the

finding on the lack of evidence that EV orchestrated the kidnapping, as these findings cannot amount to a reviewable error.

[30] Under the first prong of the IFA test, the RAD also considered whether the Applicants would face a serious possibility of persecution in the proposed IFA as a result of their gender. It reviewed country condition documentation and found that, while women in Mexico faced some degree of discrimination, including concerns of gender-based violence, this did not rise to the level of persecution. The Applicants challenge this finding, arguing that it represents a vast mischaracterization of the evidence. They rely on a number of items in the National Documentation Package [NDP], identifying the prevalence of violence against women in Mexico.

[31] The RAD is presumed to have considered the country condition evidence, even without referencing the specific items on which the Applicants rely. That presumption is rebuttable if there are portions of the evidence sufficiently inconsistent with the RAD's conclusion to support an inference that such evidence was overlooked (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at paras 15-17). However, I find no basis to conclude that the RAD overlooked or failed to reasonably consider the evidence in the case at hand. The RAD noted that gender-based violence was a concern in Mexico, referencing support in the NDP, but concluded it did not rise to the level of persecution. As the Respondent points out, some of the evidence relied upon by the Applicants identifies domestic violence as the principle source of this concern and, as canvassed above, the RAD determined that the

Applicants would not be at risk from the Principal Applicant's previous domestic partner in the IFA.

[32] The Applicants also submit that the RAD erred in stating that gender-based violence is less prevalent than other forms of violence in Mexico and that men are statistically more likely to be victims than women. The Applicants argue that the RAD applied the wrong test in its analysis, as the test for a serious possibility of persecution does not entail determining whether one group of people is more subject to violence than another group of people.

[33] I agree that the test is not a comparative one, as the focus must be on the risk of persecution, faced by the group protected by the Convention, on the Convention-protected ground. However, I do not read the RAD's observations on the more general prevalence of violence in Mexico as elevating that portion of its analysis to a test requiring that the protected group be more subject to violence than others. Rather, the RAD's overall analysis demonstrates that it was considering the question it was required to assess, which was whether the discrimination against women in Mexican patriarchal society, as identified by the RAD, rose to the level of persecution.

[34] Finally, the Applicants take issue with the RAD's reliance on steps taken by Mexican authorities to strengthen criminal sanctions against individuals who carry out gender-based violence, the presence of women in a variety of fields of employment, and programs intended to promote such presence. They argue that this analysis offends the requirement that a reasonable

state protection analysis focus upon operational adequacy rather than state efforts (see, e.g., *Henguva v Canada (Citizenship and Immigration)*, 2013 FC 912 at para 10).

[35] While the Applicants correctly state the jurisprudence related to state protection, I agree with the Respondent's submission that the RAD's analysis related to the risk of persecution in the proposed IFA, not the availability of state protection against such risk. I find no error in the RAD's reliance on the evidence it cited, in considering whether women generally faced a serious possibility of persecution in Mexico City.

B. Second Prong of IFA Test – Reasonableness of Moving to Proposed IFA

[36] The Applicants argue that the RAD erred in finding they had failed to establish that relocating to Mexico City would be unreasonable or unduly harsh for them. They submit that the RAD's finding is not an acceptable outcome, given their particular situation as survivors of gender-based violence, the absence of family members to support them, and the negative effect of discrimination against women of the Applicants' age in Mexico City on their ability to find housing and employment.

[37] The Applicants have not raised a basis for the Court to interfere with the RAD's conclusion on the second branch of the IFA test. In effect, they ask the Court to re-assess the evidence and arrive at a conclusion different from that of the RAD, which is not the Court's role in judicial review (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125). The RAD considered the evidence, including the Principal Applicant's particular

education, training, and experience, and arrived at a conclusion within the range of acceptable outcomes based on the applicable evidence and law.

VI. **Conclusion**

[38] Having found no reviewable error in the RAD's IFA analysis, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-2159-20

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2159-20

STYLE OF CAUSE: MARIA DEL SOCORRO SANCHEZ ROVIROSA
GLADYS STEFANY SANTOS SANCHEZ
v THE MINISTER OF CITIZENSHIP AND
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