

Federal Court



Cour fédérale

Date: 20211115

Docket: IMM-1295-21

Citation: 2021 FC 1235

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 15, 2021

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

**MIGUEL ESTUARDO LORENZANA QUINONEZ,
BRENDA YAZMIN BUSTAMENTE PIMENTEL,
SAYURI PIMENTEL OGATA,
JOSUE ALEJANDRO BUSTAMENTE PIMENTEL,
BRYAN ESTUARDO LORENZANA PIMENTEL,
SAMUEL PIMENTEL,
WENDY MELODY LORENZANA PIMENTEL
AND YARIANNY DEL ANGEL BUSTAMENTE
PIMENTEL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants are seeking judicial review of a decision rendered by the Refugee Appeal Division (RAD) on January 26, 2021 (Decision), denying their application for refugee

protection. The RAD found that the principal applicant has not established, on a balance of probabilities, that he would be exposed to a prospective and personal risk within the meaning of section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), if returned to Guatemala.

[2] For the reasons that follow, the applicants' application for judicial review is dismissed.

I. Background

[3] The applicants are a family of eight: the principal applicant, Miguel Quinonez, a citizen of Guatemala; his spouse, the associate applicant, Sayuri Ogata, a citizen of Mexico; the adult daughter of the associate applicant, a citizen of Mexico; two children, citizens of Mexico; and three children, citizens of the United States.

[4] The applicants' alleged fears of persecution are:

- A. The principal applicant fears being killed in Guatemala by the criminal group MS-13 because he refused to join them between 1999 and 2003. The three children who are citizens of the United States are basing their refugee protection claims on the principal applicant's claim.
- B. Despite her divorce in 2004, the associate applicant fears the leader of one of the Mexican cartels who was looking for her ex-spouse. The two children who are citizens of Mexico are basing their refugee protection claim on that of the associate applicant.

- C. The adult daughter of the associate applicant fears another criminal group in Mexico, which approached her in 2018 to join the group.

[5] The Refugee Protection Division (“RPD”) denied the applicants’ refugee protection claims on June 23, 2020. The applicants did not challenge before the RAD the RPD’s negative findings on the refugee protection claims of the associate applicant and her adult daughter. Nor are they challenging them in this Court. This ruling, therefore, addresses only the RAD’s analysis of the principal applicant’s claim and the applicants’ arguments and evidence relevant to that claim.

[6] The principal applicant was allegedly pursued by the MS-13 group from 1999 to 2003. On several occasions during this time, he was allegedly intimidated by members of the group seeking to recruit him. In April 2003, the principal applicant and his parents filed a complaint with the police because of repeated threats by MS-13 members.

[7] The principal applicant left Guatemala for the United States in February 2004. He remained there until his departure for Canada in March 2019.

[8] The principal applicant alleges that the threats extended to his family and continued after he left. Two of his uncles were allegedly murdered by the MS-13 group in 2000 and 2011. Subsequently, in 2017, another uncle allegedly received a call from a member of the group claiming to have kidnapped the principal applicant while he was being deported from the United States. The caller demanded a ransom for his release.

[9] The RPD found that the evidence did not show that MS-13 was still interested in the principal applicant 15 years after he left Guatemala. The RPD therefore concluded that the principal applicant had not established that he faced a prospective risk should he return to Guatemala. I also note that the RPD found that the adult daughter of the associate applicant lied about the dates of her stay in the United States, which made what she alleged to have experienced in Mexico not credible. The RPD stated that this adverse finding [TRANSLATION] “taint[ed] the applicants’ overall credibility”.

[10] The applicants appealed this decision. The applicants’ appeal submissions identified two errors allegedly committed by the RPD: (1) denying the principal applicant’s refugee protection claim; and (2) finding that the adult daughter’s testimony affected the credibility of the principal applicant’s story. Pursuant to paragraph 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257, the RAD’s analysis was limited to the two alleged errors (see *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at paras 23–24).

[11] The RAD recognized that the basis for the principal applicant’s claim was different from the basis for his spouse’s adult daughter’s claim. The panel therefore concluded that the principal applicant’s claim should not be affected by the misrepresentation in question. According to the RAD, the RPD had therefore erred in this regard.

[12] The RAD then addressed the principal applicant’s argument that the RPD should have accepted his refugee protection claim, as he was able to establish the material elements. The RAD agreed with the principal applicant that he had credibly established that the MS-13 group

had approached and threatened him between 1999 and 2003, as well as the fact that they had tried to recruit him during that time. In addition, the RAD accepted that the group had murdered one of his uncles in 2000 and that the applicant had gone to the police in 2003 to file a complaint against them. However, the RAD concluded as follows:

[32] . . . However, in the opinion of the RAD, none of these elements demonstrates, on a balance of probabilities, that he would face a prospective risk should he return to Guatemala. It concludes that the male appellant did not establish that the deaths of two of his uncles were related to the problems he allegedly had, or that MS-13 would be interested in finding him 15 years after a report he allegedly made which had no impact on the group.

[13] The RAD also addressed the principal applicant's allegation that one of his uncles was contacted by the MS-13 group in 2017 to tell him that the principal applicant had been deported from the United States, that the group had kidnapped and confined him upon his return to Guatemala, and that the group had demanded a ransom for his release. The RAD found that the principal applicant had testified before the RPD that he had not kept in touch with this uncle for 15 years and could not provide the details of this call, including the amount of ransom demanded. In light of this highly inaccurate account, the RAD found that the principal applicant had not established that he had received such a call from his uncle.

[14] In sum, the RAD found that the principal applicant had not established the existence of a prospective personal risk within the meaning of section 97 of the IRPA from the MS-13 group should he return to Guatemala. Because the RPD's finding of no prospective risk was correct, the RAD dismissed the appeal.

[15] The applicants are now seeking judicial review of the RAD's Decision.

II. Analysis

[16] The applicants argue that the RAD made an unreasonable decision in denying their appeal. Specifically, they argue that the RAD committed a reviewable error in determining that the principal applicant would not be at prospective risk should he return to Guatemala.

[17] The RAD's assessment of prospective risk in a section 97 claim is subject to the standard of review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Laguerre v Canada (Citizenship and Immigration)*, 2021 FC 701 at para 28).

[18] In reviewing a decision against the reasonableness standard, the Court must decide whether the decision is justified, transparent and intelligible. To be reasonable, the decision must be “based on an internally coherent and rational chain of analysis” and be “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

[19] It has been well established that the prospective nature of the risk raised in support of a refugee claim is a central element in the entitlement to protection set out in section 97 of the IRPA (*Gomez Mondragon v Canada (Citizenship and Immigration)*, 2015 FC 603 at para 12). The principal applicant had to establish not only that he had been targeted and recruited by MS-13 in Guatemala between 1999 and 2003, but also that he was at risk of being targeted and recruited upon return to his country of origin.

[20] The applicants argue that the RAD's analysis of prospective risk is unreasonable because the panel did not consider the background and family history of the principal applicant when assessing the misfortunes that had occurred since he left Guatemala. They submit that the risk posed by the MS-13 group is not a generalized risk of criminality given the principal applicant's personal experiences between 1999 and 2003, the murder of his uncle by members of the group in 2000, and the murder of his second uncle in 2011. According to the applicants, the RAD failed to follow the principle of *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA), in its consideration of the principal applicant's testimony and MS-13's continued interest in the applicant, despite his departure in 2004.

[21] I am not persuaded by the applicants' arguments.

[22] The RAD found that the applicants had failed to demonstrate MS-13's continued interest in them. In my view, this finding is entirely reasonable, given the principal applicant's account and testimony, as well as his documentary evidence.

[23] The RAD's analysis of the principal applicant's prospective and personal risk in Guatemala addresses each relevant element of his family history. The determining issue for the RAD was whether there was a connection between these elements and a prospective risk if he returned to Guatemala.

[24] First, the RAD agreed with the principal applicant that he had established substantial evidence to support his claim. In addition, the panel did not dispute either the violent deaths of

his two uncles or the responsibility of MS-13 members for his uncle's murder in 2000. However, the principal applicant was unable to establish a link between the two murders and his refusal to join the group in 2003.

[25] The RAD accepted that criminal groups in Guatemala such as MS-13 "reign through fear and violence", but general danger is not sufficient to establish a specific fear of harm in a particular applicant (*Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808 at para 22). The RAD found that the principal applicant had difficulty explaining to the RPD why the group would want to target him and his family 15 years after he left the country, given that his denunciation to the police in 2003 had no consequences for the group. In this sense, the deaths of the applicant's uncles can be explained by the general risk rather than by a connection to the applicant.

[26] Regarding the murder of the uncle in 2011, the RAD accepted that this uncle's death certificate shows that he was violently killed. However, the certificate does not identify the person responsible for the death or the person's motives. As a result, the certificate does not support the allegation that this uncle died as a result of the conflict between the principal applicant and MS-13. The RAD therefore concluded that the principal applicant could not in his testimony identify a causal relationship between his refusal to join the group in 2003 and the murder in question.

[27] Next, the RAD considered the principal applicant's testimony to evaluate the allegation that one of his uncles was contacted by a member of MS-13 in 2017 under the pretense that the

group had kidnapped the applicant and demanded a ransom for his release. The RAD found that, at the RPD hearing, the applicant had stated that he had not kept in touch with this uncle for 15 years and did not know his work. In addition, the RAD noted that the principal applicant's account differed from his testimony and that the principal applicant's version of the story was so imprecise "that it consider[ed] that the call received by his uncle ha[d] not been established on a balance of probabilities".

[28] Finally, the applicants argue that the RAD confirmed that the principal applicant was credible overall in respect of MS-13's persecution of him between 1999 and 2003. They submit that this confirmation should be extended to his testimony on the events after he left Guatemala. I agree with the applicants that the RAD speaks of the principal applicant's "overall credibility". However, this finding does not make the RAD's analysis of the principal applicant's evidence and testimony regarding who was responsible for his uncle's murder in 2011 and the kidnapping call allegedly received by a different uncle in 2017 unreasonable.

III. Conclusion

[29] In my opinion, it was open to the RAD to conclude that the principal applicant did not discharge his burden of establishing that he would face a prospective personal risk from MS-13 in the event of his return to Guatemala. The applicants' arguments are not persuasive with respect to the lack of evidence of a link between the group's threats to the principal applicant between 1999 and 2003 and the subsequent misfortunes that the applicant alleges his family suffered. The panel's reasons are transparent and intelligible and reveal internally coherent

reasoning. I therefore conclude that the Decision falls “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”, as required by *Vavilov*.

[30] Accordingly, I dismiss the application for judicial review. No question of general application has been proposed for certification, and I agree that none arises.

JUDGMENT in docket IMM-1295-21

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Elizabeth Walker”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1295-21

STYLE OF CAUSE: MIGUEL ESTUARDO LORENZANA QUINONEZ,
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PIMENTEL v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

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JUDGMENT AND REASONS: WALKER J.

DATED: NOVEMBER 15, 2021

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