Federal Court Cour fédérale

Date: 20220325

Docket: IMM-1068-21

Citation: 2022 FC 396

Ottawa, Ontario, March 25, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

ROBERTO ALCIDES HUENALAYA MURILLO
MARIANA AYUDANTE SALVATIERRA
ALESSANDRO VALENTINO HUENALAYA AYUDANTE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicants, Roberto Alcides Huenalaya Murillo, his spouse, Mariana Ayudante Salvatierra, and their minor son, Alessandro Valentino Huenalaya Ayudante, are citizens of Peru.

The Applicants allege that they fled Peru and came to Canada due to their fear that they will be harmed by a criminal gang.

[2] The Applicants lived in Lima, Peru, where they owned a car rental and chauffeur business. A cousin of the female Applicant owned a similar business in Trujillo, Peru. In February 2019, the cousin of the female Applicant was kidnapped and a ransom was paid for his release. In May 2019, the male Applicant responded to a booking that entailed travel from Lima for a pick-up in Barranca and then delivery to Trujillo, where he was abducted. Following the payment of a ransom, the male Applicant was released in Trujillo the next day. While held by the kidnappers, the male Applicant was threatened that if he did not launder money for them, he would be killed.

[3] Following the kidnapping, the male Applicant sought to report the event and the demands to the police in Trujillo, however this was unsuccessful as the police indicated that these kinds of events were not uncommon in Trujillo. The male Applicant, with the assistance of his father, then returned to Lima. On June 8, 2019, the male Applicant received an anonymous call wherein the caller signalled that his visit to the police made the situation worse and demanded money.

[4] The Applicants held visas for the United States in 2018 and 2019, however, they preferred to come to Canada. On August 14, 2019, the Applicants flew to New York, but they did not lodge a refugee claim in the United States. On September 12, 2019, the Applicants crossed the border into Canada where they claimed refugee status.

[5] The male Applicant's parents and two daughters from a prior relationship remain in Lima, Peru, while his three siblings live in Peru, Spain, and New York. The female Applicant's parents and three sisters live in Lima, Peru, while her brother lives in Ventanilla, Peru.

[6] On July 1, 2020, the Refugee Protection Division [RPD] rejected the Applicants' refugee claim. The determinative issue before the RPD was the finding that the Applicants had an internal flight alternative [IFA] available to them in Arequipa, Peru.

[7] The Applicants appealed, and on January 26, 2021, the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada confirmed the RPD's decision that the Applicants are not persons in need of protection due to the availability of an IFA in Arequipa [Decision].

[8] The Applicants seek judicial review of the Decision and request that it be set aside and that the matter be referred back for re-determination by a different member of the RAD.

II. Issue and Standard of Review

[9] The central issue in the present application is whether it was reasonable for the RAD to find that the Applicants had failed to establish, on a balance of probabilities, that there is no serious possibility of persecution in Arequipa, and that it would not be unreasonable for the Applicants, considering all the circumstances, to relocate to Arequipa should they return to Peru.

[10] The parties agree that the standard of review is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. It is the party challenging the decision who bears the burden of demonstrating that it is unreasonable (*Vavilov* at para 100). If "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision", it is not for the reviewing court to substitute the outcome it would prefer (*Vavilov* at para 99).

[11] A reviewing court should also refrain from reweighing or reassessing the evidence considered by the decision maker and must not, absent exceptional circumstances, interfere with factual findings (*Vavilov* at para 125). Nevertheless, *Vavilov* instructs that a decision maker "must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them" (at para 126).

III. Analysis

[12] The test for establishing the viability of an IFA is two-pronged. Both prongs must be satisfied in order to make a finding that a clamant has an IFA. The first prong consists of ensuring that there is no serious possibility, on a balance of probabilities, of the claimant being persecuted in the proposed IFA. The second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including of the claimant's personal circumstances, for the claimant to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA) at 597-598; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9 [*Leon*];

Mora Alcca v Canada (Citizenship and Immigration), 2020 FC 236 at para 5 [*Mora Alcca*]; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17).

[13] It is a claimant, and not a respondent or the RAD, who bears the onus of demonstrating that the IFA is unreasonable (*Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21). As stated by Justice Leblanc in *Mora Alcca*, the onus is an exacting one:

> [14] I am well aware that the onus of demonstrating that an IFA is unreasonable in a given case, an onus that rests with the claimant, is an exacting one. In fact, it requires nothing less than demonstrating the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. [Citations omitted]

[14] As a general rule, the fear of being unable to find suitable employment is not sufficient to preclude an otherwise viable, realistic and affordable IFA (*Mora Alcca* at para 15).

[15] The Applicants submit that the RAD erred in finding that they have an IFA in Arequipa. The Applicants plead that the kidnappers have the resources necessary to track them throughout the country. They state that once they apply for jobs, make purchases online, perform a Google research, check the weather online, they could be geolocated through their smartphones by the kidnappers. The Applicants submit that the result is that they would be trapped in their home, unable to interact with their family and friends in Peru, or within society generally.

[16] The Applicants rely on *Cejudo Hernandez v Canada (Citizenship and Immigration)*, 2019 FC 1019 [*Cejudo Hernandez*] for the proposition that they could be tracked anywhere in Peru. They also rely on *Leon* for the proposition that national cartels have the ability to pursue an

individual throughout the country. I note that these cases involved refugee claimants from Mexico, not Peru.

[17] The Respondent submits that it was reasonable for the RAD to find, based on the evidentiary record before it, that the Applicants had not discharged their burden of demonstrating, on a balance of probabilities, that relocating to Arequipa would be unreasonable. The Respondent highlights that the Applicants have not named the persecutors, not specified that a cartel is involved, and not provided evidence that the persecutors have the ability or desire to locate them in Arequipa.

[18] The Respondent objects to the submissions by the Applicants relating to social media, use of the internet, and the possibility of tracking the Applicants through geolocation, on the basis that those arguments were not made before the RAD and no evidence is contained in the record to that effect. At the hearing, the Applicants conceded that there is no such evidence in the record.

[19] I agree with the Respondent that there is no evidence in the record supporting the Applicants' submission that they can be tracked by geolocation through their mobile phones. Moreover, I find the reliance on *Cejudo Hernandez* to be misplaced. In *Cejudo Hernandez*, the Court noted that the applicant had submitted evidence as to the manner in which someone may be located by exploiting the social security system in Mexico, and in particular by obtaining an individual's social security number (para 37). There is no evidence in the record that the kidnappers are able to do this in Peru or that they are motivated to do so.

[20] I agree with the Respondent that it was not unreasonable for the RAD to find that the Applicants had not discharged their burden of demonstrating that the kidnappers had the influence, interest and motivation to pursue them in Arequipa. Following the anonymous telephone call in June 2019, once the male Applicant changed his telephone number, there was no further contact. The Respondent highlights the fact that the male Applicant's parents and two daughters, along with the female Applicant's parents and three sisters, all live in Lima. There is no evidence on the record that that the kidnappers have sought to contact, find or threaten the Applicants since their departure, or contact their respective family members. Given the presence of their family members in Peru and the lack of follow up with the Applicants, it was reasonable of the RAD to find, in the absence of evidence to the contrary, that there is no capacity and motivation on the part of the kidnappers to pursue the Applicants.

[21] As to the second prong of the test, I find the RAD reasonably considered all the circumstances raised in the present case, including those particular to the Applicants, when determining whether it would not be unreasonable for the Applicants to seek refuge in Arequipa. The RAD considered that the spouses are well educated, have significant work experience and speak Spanish. The RAD also noted that the male Applicant confirmed during his testimony before the RAD that he would be able to find a job in Arequipa.

IV. Conclusion

[22] For the above reasons, I therefore find that the RAD did not err in its assessment that the Applicants have IFA in Arequipa. Neither party proposes a question of general importance, and none arises.

JUDGMENT in file IMM-1068-21

THIS COURT'S JUDGMENT is that :

1. The Applicants' application for judicial review is dismissed;

2. There is no question for certification arising.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1068-21
STYLE OF CAUSE:	ROBERTO ALCIDES HUENALAYA MURILLO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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