

Federal Court



Cour fédérale

Date: 20230531

Docket: IMM-6157-22

Citation: 2023 FC 763

Vancouver, British Columbia, May 31, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

**JUAN ESCOBEDO CERDA
LAURA ELIZABETH CASTELAN ORTIZ
NANCY MARIBEL ORTIZ ONOFRE**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Vancouver, British Columbia, on May 31, 2023)

[1] The applicants are citizens of Mexico. They operated a small business. They were victims of extortion and were forced to make payments to a criminal organization. When the demands increased, they could no longer make the payments. They then closed their business and moved to a different city in the same state. While there, their daughter received a phone call from

someone associated with the criminal organization, who asserted he knew where they were and claimed three months of payments, failing which the applicants would face death. They then came to Canada and claimed refugee status.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dismissed their claims. It identified a number of issues with the applicants' testimony that it described as credibility problems. These issues pertained to the applicants' statements that (1) they remained in their home city after missing a payment and left only some weeks later; (2) the current tenant of their house in their home city never received the visit of the criminal organization; and (3) the criminal organization did not seek them in the second city, although the caller claimed to know their whereabouts. In any event, the RPD went on to hold that the applicants had an internal flight alternative [IFA] in various Mexican cities.

[3] The Refugee Appeal Division [RAD] of the IRB dismissed the applicants' appeal. The RAD found that the issues identified by the RPD did not affect the applicants' credibility. It considered the applicants to be generally credible. Turning to the issue of IFA, the RAD found that the criminal organization no longer had any motivation to harm the applicants, three years after the events. The RAD based its finding on the criminal organization's failure to take any concrete steps to collect the extortion debt, neither in the applicants' home city nor in the second city. It also found that as the applicants remain active on social media and still have family members in the two cities in question, the criminal organization could have tried to find them had it wanted to. The RAD also noted country condition evidence showing that cartels typically

do not harm victims of extortion who shut down their businesses and move elsewhere within the country. Thus, the RAD found that the applicants have an IFA in Guadalajara.

[4] The applicants now seek judicial review of the RAD's decision. I have considered their written submissions as well as their brief oral submissions.

[5] The applicants first attempt to describe the RAD's findings as implausibility findings. I disagree. The RAD makes an implausibility finding where it does not believe an applicant because the facts could not have happened as described. An implausibility finding is a form of negative credibility finding. However, the RAD believed the applicants. Therefore, it did not find their story implausible. Rather, it found that the applicants did not discharge their burden of proving that they would not be safe in the proposed IFA.

[6] I reject the applicants' second submission for the same reason. The applicants assert that the RAD impermissibly speculated as to the motives of the agents of harm. But the RAD did not do this. Rather, it simply found that the evidence was insufficient to prove that the criminal organization would pursue the applicants in Guadalajara.

[7] Third, the applicants say that the RAD contradicted itself when it used the erroneous RPD findings to justify its conclusion that the applicants have an IFA in Guadalajara. Again, this is a mischaracterization of the RAD's reasoning. The RAD concluded that the portions of testimony highlighted by the RPD did not give rise to credibility concerns. However, even though these facts are true, they may not be sufficient to justify refugee status. These are two

separate questions. The RAD did not contradict itself by relying on these facts to find an IFA. I reiterate that the RAD made no implausibility findings.

[8] Fourth, the applicants contend that the RAD erred in relying on county condition evidence regarding the *modus operandi* of criminal organizations in Mexico. They say that this amounts to speculation as to the motives of agents of persecution and, in particular, as to whether business owners who relocate to avoid extortion are really safe. In my view, in the absence of more precise evidence, the RAD was entitled to rely on evidence regarding the *modus operandi* of criminal organizations to assess the risk that the applicants would be harmed in the IFA. The applicants have not shown that the RAD misapprehended the evidence or committed any other reviewable error.

[9] For these reasons, the application for judicial review will be dismissed.

JUDGMENT in IMM-6157-22

THIS COURT'S JUDGMENT is that

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

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6157-22

STYLE OF CAUSE: JUAN ESCOBEDO CERDA, LAURA ELIZABETH
CASTELAN ORTIZ, NANCY MARIBEL ORTIZ
ONOFRE v MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MAY 31, 2023

JUDGMENT AND REASONS: GRAMMOND J.

DATED: MAY 31, 2023

APPEARANCES:

Dorab Colah FOR THE APPLICANTS

Philippe Alma FOR THE RESPONDENT

SOLICITORS OF RECORD:

Safe Harbour Immigration Law FOR THE APPLICANTS
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia