

Federal Court



Cour fédérale

Date: 20230719

Docket: IMM-4441-22

Citation: 2023 FC 989

Ottawa, Ontario, July 19, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**JOEL MARTINEZ ALTAMIRANO
EUSEBIA ROSALIA REYES LUNA
ABAD GILBERTO MORA REYES
AZUCENA MORA REYES
GAEL MARTINEZ MORA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (“RAD”) dated April 26, 2022, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicants are neither Convention refugees nor persons in need of protection

under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”).

[2] The RAD upheld the RPD’s refusal of the refugee claim on the basis that the Applicants have a viable internal flight alternative (“IFA”) in Merida, Mexico.

[3] The Applicants submit that the RAD mischaracterized the Applicants’ nexus to one of the Convention grounds enumerated under section 2(1) of *IRPA*, and conducted an unreasonable assessment of the IFA in light of the Applicants’ evidence.

[4] For the reasons that follow, I find that the RAD’s decision is reasonable. This application for judicial review is therefore dismissed.

II. Facts

A. *The Applicants*

[5] Joel Martinez Altamirano (the “Principal Applicant”), his wife, Azucena Mora Reyes (the “Associate Applicant Azucena”), and their child, Gael Martinez Mora (the “Minor Applicant”), are citizens of Mexico. The Principal Applicant’s mother-in-law, Eusebia Rosalia Reyes Luna (the “Associate Applicant Eusebia”) and brother-in-law, Abad Gilberto Mora Reyes (the “Associate Applicant Abad”), are also citizens of Mexico.

[6] The Associate Applicant Eusebia and her four sons—Jorgé, Ulises, Neftali, and the Associate Applicant Abad—owned a butcher shop in Tehuacán, Puebla, Mexico. The Associate Applicant Azucena assisted at the shop on weekends.

[7] In August 2017, the Applicants claim that Neftali received a phone call from a member of the Jalisco New Generation Cartel (“CJNG”), demanding protection money to continue operating the family business. Neftali hung up the call.

[8] In September 2017, the Associate Applicant Abad allegedly received a threatening phone call from a CJNG commander. The Associate Applicant Abad travelled to Canada in November 2017 due to stress associated with this call, but returned to Mexico in December 2018.

[9] In June 2018, Jorgé allegedly received a phone call from a CJNG member demanding money. The Applicants claim that this phone call prompted Jorgé to travel to Canada in June 2018. He made a claim for refugee protection in March 2019, but later withdrew his claim.

[10] On January 28, 2019, the Associate Applicant Eusebia allegedly received a phone call from the CJNG, informing her that they had kidnapped her son, Ulises, and demanding a ransom of 1 million pesos. The Applicants claim that they paid the CJNG a ransom of 200,000 pesos. When the money was paid, CJMG released Ulises on January 31, 2019, after which he relocated to San Quintin, Baja California, Mexico, where he currently resides.

[11] In February 2019, the Associate Applicant Azucena allegedly began receiving phone calls from unknown numbers. On March 22, 2019, the Associate Applicant Azucena, the Principal Applicant, and the Minor Applicant arrived in Canada and made claims for refugee protection on arrival. Fearing that he would also be kidnapped, the Associate Applicant Abad returned to Canada in March 2019 and made a claim for refugee protection. In August 2019, the Associate Applicant Eusebia travelled to Canada and made a claim for refugee protection.

[12] In October 2019, Jorgé returned to Mexico. Upon his return, he relocated to San Quintin, Baja California, Mexico to reside with his brother, Ulises. Neftali relocated to Laredo, Nuevo Leon. Neftali manages the family business in Puebla from his residence in Baja California.

[13] The Applicants testified that Neftali received phone calls from unknown numbers, that there was a suspicious van parked outside the family residence approximately a year after Ulises' kidnapping, and that their neighbours received phone calls asking for the Associate Applicant Eusebia's whereabouts.

[14] The Applicants' refugee claims are based on the fear of persecution or harm in Mexico at the hands of the CJNG cartel for failing to pay the total amount demanded as ransom for the kidnapping of Ulises.

B. *RPD Decision*

[15] In a decision dated December 30, 2021, the RPD found that the Applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of *IRPA*, on the basis that they have a viable IFA in Merida.

[16] The RPD found that while the Applicants' allege that they are victims of criminality by the CJNG; there is insufficient evidence to establish a nexus between these acts and any of the enumerated Convention grounds. The RPD therefore concluded that the Applicants' claims must be assessed under section 97(1) of *IRPA*.

[17] The RPD found that the Applicants have a viable IFA in Merida. The test to determine a viable IFA requires that: (1) there is no serious possibility of persecution or risk of harm in the IFA, and (2) it is reasonable in the Applicant's circumstances to relocate to the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706). The second prong of the test places a high evidentiary burden on the Applicant to demonstrate that relocation to the IFA would be unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1367) ("*Ranganathan*").

[18] On the first prong of the test, the RPD first noted that Mexico is a large country that allows for freedom of movement and a right to travel within the country. The RPD found that the National Documentation Package ("NDP") for Mexico provided mixed information about whether the CJNG has a presence or influence in Yucatan. According to the NDP, the CJNG is a

“national cartel” and the “most dangerous and largest” cartel in Mexico. Although the NDP states that the CJNG has presence throughout Mexico, it also states that the CJNG is not present in Merida or anywhere in Yucatan.

[19] However, the RPD found no reliable evidence that the CJNG has attempted to locate the Applicants since they left Mexico, Ulises or Jorge in San Quintin, or Neftali in Laredo. The RPD also found that the Applicants’ testimony regarding suspicious phone calls from unknown numbers, their neighbours receiving phone calls asking for the Associate Applicant Eusebia’s whereabouts, or a suspicious truck parked outside their family is speculative and does not substantiate their claims that they are being pursued by CJNG. The RPD found no evidence to explain why the cartel would rekindle their interest in the Applicants since they left Mexico.

[20] The RPD found that while the NDP evidence confirms that criminal organizations in Mexico extort profitable business owners, the NDP does not specifically state that CJNG members pursue individuals that have failed to pay extortion fees throughout Mexico, only that a criminal organization may be motivated to track someone in Mexico if they owe a large debt, are the object of a vendetta, or refused to work for the gang. The NDP does not specify the amount of unpaid debt that would motivate an organization like CJNG to pursue an individual throughout Mexico. The RPD found that based on this evidence, the Applicants do not have the profile of people whom the CJNG would pursue across Mexico.

[21] The RPD accepted the objective evidence stating that the CJNG have various means to locate their targets and that they have sophisticated methods of communicating with one another.

However, the RPD found limited evidence to demonstrate that the CJNG would be motivated to pursue the Applicants in Merida, and that the NDP does not mention CJNG using any of its sophisticated methods of communication to track those who refuse to pay extortion fees. For these reasons, the RPD found that on the basis of the available evidence, the Applicants do not face a risk of harm or danger of torture at the hands of the CJNG in Merida.

[22] At the second prong of the test for an IFA, the RPD noted the high threshold that must be met for the Applicants to demonstrate that relocation to the proposed IFA is unreasonable, requiring proof of adverse conditions that would jeopardize their lives and safety, such that relocation would be unduly harsh (*Ranganathan* at para 15; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at 598 (CA)).

[23] The RPD acknowledged the Applicants' contention that relocating their business in Merida, once again making them vulnerable to extortion. The RPD found that this is a generalized risk faced by all business in Mexico and does not preclude relocation. The RPD further found insufficient evidence to show that the Applicants could not find other employment opportunities, given their individual employment experience. The RPD noted that the Applicants are all educated and although they may encounter difficulties in finding employment and housing in Merida, their past experiences would help them to find work and accommodation. The RPD further noted that women face gender-based discrimination in Yucatan, but found that relocation is not unreasonable for both the Associate Applicants Azucena and Eusebia, considering their individual circumstances and their history of gainful employment.

[24] The RPD ultimately found that the Applicants failed to discharge their burden under the second prong of the IFA test and, in turn, relocation to Merida is reasonable in light of the evidence and circumstances.

C. *Decision under Review*

[25] In a decision dated April 26, 2022, the RAD dismissed the Applicants' appeal and confirmed the RPD's finding that the Applicants have a viable IFA in Merida.

(1) Nexus with a Convention Ground

[26] On appeal, the Applicants submitted that the RPD erred in finding that their claims failed to establish a nexus between their fear of persecution and an enumerated Convention ground, specifically in ignoring the ground of political opinion or membership in a particular social group, that group being successful business owners.

[27] The RAD found that the Applicants' particular circumstances do not meet the definitions for either of these enumerated grounds. The RAD noted that the relevant question is whether the agent of persecution considers the Applicants' conduct to be political or attributes political activities to them (*Inzunza v Canada (Employment and Immigration)*, 1979 CanLII 2530 (FCA)). The RAD found that there is no evidence that the CJNG cartel has viewed the Applicants' actions as being political in nature and persecuted them on this basis, or that the cartel kidnapped people for political reasons rather than criminal activity for the purpose of obtaining ransom money. The RAD further found that being a business owner does not qualify within the three

broad categories of a “particularly social group” outlined in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689.

(2) IFA

[28] The RAD found that the RPD erred in its finding with respect to the cartel’s means to locate the Applicants, but that it did not err in finding that the CJNG lacks the motivation to pursue the Applicants in the IFA or that the Applicants failed to demonstrate that relocation to the IFA is unreasonable.

[29] In assessing the cartel’s means to locate the Applicants, the RAD found that, contrary to the RPD’s finding, the NDP evidence demonstrates that the cartel is present in any proposed IFA location and that it would consequently have the means to locate the Applicants throughout Mexico, including in the state of Yucatan. That being said, the RAD agreed with the RPD’s finding that there is insufficient evidence to demonstrate that the CJNG was motivated to pursue the Applicants throughout Mexico. The RAD acknowledged the Applicants’ submission that the CJNG remains motivated to locate them for making only a partial payment of the ransom demanded for the release of Ulises, but ultimately found that their belief in the cartel’s motivation is unsubstantiated by evidence on the record. The RAD cited this Court’s decision in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 (“*Olusola*”) for the proposition that while a claimant’s sworn testimony creates the presumption of truthfulness, this is “not a presumption that everything the witness believes to be true, but has no direct knowledge of, is actually true” (*Olusola* at para 25).

[30] The RAD further noted that the CJNG's threatening demands and kidnapping of Ulises were actions associated with the Applicants' successful business, rather than borne out of a personal vendetta. Therefore, the current operation of the butchery business by Neftali would result in Neftali becoming the target of the cartel's demands. However, the Applicants testified that they are unaware of any attempts by the cartel to contact their family members in Mexico. The RAD found that the lack of evidence demonstrating the cartel's efforts to pursue the Applicants for their continuing business, specifically those family members who have relocated to other parts of Mexico, is indicative of a lack of motivation to pursue the Applicants in the proposed IFA.

[31] On appeal, the Applicants submitted that the RPD erred in its assessment of the second prong of the IFA test, concerning whether the Applicants' relocation to the proposed IFA is reasonable. In support of this submission, the Applicants cited this Court's decisions in *Zaytoun v Canada (Citizenship and Immigration)*, 2014 FC 939 ("Zaytoun") and *Cruz Martinez v Canada (Citizenship and Immigration)*, 2008 FC 399 ("Cruz Martinez").

[32] The RAD found that the Applicants' circumstances can be differentiated from those in *Zaytoun* because unlike the applicant in that case, the Applicants are undistinguishable from a majority of the population by religion or by surname. The RAD acknowledged the Applicants' reliance on *Cruz Martinez* for the proposition that the decision-maker must demonstrate that an IFA is qualitatively different from parts of the country where there is a reasonable chance of persecution. However, the RAD found that *Cruz Martinez* does not displace the burden on an applicant to establish that relocation to the proposed IFA is unreasonable. The RAD found that

the RPD reasonably assessed the issue of the cartel's motivation and was not required to demonstrate that the proposed IFA is qualitatively different than other regions of Mexico because the burden of proof remains with the Applicants.

[33] Noting that the Applicants made no further submissions on appeal concerning the second prong of the IFA test, the RAD agreed with the RPD's finding that the Applicants' failed to discharge their burden to establish that relocation to Merida would be unreasonable in their circumstances. For these reasons, the RAD dismissed the appeal and upheld the RPD's decision.

III. Issue and Standard of Review

[34] The sole issue is whether the RAD's decision is reasonable.

[35] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[36] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record

before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[37] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[38] The Applicants submit that the RAD erroneously found that their claims do not establish a nexus with a Convention ground and that they have a viable IFA in Merida, rendering the decision unreasonable.

[39] In my view, the RAD did not err in either of these aspects. It reasonably found that the Applicants’ claims do not establish a nexus with a Convention ground and conducted a reasonable analysis of the IFA.

A. *Nexus with a Convention Ground*

[40] The Applicants submit that the RAD erred in finding insufficient evidence to establish that the cartel's actions were motivated by an enumerated Convention ground, particularly the ground of membership in a social group. Specifically, the Applicants contend that the RAD mischaracterized the relevant social group in the Applicants' case as being business owners, when it should have considered the Applicants' membership in the social group of people who have failed to pay ransom to a criminal organization.

[41] The Applicants rely on *Loyo de Xicara v Canada (Citizenship and Immigration)*, 2013 FC 593 ("*Loyo de Xicara*"), where this Court found that the RPD unreasonably determined that "a personalized risk or threat loses this characteristic based on the mere fact that the criminal conduct in question is common in a given country" (at para 24). The Applicants also rely on *Benegas v Canada (Citizenship and Immigration)*, 2015 FC 45 ("*Benegas*"), where this Court found that the RPD unreasonably concluded that the attacks against the applicant were not motivated by his political opinion, without regard to the fact that the applicant can be easily identified as a resistor to recruitment by his visible scars from previous attacks (at para 34).

[42] The Respondent submits that the Applicants' submissions on this issue lack merit because the Applicants testified that although they paid less than the amount that was demanded as ransom for the release of Ulises, it nonetheless secured his release. The Respondent submits that given these facts, the Applicants fail to show that they should have been assessed as part of the social group of people who failed to pay ransom to the CJNG.

[43] I first note that the Applicants' submissions do not expand on how the factual scenarios or legal findings in either *Loyo de Xicara* or *Benegas* is applicable to their circumstances. The RAD's reasons do not state that there is no nexus between the cartel's actions and the Convention grounds of political opinion or membership in a social group because the cartel's actions are common and therefore constitute a generalized risk.

[44] I do not find that the RAD erred by failing to consider the nexus between the Applicants' claims and their membership in the social group of people who have not paid the full amount of ransom demanded by criminal organizations. The Applicants' evidence reveals that although they did not pay the full amount, the payment ultimately secured the release of Ulises. It is reasonable for the RAD not to consider the potential nexus between the Applicants' claims and their membership in the social group of those who do not pay ransom amounts as demanded. This is also reasonable in light of the minimal evidence proffered by the Applicants to demonstrate that they, or other members of their family in Mexico, have been pursued on the basis of their failure to pay the full ransom amount.

[45] For these reasons, I do not find that the RAD erred in assessing in whether the cartel's actions were motivated by the Applicants' membership in the social group of business owners and, in turn, finding that their claims do not establish a nexus with a Convention ground.

B. *IFA*

[46] The Applicants submit that the RAD's assessment of the IFA is unreasonable on two grounds: 1) in its finding that the CJNG cartel lacks the motivation to pursue the Applicants in

the proposed IFA and 2) in its finding that their relocation to the proposed IFA is reasonable in the Applicants' circumstances.

[47] The Applicants submit that the RAD erred in finding that there is no evidence to support the cartel's ongoing interest in and pursuit of the Applicants throughout Mexico. The Applicants note that the Associate Applicant Abad testified that members of the family have received phone calls from unknown numbers. They submit that the mere fact that Ulises was released following the ransom payment does not reasonably lead to the finding that the cartel is unmotivated to pursue the Applicants or that relocation is reasonable in the Applicants' circumstances.

[48] The Respondent submits that the Applicants' submissions on the IFA issue amount to a request that this Court reweigh the evidence. The Respondent submits that the RAD reasonably found that the Applicants proffered insufficient evidence to demonstrate that the CJNG had a continued interest in them or were still motivated to pursue them throughout Mexico. The Respondent contends that the RAD based this finding on a reasonable assessment of the evidence, which shows that the family business remains operational, that the Applicants are unaware of attempts by the cartel to contact any family members associated with the business, and that their family members have relocated within Mexico without being pursued. The Respondent submits that the RAD reasonably found that the Applicants failed to meet their onus to establish that they would face a risk in the IFA or that relocation would be unreasonable.

[49] I agree. I note that the Applicants' submissions on these alleged errors are largely vague and unclear. What remains of their submissions appears to request that this Court reassess the

evidence, which is not this Court's role on review (*Vavilov* at para 125). Their allegation that the RAD unreasonably assessed the cartel's motivation to pursue them and the reasonableness of their relocation to Merida is unsupported by references to the decision or clear evidence of a reviewable error. A review of the RAD's reasons reveals a thorough and reasonable assessment of the facts that is responsive to the evidentiary record. The Applicants are unable to demonstrate that the CJNG attempted to contact or pursue them since they paid a portion of the ransom and Ulises was released. There is no evidence that their family members in Mexico, who are associated with the continuing business and relocated within Mexico, were pursued.

[50] In the absence of this evidence, the RAD's reasons exhibit a clear line of analysis to arrive at the conclusion that the cartel lacks the motivation to pursue them in the IFA, supported by the factual and legal constraints (*Vavilov* at paras 99, 102). Given the minimal evidence provided, the RAD reasonably found that the Applicants failed to establish that relocation to Merida would be unreasonable, and provides clear and cogent reasons for this finding. For these reasons, I find that the RAD reasonably assessed the IFA issue in relation to the Applicants' circumstances and its decision is therefore reasonable.

V. Conclusion

[51] This application for judicial review is dismissed. The RAD's decision is reasonable in light of the Applicants' circumstances and evidence. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-4441-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4441-22

STYLE OF CAUSE: JOEL MARTINEZ ALTAMIRANO, EUSEBIA ROSALIA REYES LUNA, ABAD GILBERTO MORA REYES, AZUCENA MORA REYES AND GAEL MARTINEZ MORA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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DATED: JULY 19, 2023

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