

Federal Court



Cour fédérale

**Date: 20231127**

**Docket: IMM-2913-22**

**Citation: 2023 FC 1575**

**Ottawa, Ontario, November 27, 2023**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**JOSE MARIA AGUILAR NUNEZ  
ROSELIA YANET NUNEZ NUNEZ  
MARIA JOSE AGUILAR NUNEZ**

**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 Decision (“RAD”) dated March 4, 2022, confirming the finding of the Refugee Protection Division (“RPD”) that the Applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27

(“*IRPA*”). The RAD found the determinative issue to be the evidentiary basis for establishing a well-founded fear of persecution.

[2] The Applicants submit that the RAD’s decision is unreasonable, as it improperly applied relevant law and failed to properly assess the evidence before it.

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

## II. **Facts**

### A. *The Applicants*

[4] Jose Maria Aguilar Nunez (the “Principal Applicant”), Roselia Yanet Nunez Nunez (the “Associate Applicant”), and their daughter (collectively the “Applicants”) are all citizens of Honduras. The Principal and Associate Applicants are 47 and 48 years old, respectively.

[5] The Applicants claim that they are at risk of persecution owing to the Principal Applicant’s membership in the Frente Nacional de Resistencia Popular (“FNRP”) party and his participation in peaceful protest marches.

[6] The Principal Applicant stated that he became a member of the FNRP in 2012 and an assistant volunteer coordinator in 2015. The Applicants claim that members of the FNRP and

the opposition party Partido Libertad y Refundacio (“LIBRE”) have allegedly been targeted by Honduran government authorities, the Honduran military, and organized crime.

[7] On March 20, 2014, the Principal Applicant’s brother, Francisco was shot and killed. Francisco was also a member of the FNRP. The Principal Applicant suspects he was killed due to his FNRP membership and protest activities.

[8] The Principal Applicant testified that in February 2019, he was followed by “strange cars.” Nonetheless, he did not interact with these drivers.

[9] The Principal Applicant claims that on March 31, 2018 and in May 2019, respectively, he was asked to produce identification and answer questions for uniformed men. They checked his ID and let him go.

[10] On June 28, 2019, the Applicants’ home was allegedly raided by three armed, uniformed men and searched by two of them while the Associate Applicant was at home. The Associate Applicant stated that the uniforms were those normally worn by the military. The men took a few items, including signs, books, the Principal Applicant’s computer, and some FNRP materials.

[11] The Principal Applicant states that after this encounter, he never returned home. At the time of the RPD hearing, the Applicants had been renting out their home and had not heard of any other incidents.

[12] The Applicants arrived in Canada on August 2, 2019.

B. *RPD Decision*

[13] In a decision dated July 27, 2021, the RPD refused the Applicants' claim for protection. Credibility was the determinative issue. The RPD found that the Applicants' evidence was speculative, their allegations were not supported by objective evidence, and that they did not make reasonable efforts to obtain supporting documents.

[14] The RPD found that the Principal Applicant's testimonial and documentary evidence about his brother's death owing to involvement in the FNRP was speculative. The RPD acknowledged the Principal Applicant's testimony that he did not know for certain and for what reason his brother was killed, especially with Honduras being among the most dangerous countries in the world, and the fact that he never followed up with police investigations about his brother's death.

[15] The RPD found that the Principal Applicant had not established that he was being followed in February 2019. The RPD recognized the fact the Principal Applicant could not describe the vehicles that followed him or if the vehicles were the same each time, as well as the fact that he never spoke with the drivers nor reported them to the police. Additionally, the RPD did not find that the ID checks amounted to persecution.

[16] The RPD found that the Applicants had not established that their home was searched by the Honduran military. The RPD stated that the Associate Applicant's testimony was speculative

and that objective evidence did not support her allegations. The RPD noted that the Applicants took no steps to identify who raided the home, and found that the Principal Applicant was not a sufficiently highly ranked member of FRENTE to have his home raided. The RPD rejected the Applicants' letters of support, as they had no independent first hand knowledge of what had occurred. As such, the RPD drew a negative credibility finding.

[17] The RPD found that the Principal Applicant had not established that he had moved to La Ceiba nor that he was threatened by telephone. The RPD determined that the Principal Applicant did not make reasonable attempts to procure supporting evidence that would show he hid in La Ceiba and was threatened while there. The RPD thus drew a further negative credibility finding.

[18] For these reasons, the RPD concluded that the Applicants are neither Convention refugees nor persons in need of protection.

### C. *Decision under Review*

[19] In a decision dated March 4, 2022, the RAD upheld the RPD's determination and found that the Applicants are neither Convention refugees nor persons in need of protection. The RAD found the determinative issues to be lack of an objective basis for establishing a well-founded fear of persecution, and the Applicants' treatment and experiences not amounting to persecution.

[20] On appeal, the Applicants submitted that the RPD erred in its analysis of the objective evidence and in finding the Principal Applicant to be not credible. The Applicants also sought to introduce new evidence.

[21] The RAD rejected the Applicants' attempts to introduce an affidavit from their lawyer and have an oral hearing before the RAD. The RAD found that under section 110(4) of the *IRPA*, this piece of evidence did not provide any new information and that the Applicants did not provide a sufficient explanation as to why this evidence was not reasonably available at the time of their RPD hearing. Following this rejection, the RAD found that no new evidence was presented such that a hearing could be held pursuant to section 110(6) of the *IRPA*.

[22] The RAD found that the Applicants did not provide an objective basis for establishing persecution. First, the RAD found that the Principal Applicant was speculating about the identity of his brother's killer, acknowledging the fact that the Applicants have largely lived an incident-free life since his death.

[23] The RAD further found that neither the Principal Applicant being followed by cars nor his ID checks amounted to persecution. The RAD found no evidence to determine who was driving the car and acknowledged the fact that nothing else occurred in these situations to support the former determination; and the RAD acknowledged the fact that the Principal Applicant was allowed to return home without any incident in regards to the two ID checks to support the latter determination.

[24] The RAD agreed with the RPD that the Applicants' home was not searched by the military, but found that even if a search took place, no evidence supports their claims that the military searched their home. The RAD reiterated the fact that no other incidents have occurred at the home undermines the allegation of future risk of persecution.

[25] The RAD concluded that the Applicants had not established an objective basis for risk of persecution and an insufficient risk of harm in terms of severity and frequency. The RAD evaluated country conditions documents about officials acting with impunity in Honduras and concluded that this evidence was general and did not contradict the finding that the Applicants had not faced persecution.

[26] The RAD therefore confirmed the RPD's decision that the Applicants are neither Convention refugees nor persons in need of protection.

### III. **Issues and Standard of Review**

[27] In their written submissions, the Applicants propose five separate issues, including whether this decision breached procedural fairness. However, their submissions are silent on many of these issues. Furthermore, the Applicants' counsel brought new arguments at the oral hearing that were not raised in their written submissions.

[28] At the outset of the oral hearing, counsel for the Applicants stated that procedural fairness was no longer an issue. I agree. In my view, the determinative issue is whether the RAD reasonably found the Applicants' claim of persecution lacked an evidentiary basis.

[29] I find that the applicable standard of review of the RAD's decision is reasonableness (*Baig v Canada (Citizenship and Immigration)*, 2023 FC 673 at para 18; *Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93 at para 35; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov") at paras 16–17, 23–25).

[30] 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).

[31] 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).

#### IV. Analysis

[32] The Applicants submit that the RAD’s decision is unreasonable, as it improperly applied relevant jurisprudence and failed to properly assess the evidence. I disagree. The RAD’s decision is justified in light of its legal and factual constraints (*Vavilov* at paras 99-101).

[33] The Applicants submit that the RAD erred in finding that they do not face a serious possibility of future risk, especially regarding objective evidence about how dangerous Honduras



is, the RAD's finding of overall lawlessness in Honduras, and testimonial evidence about Francisco's death, the strange car incident, the ID checks, and the alleged home intrusion.

[34] The Respondent submits that the RAD reasonably found, regarding the identity of the killer of the Principal Applicant's brother, the strange cars incident, the ID checks, and the home intrusion incident, that there was speculative and/or insufficient evidence to justify a finding of persecution. The Respondent contends that the RAD thoroughly assessed country condition evidence in making this finding.

[35] I agree with the Respondent. The RAD reasonably found that there is an insufficient and/or speculative evidentiary basis to the Applicants' claims. Threat of risk is established on a forward-looking basis and claimants' fear must be objectively well-founded (*Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680; *Thompson v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 730 at para 19). The RAD reasonably assessed both the testimonial and objective evidence to conclude that the Applicants had not established that Francisco's death carries sufficient evidence of risk. The Applicants point to no evidence that the killing was due to his political affiliations or would likely endanger the Applicants.

[36] The RAD was entitled to find that the Associate Applicant's testimony and documentary evidence show that the Applicants had not demonstrated that the home was searched by the military. Relevant testimony reflects that the Associate Applicant saw that the uniforms worn by the men were military uniforms; but even presuming that this is true as per *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at 305, the RAD was entitled to

consider other relevant facts to determine there was an insufficient evidentiary basis to establish this belief in relation to future risk of persecution. These other facts include that no one had visited the Applicants' home since, that they have rented the house without any concerns, and that the Applicants did not call the police after the intrusion. Furthermore, the RAD acknowledged country condition evidence showing that the Principal Applicant's rank in FNRP would not make him a likely target and found that there was an absence of evidence that Honduran government authorities illegally searched homes. It is not this Court's role to reweigh these factual findings (*Vavilov* at para 125) and, in my view, it is reasonable to find that these facts sufficiently contradict the Applicants' fear of persecution that arises from testimony about the home intrusion.

[37] Furthermore, the RAD reasonably concluded that there was insufficient evidence that the strange cars incident and ID checks amount to persecution. On the strange cars incident, the RAD found no evidence to establish who was driving the car, acknowledged testimony showing the Principal Applicant to lack of knowledge about how or why he was being followed for his affiliation with FNRP, and the fact that nothing else happened in this incident to support the conclusion that this behaviour does not rise to the level of persecution. On the ID checks, the RAD found that the Principal Applicant was neither arrested nor detained, nor harmed or intimidated, and his testimony shows that he was inferring that he was stopped owing to his participation in a march. This inference is not presumed to be true (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 1410 at para 16). Acknowledging again that this Court should not reweigh the RAD's factual findings, I am satisfied that the RAD's conclusion about the non-

persecutory nature of these events is justified in relation to the legal and factual constraints that bear upon it (*Vavilov* at paras 99-101).

[38] I conclude by noting that most of the Applicants' written submissions about the RAD's findings assert errors in nearly every paragraph of the reasons. Most if not all of these submissions conflate the RAD's credibility analysis with a sufficiency analysis, or are vague, speculative, or made without argument. The Applicants engage in a "line-by-line treasure hunt for error" and request that this Court do the same (*Vavilov* at para 102). That is not this Court's role on review.

V. **Conclusion**

[39] This application for judicial review is dismissed. The RAD's decision is justified in light of its legal and factual constraints. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-2913-22**

**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-2913-22

**STYLE OF CAUSE:** JOSE MARIA AGUILAR NUNEZ, ROSELIA YANET  
NUNEZ NUNEZ AND MARIA JOSE AGUILAR  
NUNEZ v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 29, 2023

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** NOVEMBER 27, 2023

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