Federal Court Cour fédérale

Date: 20231128

Docket: IMM-11070-22

Citation: 2023 FC 1585

Ottawa, Ontario, November 28, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

WILFREDO CASTILLO MONTES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Honduras, seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated October 21, 2022. The RPD determined that the Applicant was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*]. The determinative issue was the availability of an internal flight alternative [IFA] in Roatán, Honduras.

[2] The Applicant asserts that the RPD's determination that a viable IFA exists in Roatán was unreasonable and that he was denied procedural fairness.

[3] For the reasons that follow, the application for judicial shall be dismissed.

I. Background

[4] The Applicant is a highly educated, 69-year old. For over 30 years, he has worked a variety of jobs, including as an engineer, a high school teacher and a part-time television presenter.

[5] While working as a television presenter in 2013, the Applicant publicly disagreed with a coup in 2009, which was perpetrated by supporters of the now disgraced former President Juan Orlando Hernandez. Following that statement, the Applicant received a number of threats and was assaulted by the Mara (Barrio) 18 gang [the Barrio-18], including a note advising him that the Barrio-18 had sentenced him to death, a threatening phone call, a physical attack and a break and enter at his home. As a result, he quit his job and fled to the United States in October 2013.

[6] In March of 2014, the Applicant returned to Honduras as his spouse had advised him that she had neither seen nor heard from the gang in his absence. The Applicant moved with his family to San Pedro Sula and started working as a manager for a construction and telecommunications company and in the evenings, he continued to present sports segments on television.

[7] On February 11, 2015, two men on a motorcycle attacked the Applicant. Three days later, he received a threatening phone call from the Barrio-18. On February 19, 2015, the Applicant fled to the United States. The next day, his spouse received a threatening phone call and later someone shot at their house. On February 26, 2015, the Applicant's spouse and two daughters left Honduras and joined the Applicant in the United States. The Applicant eventually joined his son in Canada and made a claim for refugee protection.

[8] The Applicant's refugee claim was heard by the RPD on August 26, 2022 and at the hearing, the RPD permitted the Applicant to submit documents and make post-hearing submissions on the issue of the viability of the IFA.

[9] The Applicant filed written submissions on September 20, 2022, together with several documents, including a number of letters/statements from individuals regarding crimes in Roatán, one of which was a letter from Mireya Edith Guillen, an Alternate congresswoman of the National Congress of Honduras for the island of Bahia, where Roatán is located.

II. The RPD's Decision

[10] In its decision, the RPD rejected the Applicant's claim after having determined that the Applicant was neither a Convention refugee nor a person in need of protection. Although the RPD determined that the Applicant had a nexus to the Convention and was credible, it held that he had an IFA in Roatán.

[11] On the first prong of the IFA test, the RPD determined that, on a balance of probabilities, the Applicant would not face a serious possibility of persecution in the proposed IFA because the agents of harm (the Barrio-18) had neither the means nor the motivation to locate the Applicant in Roatán. In relation to "means", the RPD found that:

A. There was no evidence in the National Document Package [NDP] that established a physical presence or influential presence of *any* gang in Roatán, and that neither counsel nor the Applicant was able to provide objective country documentation which shows that the Barrio-18 gang (or any gang for that matter) have a physical or influential presence in Roatán.

B. Even though there was reference to the national presence and influence of the Barrio-18 in a UNHCR document quoted by the Applicant, the RPD determined that, considered together, the "preponderance of evidence" demonstrated that gangs in Honduras primarily cluster around neighbourhoods in the country's three most populous cities (Tegucigalpa, La Ceiba and San Pedro Sula).

C. Item 7.14 of the NDP, which is a document from 2021, supports a finding that Roatán and the Bay Islands have a lower crime rate than mainland Honduras.

D. The Applicant stated that he feared corrupt police or politicians linked to the gangs, and the RPD acknowledged that corruption is a widespread problem in Honduras according to the NDP, but found that "there is no evidence that has been brought to

my attention, demonstrating that corrupt police or government officials are present in Roatan or have assisted gangs in tracking down persons who have located there [sic]".

[12] In relation to "motivation", the RPD found:

A. The Barrio-18 had made no attempts to locate the Applicant since he left Honduras in 2015, which is evidence that the gang lacks motivation to pursue him.

B. The Barrio-18 does not have sufficient motivation to pursue the Applicant in Roatán, where the gang has "neither an influential presence nor a physical presence" and that there was no evidence in the NDP of "this gang pursuing ordinary citizens to Roatan or elsewhere for non-payment of extortion fees or otherwise".

[13] Furthermore, although the Applicant provided news articles and affidavits attesting to the existence of criminal activity in Roatán, the RPD stated the evidence did not provide objective proof that gangs such as the Barrio-18 operate in Roatán and would pose a risk to the Applicant.

[14] On the second prong of the IFA test, the RPD concluded that the conditions in Roatán were not such that it would be objectively unreasonable under the circumstances, including those particular to the Applicant, for him to relocate and reside there. In particular, the RPD found that:

A. Difficulty in finding work is a part of the natural difficulties that come with relocation, and that the Applicant has an "exceptional record of academic achievement and a solid

work record over several decades in multiple job fields," which makes him highly employable.

B. The Applicant is being financially supported by his son in Canada and has relatives in Honduras to assist him with relocating to Honduras.

C. The Applicant has been diagnosed with depression, anxiety, high blood pressure and high cholesterol, but did not testify to ever having had difficulty accessing healthcare or prescriptions when he had lived in Honduras, previously, nor does the evidence provided by counsel address healthcare in Roatán specifically.

D. On a balance of probabilities, the evidence does not establish that the Applicant would not have access to healthcare or prescriptions in Roatán. Counsel's argument that the Applicant would not have access to medical care or prescriptions in Roatán was speculative, as it assumed that the health care situation on the island of Roatán is the same as on the Honduran mainland and assumed that the Applicant would not be able to find a job and would thus have to pay expensive costs for his own medicine.

III. Issues and Standard of Review

[15] This application raises the following issues:

1. Whether the RPD's determination that the Applicant had a viable IFA in Roatán was unreasonable; and

2. Whether the RPD breached the Applicant's procedural fairness rights in its assessment of the evidence submitted post-hearing.

[16] In relation to the first issue, the applicable standard of review is that of reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. 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 [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenjij-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[17] In relation to the second issue, breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise ... 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" [see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54]. The duty of procedural fairness is "eminently variable," inherently flexible and context-specific. It must be determined with reference to all the circumstances, including the *Baker*

factors [see *Vavilov, supra* at para 77]. A court assessing a procedural fairness question is required to ask whether the procedure was fair, having regard to all of the circumstances [see *Canadian Pacific Railway Company v Canada (Attorney General), supra* at para 54].

IV. Analysis

A. The RPD's determination that the Applicant had a viable IFA in Roatán was reasonable

[18] The two-prong IFA test was described by Justice McHaffie in *Olusola v Canada (Citizenship and Immigration),* 2020 FC 799 at paragraphs 8-9 as follows:

> [8] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: Thirunavukkarasu at pp 595–597; Hamdan v Canada (Immigration, Refugees and Citizenship), 2017 FC 643 at paras 10–12.
>
> [9] Both of these "prongs" of the test must be satisfied to conclude that a refugee claimant has a viable IFA. The threshold on the second prong of the IFA test is a high one. There must be "actual and concrete evidence" of conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area: Ranganathan v. Canada (Minister of Citizenship & Immigration), [2001] 2 F.C. 164 (Fed. C.A.) at para 15.

[19] It must also be kept in mind that once the RPD proposes a viable IFA, the claimant bears the burden to establish that the proposed IFA is unreasonable and that there is a serious possibility

of persecution throughout the whole country [see *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 20].

(1) The first prong of the IFA test

[20] The Applicant asserts that the RPD erred in stating that the Applicant failed to provide objective country documentation which shows that the Barrio-18 gang have a physical or influential presence in Roatán. The Applicant asserts that he did provide evidence showing that the Barrio-18 has had a presence in Roatán "since 2012", referring to a 2013 NDP article entitled "Honduras: Areas where gangs operate (2012 – June 2013)" [2013 NDP Article]. The 2013 NDP Article cites a study by the National Programme of Prevention, Rehabilitation and Social Reintegration that was conducted on "the maras and other gangs" between September 2010 and January 2011. The study found that there were 13 gang members from the Pandilla 18 (M-18) (another accepted name for the Barrio-18) in Roatán. The Applicant asserts that the RPD's failure to address the 2013 NDP Article is a reviewable error.

[21] While I agree with the Applicant that a decision-maker is required to address relevant evidence if such evidence goes directly to contradict their findings [see *Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 at para 17], I reject the Applicant's assertion regarding the relevance of the 2013 NDP Article, as it does not state that the Barrio-18 have operated in Roatán "since 2012". It is only evidence that the Barrio-18 had a presence in Roatán over a decade ago and there is no evidence in the record that the Barrio-18 continues to have a presence or influence in Roatán at the time the RPD rendered its decision. As the Respondent

points out, there have been at least fifteen updates to the NDP since 2013 and the evidence now relied upon by the Applicant no longer appears in the most current version. As a result, I find that the RPD did not err in failing to address the 2013 NDP Article.

[22] The Applicant further asserts that the RPD improperly conflated physical presence and influence of the Barrio-18 in Roatán, relying on this Court's decisions in *Campos v Canada (Citizenship and Immigration)*, 2022 FC 1641, *Mauricio Berrios v Canada (Citizenship and Immigration)*, 2021 FC 739 and *Monsalve v Canada (Citizenship and Immigration)*, 2022 FC 4. I reject that assertion. I am not satisfied that the Applicant has demonstrated that the RPD fell into error by conflating the concepts of physical presence and influence. To the contrary, the RPD explained that the preponderance of evidence established that the Barrio-18 operate in the three largest urban centres in Honduras and that, "while able to exert influence outside their controlled neighbourhoods and some adjacent rural areas, they all lack an empirically established physical and influential presence in Roatan". The Applicants have not pointed to evidence contradicting the RPD's findings that the Barrio-18 have no presence or influence in Roatán.

[23] The Applicant also argues that the RPD erred by failing to consider contradictory evidence in the letter provided by Ms. Guillen. In that letter, she states that "nowadays the situation [in Roatán] is highly concerning because the latest violent incidents have been attributed to the maras and gangs in this area". Ms. Guillen then lists a number of crime victims as examples of these "violent incidents." The Applicant submitted articles or copies of online resources about each victim, but none of the documents provide support for the argument that the Barrio-18 were responsible for the incidents. The evidence only supports the general proposition that there is crime

on Roatán, which—as the RPD explicitly stated in their reasons—is not in dispute. As the Respondent points out, this evidence does not demonstrate that the Barrio-18 operates in Roatán or would pose a risk to the Applicant. It was therefore reasonable for the RPD to conclude that the Applicant's evidence showing that there was crime on Roatán was irrelevant to the first prong of the IFA analysis. Moreover, the remaining letters submitted by the Applicant were even more general than Ms. Guillen's letter and did not mention gangs. As such, I find that it was reasonable for the RPD to not address them in their reasons.

[24] Having found that the post-hearing documents were not relevant to the first prong of the IFA, I find that the additional comments made by the RPD at paragraph 80 of its reasons regarding the documents are immaterial to its determination.

[25] The Applicant further asserts that the RPD failed to consider that the island of Roatán is close to (i.e. 70 kms from) La Ceiba, which is one of the places the RPD determined had a strong concentration of Barrio-18 gang members. I reject this assertion. The RPD found that the preponderance of evidence showed "that the gangs are coalesced around the three major urban centers in Honduras, and while able to exert influence outside their controlled neighbours and some adjacent rural areas, they all lack an empirically established physical and influential presence in Roatan." As an island, Roatán is separated from La Ceiba by the sea. The Applicant did not point to evidence that the Barrio-18's influence extends from the mainland, in La Ceiba, to the island of Roatán and as such, I find that the RPD did not err by not expressly addressing this point in its reasons.

[26] Similarly, the Applicant testified that he feared corrupt police or politicians in Roatán that might be linked to the Barrio-18. The Applicant asserts that the RPD erred when it found that there was no evidence brought to its attention demonstrating that corrupt police or government officials are present in Roatán or have assisted gangs in tracking down persons who have relocated to Roatán. The Applicant points to a news article that states that the mayor of Roatán was arrested for drug trafficking in 2021. I am not satisfied that this one news report (which states that the enforcement agency refused to confirm the mayor's arrest) in the absence of any evidence of the mayor being charged, let alone convicted, constitutes evidence demonstrating the presence of corrupt government officials in Roatán or that corrupt police or government officials have helped the Barrio-18 find people that have relocated there. As such, I am not satisfied that the Applicant has demonstrated that the RPD's analysis of this issue is unreasonable.

[27] Lastly, the Applicant asserts that the RPD failed to consider the fact that the Barrio-18 had pursued him to another city (San Pedro Sula) in the past. I reject this assertion as the RPD's reasons expressly take into account the events in San Pedro Sula. In making their motivation finding, the RPD appears to have been more persuaded by the fact that the Barrio-18 have made no attempts to locate the Applicant since he left Honduras in 2015 and nobody from Honduras has informed him of any further attempts to contact, locate or inquire about him. I find nothing unreasonable regarding the RPD's consideration of this issue.

(2) The second prong of the IFA test

[28] The Applicant asserts that the RPD failed to consider the Applicant's age and how it would impact his ability to secure employment, since he is over the age of retirement in Honduras. There is no merit to this assertion, as the RPD expressly acknowledged this issue at paragraphs 88-89 of their reasons.

[29] The Applicant asserts that the RPD erroneously concluded that the Applicant's family would be willing to support him if he were to relocate to Roatán, despite his daughter stating in her affidavit that she would be unable to support him and the Applicant's testimony at the hearing that his family would not support him. However, the evidence before the RPD was that the Applicant's son is currently supporting him. That evidence, coupled with the RPD's determination regarding the Applicant's employability, is a sufficient basis for the RPD's finding that it would not be unreasonable for the Applicant to relocate due to lack of financial or family support.

[30] The Applicant also argues that if he relocated to Roatán, he would not have access to—or be able to afford—medical care and prescription drugs to treat his major depressive disorder and general anxiety disorder. The Applicant claims that the RPD erred in concluding that his arguments on this point were speculative and by failing to consider the underlying evidence. I am not satisfied that the Applicant has demonstrated any error made by the RPD in its consideration of this issue. The onus was on the Applicant to demonstrate that he would be unable to access medical care and prescription drugs. Having reviewed the evidence provided to the RPD on these issues, I am satisfied that the Applicant did not meet that onus as the Applicant did not provide evidence

addressing the asserted insufficiency of medical care in Roatan (rather than Honduras, in general) with respect to his medical conditions. Moreover, given the RPD's findings about the Applicant's employability, it was reasonable for the RPD to conclude that the Applicant would, on a balance of probabilities, be able to afford healthcare and prescriptions in Roatán by virtue of his benefits or having a stable income.

B. The RPD did not breach the Applicant's procedural fairness rights

[31] The Applicant asserts that the RPD breached the Applicant's procedural fairness rights by denying the Applicant an opportunity to make submissions to address the concerns raised by the RPD regarding the post-hearing documents as set out in paragraph 80 of the RPD's reasons. I would note that at the hearing of this application, counsel for the Applicant conceded that this was not a strong argument.

[32] Given that the Applicant has cited no authority for the assertion that the RPD was obligated to raise its concerns with the Applicant and to give the Applicant a chance to respond thereto, I am not satisfied that the Applicant has established that his procedural fairness rights were breached.

V. Conclusion

[33] Having found that the Applicant has failed to demonstrate any basis for the Court's intervention, the application for judicial review shall be dismissed.

[34] The parties proposed no question for certification and I agree that none arises.

JUDGMENT in IMM-11070-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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