

Federal Court



Cour fédérale

**Date: 20240122**

**Docket: IMM-5749-22**

**Citation: 2024 FC 100**

**Ottawa, Ontario, January 22, 2024**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**MOISÉS MANSUR CYSNEIROS, AA, BB,  
CC AND DD**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Principal Applicant is Moisés Mansur Cysneiros [PA]. The identities of the other Applicants and a witness are the subject of a confidentiality order. The Associate Applicant, AA, is the PA's spouse, and the Associate Applicants, BB, CC and DD are their minor children. All

Applicants are the citizens of Mexico. The PA also is a citizen of Brazil, while DD also is a citizen of the United States of America.

[2] The Applicants fear persecution at the hands of, or at the behest of, a political rival of the PA's long-time friend (from their time as law students), Javier Duarte Del Ochoa [Duarte], who was the former governor of Veracruz. Duarte was accused of organized crime, money laundering and tax evasion by Miguel Angel Yunes Linares [Yunes], the subsequent governor of Veracruz. The PA alleges that the latter governor falsely implicated the PA in a corruption scheme.

[3] The PA was similarly charged as his friend Duarte, whom he had supported politically in the past. As a result, further to the Minister of Public Safety and Emergency Preparedness's intervention, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] found that the PA was excluded from refugee protection on the basis that there are serious reasons for considering the PA committed several non-political financial crimes prior to entering Canada, contrary to section 98 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*, incorporating Article 1F(b) of the Refugee Convention (as defined in section 2 of the *IRPA*). See Annex "A" for relevant provisions.

[4] On appeal, the Refugee Appeal Division [RAD] of the IRB found that the RPD erred and concluded that the PA is not excluded from refugee protection. The RAD agreed with the RPD, however, that the Applicants were neither Convention refugees nor persons in need of protection [Decision]. Specifically, the RAD was of the view that the PA does not face a serious possibility of persecution or risk of harm in Brazil, while the Associate Applicants do not face a similar

possibility of risk in respect of Mexico. DD did not advance a claim or evidence against the United States. While the Applicants seek judicial review, they do not challenge specifically the RAD's Article 1F(b) determination.

[5] The overarching issue for the Court's determination is the reasonableness of the Decision. The record raises the following more granular issues:

- A. Did the RAD reasonably apply the appropriate legal standard and respect the presumption of truthfulness and the benefit of the doubt in assessing the evidence of persecution and criminal behaviour by the agents of persecution?
- B. Did the RAD reasonably draw conclusions about the risk to the Associate Applicants?

[6] I find there are no circumstances here that displace the presumptive reasonableness standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 17, 25.

[7] A decision may be unreasonable, that is lacking justification, transparency and intelligibility, if the decision maker misapprehended the evidence before it. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, above at paras 99-100, 125-126.

[8] As explained below, I find that the Applicants have met their onus. Issue A is determinative, and therefore, I decline to address Issue B. For the more detailed reasons that follow, the Decision will be set aside, with the matter remitted to different RAD panel for redetermination.

II. Analysis

[9] The appropriate question for this Court, as the reviewing court, is whether the RAD reasonably applied the appropriate legal standard. I am persuaded that it did not. I find that the RAD's determination of insufficient evidence linking Yunes to the RCMP Incident described below is unintelligible.

[10] Contrary to the Respondent's submission that the RAD did not identify a nexus to a Convention ground under section 96 of the *IRPA*, and thus only applied section 97, I find that the RAD's reasons reference both provisions and use terminology relating to both Convention refugees (section 96) and persons in need of protection (section 97). Thus, both were in play.

[11] For example, the RAD prefaced its analysis of the PA's claim against Brazil and Mexico with the following: "I have ... conducted my own independent assessment of all of the evidence and determined the Principal Appellant does not face either a serious possibility of persecution under s.96 or a s.97(1) risk of harm in Brazil from either Yunes or from Mexican state officials." This is one of several examples.

[12] Further, I agree with the Applicants that the established standard for proving that a claimant's fear under section 96 is objectively well-founded is whether there is a reasonable chance they would suffer persecution, which is less than a balance of probabilities: *Adjei v Canada (Minister of Employment and Immigration)*, 1989 CanLII 9466 (FCA) at 683; *Németh v Canada (Justice)*, 2010 SCC 56 at para 98; *Li v Canada (Minister of Citizenship &*

*Immigration*), 2005 FCA 1 at paras 10-12; *Zuniga Barrera v Canada (Citizenship and Immigration)*, 2023 FC 51 at para 19. In addition, refugee claimants must be given the benefit of the doubt in proving the objective aspect of their claim “where strict documentary evidence may be lacking”: *Chan v Canada (Minister of Employment and Immigration)*, 1995 CanLII 71 (SCC) at para 137.

[13] That said, I find that the RAD did not articulate its reasons for determining that “the Principal Appellant does not face ... a serious possibility of persecution under s.96.” In the circumstances, I might have been prepared to entertain an argument to the effect that the RAD unreasonably conflated the analyses of these provisions, given the lack of a clear determination regarding section 96, but none was advanced.

[14] Instead, I start with the following noteworthy events that the RAD accepted:

- In August 2016, then governor-elect Yunes travelled to Toronto and met with the PA, where Yunes pressured the PA, who felt intimidated, to cooperate in bringing down Duarte. Further, Yunes had video-recorded the meeting secretly and released it to the Mexican media, alleging the PA’s complicity in Duarte’s asserted corruption;
- In September 2016, at a meeting this time held in Vancouver and attended by the future Attorney General of Veracruz, the PA was pressured to sign over his assets to the state of Veracruz; and
- In February 2017, Royal Canadian Mounted Police [RCMP] officers visited the Applicants at their home in Vancouver and told them that based on intelligence they had received, they believed the Applicants’ lives were in danger and recommended that they leave their home for a few days, and further, without providing any details, the RCMP advised the Applicants that certain people had attended the minor Applicants’ school and inquired about the children [RCMP Incident].

[15] Regarding the RCMP Incident, the RAD found: “[w]hile the Principal Appellant believed that Yunes or Mexican authorities may be responsible for this incident, I find this fear to be

speculative as insufficient credible evidence was adduced to conclude that Yunes or anyone in Mexico has tried to resort to extrajudicial means of intimidating or harming the Appellants in Canada by contacting the children's school or otherwise.”

[16] As noted, the RAD accepted that Yunes himself came to Canada and had a meeting with the PA, in which he questioned the PA to an extent that the PA felt intimidated. On its face, this meeting is evidence, in my view, of Yunes resorting to extrajudicial means to intimidate the PA contrary to the RAD's statement above.

[17] I am sympathetic to the Applicants' submission that it is difficult to imagine why or by whom the children's school would have been contacted or why the RCMP would have gotten involved, if not by or on behalf of the alleged agents of persecution in Mexico. More to the point, however, the RAD did not explain why the PA's testimony that he believes Yunes was behind the RCMP Incident was speculative or not credible, and I am not able to infer any such explanation from the Decision.

[18] For example, it was open to the RAD to come to the conclusion that the RCMP Incident occurred at the hands of the alleged agents of persecution but still find that the PA would not face risk in Brazil, either because of the lack of an extradition treaty or because there was no longer a forward-looking risk, since neither Yunes nor the Attorney General held office any longer (as the RAD in fact noted in its Article 1F(b) analysis). It is not the role of this Court, however, to buttress the RAD's reasons regarding the PA's refugee claims, which, as the

Applicants submit, are thin when contrasted with the RAD's Article 1F(b) analysis: *Vavilov*, above at para 96.

[19] In light of the events which the RAD accepted, it behooved the panel to explain why it found the PA's asserted linkage of Yunes to the RCMP Incident speculative. The failure to do so was unreasonable.

[20] This error is sufficient, in my view, to send the matter back for redetermination, because: (a) it was one of the few factors considered in the RAD's analysis on the PA's refugee claim; (b) this finding also relates to the Associate Applicants' claims; and (c) this finding contributes significantly to the means and motivation of the asserted agents of persecution and whether the PA could face risk in Brazil.

### III. Conclusion

[21] For the above reasons, the Applicants' judicial review application is granted. The Decision is set aside. The matter will be remitted to a different RAD panel for redetermination.

[22] Neither party proposed a question for certification, and I agree that none arises in the circumstances.

**JUDGMENT in IMM-5749-22**

**THIS COURT'S JUDGMENT is that:**

1. The Applicants' judicial review is granted;
2. The April 29, 2022 decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada is set aside.
3. The matter is remitted to a different RAD panel for redetermination.
4. There is no question for certification.

"Janet M. Fuhrer"

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Judge



**Annex “A”: Relevant Provisions**

*Immigration and Refugee Protection Act, SC 2001, c 27.*  
*Loi sur l’immigration et la protection des réfugiés, LC 2001, ch 27.*

<p><b>Definitions</b></p> <p><b>2 (1)</b> The definitions in this subsection apply in this Act.</p> <p>...</p> <p><b>Refugee Convention</b> means the United Nations Convention Relating to the Status of Refugees, signed at Geneva on July 28, 1951, and the Protocol to that Convention, signed at New York on January 31, 1967. Sections E and F of Article 1 of the Refugee Convention are set out in the schedule. (<i>Convention sur les réfugiés</i>)</p> <p>...</p>	<p><b>Définitions</b></p> <p><b>2 (1)</b> Les définitions qui suivent s’appliquent à la présente loi.</p> <p>...</p> <p><b>Convention sur les réfugiés</b> La Convention des Nations Unies relative au statut des réfugiés, signée à Genève le 28 juillet 1951, dont les sections E et F de l’article premier sont reproduites en annexe et le protocole afférent signé à New York le 31 janvier 1967. (<i>Refugee Convention</i>)</p> <p>...</p>
<p><b>Convention refugee</b></p> <p><b>96</b> A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p><b>Définition de réfugié</b></p> <p><b>96</b> A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p>b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
<p><b>Person in need of protection</b></p> <p><b>97 (1)</b> A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p>	<p><b>Personne à protéger</b></p> <p><b>97 (1)</b> A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p>

<p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> <p>(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,</p> <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> <p><b>Person in need of protection</b></p> <p>(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.</p>	<p>a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> <p>(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,</p> <p>(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,</p> <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> <p><b>Personne à protéger</b></p> <p>(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.</p>
<p><b>SCHEDULE</b></p> <p>(Subsection 2(1))</p> <p>Sections E and F of Article 1 of the United Nations Convention Relating to the Status of Refugees</p> <p><b>E</b> This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.</p>	<p><b>ANNEXE</b></p> <p>(paragraphe 2(1))</p> <p>Sections E et F de l'article premier de la Convention des Nations Unies relative au statut des réfugiés</p> <p><b>E</b> Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.</p>

**F** The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

**(a)** he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

**(b)** he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

**(c)** he has been guilty of acts contrary to the purposes and principles of the United Nations.

**F** Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

**a)** Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;

**b)** Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;

**c)** Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5749-22

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