Federal Court Cour fédérale

Date: 20240222

Docket: IMM-3900-23

Citation: 2024 FC 296

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 22, 2024

PRESENT: Mr. Justice Régimbald

BETWEEN:

RAUL ANDRES GONZALEZ PASTRANA and MARIANA ISABEL GONZALEZ PASTRANA

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of Mexico. They are seeking judicial review of a Refugee Appeal Division [RAD] decision dated February 28, 2023, which confirmed the decision of the Refugee Protection Division [RPD] dated September 22, 2022, rejecting their refugee protection claim. The RAD determined that the applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001,

c 27 [IRPA], because they had a viable internal flight alternative [IFA] in Mexico City or Campeche.

[2] For the reasons that follow, the application for judicial review is dismissed. The RAD's decision is clear, justified and intelligible in relation to the evidence submitted (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 (*Mason*) at para 8; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*) at para 99). The applicants have not discharged their burden of demonstrating that the RAD's decision was unreasonable.

I. Factual background

[3] Raul Andres Gonzalez Pastrana and Mariana Isabel Gonzalez Pastrana [the male applicant and the female applicant, or, jointly, the applicants] are citizens of Mexico. They are brother and sister, and are about 27 and 28 years old. They claimed refugee protection in Canada because they are afraid of their mother's former spouse [agent of persecution].

[4] The applicants' mother arrived in Canada in 2004 and was granted refugee protection here. The applicants, who were minors at the time, remained in Mexico with their father.

[5] The applicants' mother was married to the agent of persecution (who is not the applicants' father), but eventually separated from him. The agent of persecution, who is also a Mexican national, was imprisoned in Canada from 2006 to 2018, for the attempted murder of the applicants'

mother. He was removed to Mexico following his release. The applicants allege that he is now seeking revenge against them for having been imprisoned in Canada.

[6] In March 2019, the male applicant was living in Mexico when he allegedly received a threatening telephone call and was followed all the way home from school. He asked the police for help, to no avail. The male applicant then came to Canada, returning to Mexico in August 2019. He continued receiving threats on his return. He therefore decided to leave Mexico for Canada for good on December 30, 2020.

[7] The female applicant had been living in the United States. After she returned to Mexico, she started receiving threats in October 2020. In June and July 2021, she was also harassed and threatened with letters left on her car and doorstep. She ended up leaving Mexico on September 4, 2021.

[8] The applicants' refugee protection claim was heard by the RPD on September 6, 2022. In its decision of September 22, 2022, the RPD determined that the applicants would not face a serious risk of persecution in the proposed IFAs. The decision was appealed before the RAD, which rejected the refugee protection claim and confirmed the RPD's determination.

II. Impugned decision

[9] The applicants began by attempting to submit new evidence before the RAD. The new evidence consisted of the following:

- **A-1:** Photographs of the female applicant's car taken in June 2021 and before;
- **A-2:** Copy of the applicants' mother's medical and psychosocial history dated October 13, 2022;
- **A-3:** Letters from 2004 and 2005;
- **A-4:** Screenshots from the female applicant's cellular telephone from January 5 and April 9, 2022;
- **A-5:** Newspaper article dated December 9, 2021, entitled "Un homme sort de prison et tue la femme qu'il menaçait il y a 22 ans" [man released from prison, kills woman he threatened 22 years earlier];
- **A-6:** Newspaper article dated August 22, 2021, entitled "Le sujet a été libéré de prison et a assassiné la jeune femme qu'il avait harcelée pendant deux ans" [subject released from prison, murders young woman he had harassed for two years]; and
- **A-7:** Letter from Gerardo PINTO DAGER dated November 9, 2022.

[10] The RAD did not admit the new evidence, finding that it had been available at the time of the RPD's decision. All the exhibits, except for exhibits A-2 and A-7, were available before the RPD's decision. The medical history in Exhibit A-2 postdates the RPD decision, but the items making up this medical history predate it. Exhibit A-7 is a legal opinion that postdates the RPD's decision but concerns legal principles and the security situation in Mexico before the RPD's decision. In short, the RAD was not persuaded that this evidence had not been available at the time of the RPD's decision.

[11] The applicants alleged that the RPD had breached their right to procedural fairness by failing to explain to them what evidence could be relevant and to tell them that they could file additional evidence (consisting of exhibits the applicants attempted to file before the RAD) after the hearing. The RAD concluded that the RPD had not breached procedural fairness since the applicants had chosen not to be represented at the hearing and the RPD was not required to explain to them which evidence would be relevant to their refugee protection claim. On the contrary, the

RPD had explained the process to the applicants and had given them two weeks after the hearing to submit additional evidence. The applicants had ample opportunity to make their case before the RPD. In short, the RAD held that the new evidence was not admissible as it did not satisfy the requirements set out in subsection 110(4) of the IRPA.

[12] The RAD then dealt with the issue of whether the proposed IFAs, Mexico City and Campeche, were reasonable. On the first prong of the test, the RAD concluded that the RPD had not erred in its analysis of the agent of persecution's motivation and ability to track down the applicants. The threats the applicants had received were limited to telephone calls and letters, and, according to the evidence, the agent of persecution had not attempted to contact or threaten the applicants in person. Moreover, the applicants had been able to return to Mexico after the agent of persecution's initial threats, which is inconsistent with their claims about the agent of persecution's violent profile.

[13] On the second prong of the test, the RAD concluded that it was not unreasonable to expect the applicants to find refuge in the proposed IFAs of Mexico City and Campeche. The RAD performed a holistic analysis of the applicants' circumstances and concluded that they were in a good position to settle in one of these cities and that the conditions in those cities would not jeopardize their lives or safety. They would certainly have to be careful when using social media but this finding as such did not make relocation unreasonable.

[14] The RAD ultimately rejected the applicants' refugee protection claim and confirmed the RPD's negative decision.

III. Standard of review and issues

[15] The issues before the Court are as follows:

A. Was the RAD's decision to refuse to admit the new evidence presented by the applicants reasonable?

B. Was the RAD's determination that the applicants have IFAs in Mexico City and Campeche reasonable?

[16] The applicable standard of review is one of reasonableness (*Vavilov* at paras 10, 25; *Mason* at paras 7, 39–44). A reasonable decision is "based on an internally coherent and rational chain of analysis and . . . is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 8); it is justified, transparent and intelligible (*Vavilov* at para 99; *Mason* at para 59). Reasonableness review is not a "'rubber-stamping' process"; it remains a robust form of review (*Vavilov* at para 13; *Mason* at para 63). A decision may be unreasonable where the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at paras 125–26; *Mason* at para 73). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

IV. Analysis

A. *The RAD reasonably concluded that the new evidence was inadmissible*

[17] In order to be presented before the RAD, new evidence must satisfy the requirements of subsection 110(4) of the IRPA, which are as follows:

Evidence that may be presented	Éléments de preuve admissibles
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[18] These requirements "would leave no room for discretion on the part of the RAD" (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*] at para 35).

[19] If the new evidence satisfies the requirements set out above, it must then satisfy the criteria identified in the case law, namely credibility, relevance and newness (*Singh* at para 38, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13).

[20] The applicants argue that the new evidence presented to the RAD should have been admitted under subsection 110(4) of the IRPA as it is evidence that it could not reasonably have been expected in the circumstances to have been presented to the RPD. The circumstances in question refer to instructions the RPD gave the applicants at the hearing that they could file additional evidence within two weeks after the hearing. According to the applicants, the RPD did not make it sufficiently clear that they could present any relevant evidence, not only evidence

explicitly requested by the RPD. In other words, they did not sufficiently understand the nature of the proceeding and the process, which made the hearing unfair.

[21] The applicants also allege that the new evidence is relevant, contrary to the RAD's conclusion. The new evidence serves to establish the ability of the applicants' mother to represent them (given that she guided them in the refugee protection claim process), the agent of persecution's profile and use of violence, and the allegation that the agent of persecution has the motivation to track the applicants down as he potentially tried to hack the female applicant's social media accounts.

[22] Pursuant to the requirements of subsection 110(4) of the IRPA, the applicants have not satisfied me that they could not reasonably have been expected to present their new evidence to the RPD. As noted by the RAD, all of the new evidence had been available before the RPD hearing and the evidence that was not available contained information on facts that existed before the RPD hearing.

[23] Moreover, I find that the procedure followed by the RPD did not breach the applicants' right to procedural fairness. It has been established that it is not the duty of the RPD to act as counsel for claimants who have chosen to proceed without counsel (*Law v Canada (Citizenship and Immigration)*, 2007 FC 1006 [*Law*] at para 16; *Turton v Canada (Citizenship and Immigration)*, 2011 FC 1244 at para 74). In situations where refugee protection claimants are not represented, the RPD must ensure that a fair hearing takes place (*Law* at para 17), which it did do

here. The RPD took the time to explain the procedure to the applicants and even gave them two weeks after the hearing to present additional evidence. The RPD did in fact ask the applicants to submit some specific evidence, but it did not lead them to believe that this was the only evidence they could present.

[24] Moreover, the evidence is inadmissible because it simply confirmed assertions that the RPD believed already, that were not disputed or that were not sufficiently credible. For example, the evidence on the attempts to connect to the female applicant's social media accounts does not definitively link the agent of persecution to the attempts. The applicants' claims are speculative, and the mere fact that the attempts to connect to the social media accounts were made in the Merida area, where the agent of persecution resides, is insufficient to establish that he was the perpetrator, especially as the female applicant's family and friends also live there.

[25] As for the relevance of their mother's medical and psychosocial history, which, according to the applicants, establishes that she did not have the ability to support or properly represent them in the refugee protection process, this argument is not persuasive. The applicants' mother is neither their representative nor their counsel. The applicants are 27- and 28-year-old adults. They could represent themselves or hire a lawyer.

[26] In short, the RAD's conclusions regarding the admissibility of the new evidence are reasonable. The applicants have not satisfied me that the RAD made an error justifying the Court's intervention in this regard (*Vavilov* at para 100).

B. *The RAD reasonably determined that the applicants have an IFA*

[27] The test for determining whether there is an IFA was developed in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA), and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 1993 CanLII 3011 (FCA). It is a two-prong test: (i) the administrative decision maker must be satisfied, on a balance of probabilities, that there is no serious possibility of the individual being persecuted in the IFA area; and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15). To make a finding that there is an IFA, both prongs must be satisfied (*Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 15).

[28] The onus of demonstrating that an IFA is unreasonable rests with the refugee protection claimant, and it is an exacting one (*Huenalaya Murillo v Canada (Citizenship and Immigration)*, 2022 FC 396 at para 13; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 14). The applicants did not meet this onus.

[29] The applicants' arguments are mainly based on the RAD's analysis under the first prong of the IFA test, more specifically the agent of persecution's motivation. The applicants argue that the RAD unreasonably relied on the lack of personal contact between the agent of persecution and the applicants to conclude that the agent would not be sufficiently motivated to track them down.

They also submit that it was unreasonable for the RAD to expect the agent of persecution to call on the help of organized crime to find them when there is no evidence to support this allegation.

[30] The applicants also argue that the decision is unreasonable because the RAD recognized the extreme degree of violence suffered by the mother while pointing out that the agent of persecution had not inflicted the same level of violence on the applicants. The applicants also note that the agent of persecution did not become extremely violent towards their mother overnight; consequently, the RAD could not expect him to become so towards the applicants. The applicants submit that the same thing could reasonably happen to them if they were returned to Mexico.

[31] The applicants criticize the RAD for unreasonably concluding that, despite her awareness of the agent of persecution's violent profile and of the telephone threats against her brother, the female applicant returned to Mexico in October 2020 and did not leave the country with her brother in December 2020. The applicants argue that, for a long time, they did not know about the agent of persecution's violent profile; they only learned about the details of the assault against their mother in their teens.

[32] Finally, regarding the second prong of the IFA test, the applicants simply stated that relocation would be unreasonable as they would have to cut ties with their half-sister and any other relatives and that, because their half-sister is a child, she would be unable to keep their location a secret.

[33] In my opinion, the RAD reasonably relied on the evidence in the record to assess the agent of persecution’s motivation to harm the applicants in the proposed IFAs. The RAD determined that the threats against the applicants were all made by telephone or from afar, or in writing, and that the agent of persecution did not attempt to approach or threaten them in person. Moreover, the agent of persecution had not attempted to find the applicants since they came to Canada. In fact, the applicants replied no to a specific question from the RPD as to whether the agent of persecution had contacted members of the applicants’ family still residing in the family home where the applicants had been harassed by the agent of persecution.

[34] It was also reasonable for the RAD to conclude that the applicants’ behaviour was inconsistent with their claims that they feared the agent of persecution’s extremely violent profile. The evidence shows that the applicants were fully aware of the violence suffered by their mother, but they still chose to live in Mexico in the same town as the agent of persecution. Furthermore, despite being aware of the threats her brother had received, the female applicant decided to return to Mexico to live there in the same home even though her brother had already left to claim refugee protection in Canada. In short, it was reasonable for the RAD to conclude that the applicants did not act on the alleged fears even though they were fully aware of the agent of persecution’s extremely violent profile.

[35] Regarding the applicants’ argument that the RAD erred in suggesting that the agent of persecution did not ask organized crime for help to locate the appellants, I do not find that the RAD erred here. The RAD simply stated that there are several options for someone motivated to

track someone down, such as checking the person's former addresses and questioning the person's relatives and friends. The RAD merely noted that people could also ask organized crime for help, but that there was no evidence to that effect in this case. In my opinion, the RAD's reasons regarding the agent of persecution's motivation are reasonable since they are fleshed out and based on the facts and the evidence in the record.

[36] As for the second prong of the IFA test, the RAD reasonably concluded that the applicants did not prove that they would have to conceal where they would be relocating to from their friends and family. On this point, there is no evidence establishing that the agent of persecution would force the applicants' family or friends to disclose their new location. Indeed, the evidence is to the contrary; it shows that the agent of persecution never made any effort to question the applicants' family and friends since they came to Canada. The case law dictates that, for an IFA to be considered to be unreasonable, claimants must prove that targeted family members would be in danger if they refused to disclose the claimants' location (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1715 at para 47; *Singh v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 122 at para 20). There is no such evidence here.

[37] In addition, the RAD advised the applicants to be vigilant and discreet when using social media should they return to Mexico, which is entirely reasonable and not an error (*Iwuanyanwu v Canada (Citizenship and Immigration)*, 2022 FC 837 at para 10).

[38] The RAD's decision in this case was well reasoned, coherent and logical. The applicants failed to meet their burden of showing that the decision was unreasonable.

V. Conclusion

[39] I find that the RAD's decision is justified in relation to the factual and legal constraints bearing on the case (*Mason* at para 8; *Vavilov* at para 99).

[40] For these reasons, the application for judicial review is dismissed.

[41] No questions of general importance were submitted for certification, and the Court is of the opinion that none arise.

JUDGMENT in IMM-3900-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Guy Régimbald"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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