Federal Court  Cour fédérale

Date: 20240327

Docket: IMM-2581-22

Citation: 2024 FC 485

Toronto, Ontario, March 27, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ABRAM WALL FRIESSEN
GETRUDA NEUDORF WIEBE
ABRAM WALL NEUDORF
EVA WALL NEUDORF
GETRUDA WALL NEUDORF
JAKE WALL NEUDORF

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are Mexican citizens. They are a Mennonite family who seek refugee protection in Canada, alleging increased criminal gang and cartel violence in Mennonite communities in Mexico.

[2] The determinative issue for both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada was whether there is a viable internal flight alternative [IFA] for the Applicants in Mexico. In partially agreeing with the RPD, the RAD determined that Campeche is a viable IFA in light of the evidence of Mennonite communities in the area.

[3] The RAD thus concluded that the Applicants are neither Convention refugees nor persons in need of protection (pursuant to section 96 or subsection 97(1) of the *Immigration and Refugee Protection* Act, SC 2001, c 27) and dismissed the appeal [Decision]. See Annex "A" for relevant legislative provisions.

[4] The Applicants seek to have the Decision set aside, alleging that it is unreasonable and procedurally unfair.

[5] I find that the Applicants have not met their burden of demonstrating that the Decision is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*] at para 100. Nor am I persuaded that they have met the high threshold applicable to

allegations of bias by an administrative decision maker, in which the procedural fairness ground is rooted.

[6] For the more detailed reasons that follow, the application will be dismissed.

II. Analysis

A. *The Decision is not unreasonable*

[7] I find that the Decision bears the hallmarks of justification, intelligibility and transparency in the context of the applicable factual and legal constraints.

[8] Contrary to the Applicants' submissions, in my view the Decision exhibits a logical chain of analysis and internally coherent reasons that permit the Court to "to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn": *Vavilov*, above at paras 95, 97, citing *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11.

[9] The Applicants demand a level of perfection in the RAD's reasons that is not warranted: *Vavilov*, above at para 91. That the reasons do not include all the arguments or details the Applicants would have preferred does not justify setting the Decision aside. Further, the fact that the RAD could have drawn other inferences from the evidence, in itself, does not make the inferences the RAD drew unreasonable: *Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at para 43.

[10] At their core, I find that the Applicants' submissions are tantamount to a request to reweigh the evidence that was before and reasonably considered by the RAD.

[11] In addition, I agree with the Respondent that the Applicants have not shown that the RAD misconstrued or misapplied the test for determining the viability of an IFA (i.e. first, that there is no serious possibility of persecution in the proposed IFA on a balance of probabilities, and second, that relocation to the proposed IFA is not unreasonable in all the circumstances, including those particular to the Applicants, per *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA)). I am satisfied that the RAD's reasons demonstrate that the RAD reasonably took into account the Applicants' profiles as Mennonites who reside in Mennonite colonies or communities.

[12] While the Applicants argued successfully before the RAD that it is unreasonable to expect the Applicants to relocate anywhere in Mexico outside a Mennonite colony, the Applicants now argue before the Court that both the RPD and RAD speculated that they would be accepted in a Mennonite colony. Putting aside for the moment that this is seemingly a new argument that was not made before the RAD, I find the argument untenable for other reasons.

[13] First, the onus is on the Applicants to show why an IFA is unreasonable. The Applicants' argument, in my view, unacceptably attempts to reverse that onus. This is borne out by my second reason, namely, that the Applicants did not show they would not be accepted. Their testimony before the RPD was simply that they did not try this route (i.e. relocation versus

coming to Canada), and not that it would have been unviable. This is discussed in greater detail in connection with the procedural fairness analysis below.

[14] Regarding the Applicants' complaint about the lack of state protection analysis, this Court's jurisprudence guides that such analysis is unnecessary when the administrative decision maker has identified a reasonable IFA where there is no serious possibility of persecution: see, for example, *Aguilar Ruiz v Canada (Citizenship and Immigration)*, 2023 FC 1576 at para 47; *Ajekigbe v Canada (Citizenship and Immigration)*, 2023 FC 1017 at para 10; *Adams v Canada (Citizenship and Immigration)*, 2018 FC 524 at para 35.

B. *The Decision is not procedurally unfair*

[15] I am not persuaded that the Decision, nor the RPD decision for that matter, is procedurally unfair in the sense alleged, i.e. that it gives rise to a reasonable apprehension of bias.

[16] Although the Applicants submit that the reasonableness standard applies to all the issues they have raised, I note that questions of procedural fairness attract a correctness-like standard of review: *Benchery v Canada (Citizenship and Immigration)*, 2020 FC 217 at paras 8-9; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Vavilov*, above at para 77. The focus of the reviewing court is whether the process was fair in the circumstances: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

[17] Further, the test for a reasonable apprehension of bias is "what would an informed person, viewing the matter realistically and practically and having thought the matter through conclude? Would [they] think it is more likely than not that the decision-maker whether consciously or unconsciously would not decide fairly?": *Sandhu v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 889 at para 61, citing *Yukon Francophone School Board, Education Area No 23 v Yukon Territory (Attorney General)*, 2015 SCC 25.

[18] There is a rebuttable presumption that a tribunal member will act fairly and impartially. Suspicion alone of bias is not enough; a real likelihood or probability of bias must be demonstrated by the person alleging bias, and the threshold for a finding of real or perceived bias is high.

[19] Having regard to these principles in the context of the matter before me, I am not persuaded that the Applicants have met the high threshold for demonstrating bias.

[20] The Applicants' counsel points to the Applicants' low education and an alleged, but not evidenced, English/Low German language barrier to assert that, absent layperson language, the Applicants would not have understood words such as "impediment" and "vulnerabilities," and further, that these words do not translate to Low German.

[21] Putting aside the unfounded, inherent generalization that people who end their formal education at age 13 would not understand words like "impediment" and "vulnerability" despite

their subsequent life experiences, I find this argument unpersuasive for several additional reasons.

[22] First, if the Principal Applicant, Abram Wall Friessen, did not understand the questions that were asked of him at the RPD hearing, he should have said so at the earliest opportunity, that is, at the hearing itself. For example, he did not exhibit any difficulty understanding the RPD member's questions during the following exchanges, nor did the Applicants' counsel raise a lack of comprehension as an issue when questioning the Principal Applicant immediately after the exchanges:

> ***Member:*** *Now I did mention Merida and Campeche, would there be any impediments to relocating?*
>
> ***Principal Claimant:*** *I don't know if there would have been anything that would have held us – anything that would have held us back, we just didn't try, we didn't try.*
>
> *…*
>
> ***Member:*** *Okay. And then the first part of my question was when I asked you if there was any other impediments to relocating you said "no".*
>
> ***Principal Claimant:*** *Like you mean going to Campeche or Canada?*
>
> ***Member:*** *Yeah, going to Campeche or Merida. I asked you that question and you said there were no other impediments other than because you had the problem where you were living with the cartels and you said you hadn't thought of or, you know, thought of going to Merida or Campeche, you had family or your wife had family in Campeche, I asked you if there was any other reason why you could not go there and you said "no".*
>
> ***Principal Claimant:*** *We didn't try that route because we were offered from Nova, like this opportunity to Nova Scotia so we went this route instead.*

[23] Second, as the RAD observed, it was the Applicants' counsel, as opposed to the RPD panel, who used the word "vulnerabilities" in posing questions to the Principal Applicant. Third, while the interpreter mentioned that "vulnerability" is not really a word used in German, the

interpreter made no such comment in respect of the word “impediment,” which the RPD used four times and the Principal Applicant seemingly had no difficulty understanding.

[24] At the oral hearing of this matter, the Applicants asserted for the first time procedural unfairness flowing from the RAD’s reference in the Decision to a National Geographic article that was not disclosed to the Applicants previously, arguing that there was no opportunity to respond. The RAD referred to the article only for statistics about the number of Mennonite colonies in Campeche, in support of the viability of Campeche as an IFA for the Applicants. In their written submissions, the Applicants take issue with the reasonability of the RAD’s assessment of the document. They do not object to it, however, on the basis of procedural unfairness in light of the RAD’s reliance on extrinsic evidence.

[25] Because the latter argument was raised for the first time at the hearing, I decline to consider this issue: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 677 at para 20, citing *Zhou v Canada (Citizenship and Immigration)*, 2018 FC 182 at para 6. I simply note in passing that while the Applicants point to the feud between beekeepers and Mennonite farmers described in the article as a reason why the proposed IFA is unreasonable, this is seemingly speculative because the Principal Applicant’s affidavit states that he worked, not as a farmer, but successively in the carpentry and masonry trades.

[26] As for the reasonableness of the RAD’s assessment of the article, I find that the Applicant’s submissions about the statistics provided in the article essentially request the Court

to reweigh evidence which, in my view, the RAD reasonably considered in the context of the proposed IFA.

III. Conclusion

[27] For the above reasons, I conclude that the Applicants have not demonstrated a reviewable error warranting the Court's intervention. Their judicial review application thus will be dismissed.

[28] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-2581-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
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.

Convention refugee **96** 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, **(a)** is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or **(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.	**Définition de réfugié** **96** 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 : **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; **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.
Person in need of protection **97 (1)** 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 **(a)** to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or **(b)** to a risk to their life or to a risk of cruel and unusual treatment or punishment if **(i)** the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, **(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, **(iii)** the risk is not inherent or incidental to lawful sanctions, unless imposed in	**Personne à protéger** **97 (1)** 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 : **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; **b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : **(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, **(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, **(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

disregard of accepted international standards, and **(iv)** the risk is not caused by the inability of that country to provide adequate health or medical care.	infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, **(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection **(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.	**Personne à protéger** **(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.

FEDERAL COURT

SOLICITORS OF RECORD

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