Federal Court  Cour fédérale

Date: 20240403

Docket: IMM-3697-23

Citation: 2024 FC 517

Ottawa, Ontario, April 3, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

EDIEL ALEXANDER GUZMAN CORONEL
RUTH PACHECO PACHECO
LESLIE SHIREL GUZMAN PACHECO
IAN ALEXANDER GUZMAN PACHECO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicants, Ediel Alexander Guzman Coronel [Principal Applicant], his wife, and their two children, seek judicial review of a decision by the Refugee Appeal Division [RAD]

refusing their claim for refugee protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] I am dismissing the application because the Applicants have failed to establish that the RAD made any reviewable errors. The RAD reasonably made an adverse credibility finding and rejected the Applicants' claim that the agent of persecution had recently approached a family member seeking the Applicants' whereabouts. In addition, the RAD reasonably assessed the viability of an internal flight alternative [IFA] for the Applicants in Mérida, Yucatán, Mexico.

II. Background

[3] The Applicants, citizens of Mexico, entered Canada in September 2019 and made a refugee claim based on their fear of harm from the Jalisco New General Cartel [CJNG]. They alleged that their problems began in February 2019, when they started receiving threatening phone calls about a year after the Principal Applicant opened a butcher shop in their hometown of Tehuacán, Puebla, Mexico.

[4] According to the Applicants, the business received a call in August 2019 from someone affiliated with the CJNG, who asked for the owner. Several days later, the Principal Applicant alleged that he was pulled over and attacked by CJNG members, who demanded that the business make monthly payments. A day later, the Principal Applicant received another threatening call demanding more money. Following this incident, the Applicants went to live with family in Mexico City. It is alleged that the Principal Applicant then received another threatening call

demanding payment, which led him to file a police complaint in September 2019 prior to leaving Mexico.

[5] The Refugee Protection Division [RPD] rejected the Applicants' claim in October 2022. The RPD found that the Principal Applicant's testimony that the CJNG was still looking for him lacked credibility. Further, the RPD determined that the Applicants have a viable IFA in Mérida, Mexico.

[6] The RAD dismissed the Applicants' appeal, finding that the RPD did not err in its credibility finding. Further, while, the RAD determined that the objective evidence supported that the CJNG had the operational means to locate the Applicants in Mérida, it found that there was a lack of evidence demonstrating that the CJNG had either the motivation or the interest in actually pursuing them. Finally, the RAD concluded that relocating to Mérida is not objectively unreasonable in the Applicants' circumstances.

III. Issues and Standard of Review

[7] The Applicants raises the following issues: (i) whether the RAD erred in its credibility finding; and (ii) whether the RAD erred in determining that the Applicants have a viable IFA in Mérida.

[8] There is no dispute that the applicable standard of review for both issues is reasonableness. 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": *Canada*

(Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59-61. Furthermore, the reviewing court "must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable": *Vavilov* at para 100.

IV. Analysis

A. *The RAD's adverse credibility finding is reasonable*

[9] Significant deference is owed with respect to the RPD's and RAD's assessments of the credibility of a claimant's allegations: *Aldaher v Canada (Citizenship and Immigration)*, 2021 FC 1375 at para 23; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 15; *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 23; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 22.

[10] In this case, the RPD drew an adverse credibility finding concerning the Principal Applicant's testimony that three or four months before the RPD hearing, the CJNG had approached his brother-in-law seeking the Applicants' whereabouts. The RPD noted that this new information only came up during the hearing when the RPD questioned the Principal Applicant about whether they had continued to have problems with the CJNG since arriving in Canada. The RPD was not satisfied with the Principal Applicant's explanation as to why he had not updated his Basis of

Claim [BOC] to reflect this new information. The RPD ultimately found that the Principal Applicant was "embellishing in order to elevate his allegations of harm": Refugee Protection Division's Reasons and Decision dated October 21, 2022 at paras 7-9 [RPD's Decision].

[11] The RAD agreed with the RPD that this "late evolution" in the Principal Applicant's testimony lacked credibility and that the Applicants were simply trying to "bolster their refugee claim": Refugee Appeal Division's Reasons and Decision dated February 21, 2023 at para 18 [RAD's Decision].

[12] Furthermore, the RAD determined that the Principal Applicant was unable to satisfactorily explain why he had not taken steps to amend his BOC:

> [18] […] The Principal Appellant's response, as to this, was that when he approached his brother-in-law for proof of his having been approached, this family member had refused to talk about it. That may well be, but it does not, in any way, explain why the Appellants would not at least have updated their narrative to mention that any of this had happened. I further note that, at the outset of the hearing, the Appellants specifically confirmed that their BOC narrative was correct and complete, and I also note that they were represented by counsel throughout their proceedings.
>
> [Emphasis added]
>
> [Footnotes omitted]

[13] In my view, the RAD reasonably concluded that the Applicants' claim that the CJNG had recently approached their family member looking for them lacked credibility. The jurisprudence is clear that a failure to include material facts and details in a BOC, without a reasonable explanation, is a reasonable basis for a negative credibility finding: *Ahmed v Canada (Citizenship*

and Immigration), 2023 FC 830 at para 40; *Manan v Canada (Citizenship and Immigration)*, 2020 FC 150 at para 44; *Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at paras 18-20.

[14] I do not accept the Applicants' argument that this omission "does not go to the heart of the claim". There is no question that this omitted information was central to the Applicants' refugee claim of still being at risk of harm by the CJNG if they return to Mexico. The determinative issue was whether the Applicants have a viable IFA. As discussed below, whether the CJNG would still be interested in pursuing the Applicants is a key consideration.

[15] I also do not agree with the Applicants that "the lack of corroborating evidence was used against the Applicants and that the RAD failed to correct this mistake": Applicants' Memorandum of Argument at para 29. While the RPD asked the Principal Applicant whether he had any documentary evidence from his brother-in-law to support his allegations, the RPD did not use the lack of corroborating evidence against the Applicants. Rather, the RPD (and the RAD) based its adverse credibility finding on the Principal Applicant's failure to satisfactorily explain why he had not amended his BOC to include this significant information: RPD's Decision at paras 8-10.

B. *The RAD's assessment of the IFA is reasonable*

[16] The Applicants argue that the RAD erred in assessing their risk of persecution in the proposed IFA location of Mérida. A reviewing court, however, must refrain from reassessing and reweighing the evidence before the decision-maker: *Vavilov* at para 125. That said, "the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it": *Vavilov* at para 126. For the

reasons set out below, the Applicants have not established any such errors in the RAD's assessment of the viability of an IFA in Mérida.

[17] A two-pronged test is applicable to determining the viability of an IFA. The first prong considers whether a claimant would be subject to a serious possibility of persecution under section 96 or to a risk of harm under subsection 97(1) of the *IRPA* in the proposed IFA. The second prong assesses whether it would be reasonable, in all the circumstances, to expect the claimant to seek safety in the IFA: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at paras 8, 10 [*Singh*]; *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 8 [*Olusola*]; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10-12 [*Hamdan*].

[18] Once an IFA is proposed, the onus is on the claimant to prove that they do not have a viable IFA: *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 20 [*Adeleye*]; *Olusola* at para 9.

(1) First prong – the Applicants failed to establish the CJNG's motivation to pursue them in Mérida

[19] To satisfy the first prong of the IFA test, it is incumbent on a claimant to establish that they are at risk from the same agent of persecution in the proposed IFA. In assessing this risk, the agent of persecution's "means" and "motivation" to locate the claimant in the proposed IFA are considered: *Singh* at para 8; *Adeleye* at para 21.

[20] While the RAD found that the objective evidence supported the CJNG's operational means to locate the Applicants in Mérida, it concluded that the Applicants failed to establish that the CJNG would be motivated to use its resources to pursue them.

[21] The RAD based this lack of motivation on two findings: (i) the Applicants were not high profile targets; and (ii) there had been no contact other than two phone calls after the initial extortion attempt:

> [40] With respect to the motivation of the Cartel to pursue the Appellants, I additionally note that I agree with the RPD's finding that the Appellants did not establish that they possess a profile such that the Cartel would be likely to expend the time and resources to have them located and harmed anywhere in Mexico. They also did not give evidence of high-level or charged personal interactions with the Cartel. Indeed, in the telling of the Principal Appellant, beyond the initial attempts to extort him, it would appear that the only other interactions they ever had with the Cartel were two telephone calls in October 2019.
>
> [Emphasis added]

[22] These two findings were open to the RAD based on the evidentiary record. First, the RAD reasonably rejected the Applicants' argument that they automatically became targets when they failed to pay the extortion fee. The objective country condition evidence supports the RAD's conclusion that the CJNG would only use their resources to track "high ranking" targets: RAD's Decision at para 36. The Applicants did not establish that they fit the profile of the type of individuals that the CJNG would be interested in pursuing.

[23] Second, the RAD reasonably concluded that the Principal Applicant's limited interactions with the CJNG did not support the claim that the Cartel would be motivated to pursue them. I do

not accept the Applicants' argument that the RAD ignored the August 13, 2019 incident involving an attack of the Principal Applicant in coming to this conclusion. To the contrary, the "initial attempts to extort", as referred to in the passage at paragraph 21 above, clearly include the August 2019 attack. As the Respondent pointed out, the RAD also specifically referred to the August 13, 2019 incident at the outset of the decision: RAD's Decision at para 2.

[24] This is not a case of the RAD overlooking or misapprehending evidence. Rather, it came down to the RAD's assessment of the sufficiency of the evidence. The RAD did not agree with the Applicants that the August 13, 2019 incident, coupled with the two subsequent phone calls, proved that the CJNG would be motivated to track them wherever they went in Mexico. Indeed, the RAD specifically referred to "the paucity of attempts to contact or reach the Appellants while they were in Mexico": RAD's Decision at para 39. Ultimately, the RAD concluded that the Applicants "have simply not established, on a balance of probabilities, that the Cartel has the motivation to pursue them into the proposed IFA": RAD's Decision at para 41.

[25] Finally, there is no merit to the Applicants' further argument that the RAD misapprehended the evidence when it referred to "two telephone calls in October 2019" [emphasis added] in the passage at paragraph 21 above. This is clearly a typographical error as all prior references in the RAD's decision correctly note that the phone calls were in August 2019: RAD's Decision at paras 2, 34. This does not amount to a reviewable error.

[26] Having found that the Applicants' claim that the CJNG recently approached their family looking for them was not credible, the RAD reasonably concluded that, notwithstanding its

operational capacity, the Applicants failed to prove that the CJNG had the motivation or the interest to pursue them.

(2) Second prong – the Applicants failed to establish that their lives would be in jeopardy in Mérida

[27] The Applicants have not advanced any persuasive arguments concerning the RAD's application of the second prong of the IFA test. Their argument that the RAD "failed to consider all circumstances regarding the Applicant's employment, family and friends" is without merit: Applicants' Memorandum of Argument at para 64. While the RAD acknowledged that there may be "some difficulties and inconveniences" with relocating, it ultimately found that the Applicants failed to meet the high threshold under the second prong of establishing that the proposed IFA is unreasonable: RAD's Decision at para 46.

[28] Proving undue hardship is not enough to demonstrate that the IFA is unreasonable: *Fashola v Canada (Citizenship and Immigration)*, 2023 FC 1671 at para 44; *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 at para 30. Rather, a claimant must establish with "actual and concrete evidence" that their life and safety would be in jeopardy in the proposed IFA: *Olusola* at para 9; *Hamdan* at para 12.

[29] Here, the RAD determined that the Applicants failed to meet this high evidentiary burden because merely asserting that Mérida is unsafe was insufficient:

> [45] I also note that the Appellants argue that in relation to the articles submitted before the RAD, this "new evidence would define this proof of adverse conditions, as the presence of not only the CJNG, but other cartels would jeopardize the life and safety of the

> Appellants." With respect, I again must disagree, as it is in no way clear why this information would lead to the conclusion that conditions in that city should be held to jeopardize the Appellants' life and safety. The general fact that there is organized crime in the proposed IFA locations cannot simply be proclaimed to establish such a danger to the Appellants, and I do not find this to be the case, on a balance of probabilities. I also note that by this logic, the IFA location would not be safe for anyone at all to reside in, as the presence of cartels and some level of organized crime should likewise be held to jeopardize the life and safety of every resident of that city. That surely cannot be a reasonable conclusion to draw, even if there is a Cartel presence in Merida.
>
> [Emphasis added]
>
> [Footnote omitted]

[30] The Applicants thus failed to demonstrate that it was objectively unreasonable for them to relocate to Mérida. The RAD reasonably concluded that, based on their profile and circumstances, the Applicants were "well positioned to secure employment and assimilate there, given their language ability and work background": RAD's Decision at para 13. There is no basis for this Court to intervene.

V. Conclusion

[31] Based on the foregoing, the application for judicial review is dismissed. The RAD's decision exhibits the required attributes of transparency, justifiability, and intelligibility in accordance with *Vavilov*.

[32] The parties did not raise a question for certification and I agree that none arises in this case.

JUDGMENT in IMM-3697-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	EDIEL ALEXANDER GUZMAN CORONEL, RUTH PACHECO PACHECO, LESLIE SHIREL GUZMAN PACHECO, IAN ALEXANDER GUZMAN PACHECO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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