

Federal Court



Cour fédérale

Date: 20240523

Docket: IMM-5254-23

Citation: 2024 FC 783

Toronto, Ontario, May 23, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

**JOSE FELIX MONTIEL GARCIA,
XOCHITL REYES GAIDO &
FELIX EMILIANO MONTIEL REYES**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario on May 23, 2024

and edited for syntax and grammar)

[1] The Applicants, a family of three, seek judicial review of their refugee claim, refused on the basis of Internal Flight Alternative [IFA] in the cities of Merida, Mexico City or Cabo San Lucas.

[2] The only issue raised before this Court is whether the IFA finding was reasonable per *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–63 [*Mason*] and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

[3] The Applicants argue that the RAD’s IFA analysis was flawed, based on the Principal Applicant’s role in prosecuting and sentencing of the agent of persecution who would be able to locate them anywhere in the country upon his release. The Applicants claim that they cannot reasonably relocate to any of the proposed IFAs because they will face undue hardship.

[4] I disagree with the Applicants. An IFA exists when the RAD finds, on balance, that a refugee claimant will not face a serious possibility of persecution in the proposed IFA, and that it is not unreasonable for them to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 711, 1991 CanLII 13517 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at 597, 1993 CanLII 3011 (FCA)). Once that has been established, the burden shifts to the refugee claimant to demonstrate that a proposed IFA is unreasonable, on balance.

[5] Here the RAD assessed the facts and the evidentiary record to reasonably conclude that the agent of persecution lacks the motivation to locate the Applicants at a proposed IFA following his release from prison. Indeed, the Applicants did not provide sufficient evidence to establish such motivation.

[6] On the second prong of the IFA test, the jurisprudence establishes that for an IFA to be unreasonable, there must be “nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area” (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15, 2000 CanLII 16789 (FCA)). Here, while the RAD clearly recognized that the Applicants would face certain hardships in relocating, it nonetheless found that they failed to show the hardships would reach the high threshold required. The RAD’s IFA conclusion was thus reasonable in light of the record.

[7] At the hearing, Applicants’ counsel argued that there was sufficient uncontested evidence that demonstrated the agent of persecution’s ongoing and indefinite motive to locate them anywhere in Mexico following his release from prison, and that the RAD unreasonably speculated that the agent of persecution would act a certain way if they had an ongoing motivation to harm the Applicants. Counsel also argued that the RAD contradicted itself in its decision.

[8] I cannot agree that the panel either speculated or contradicted itself. The RAD, in its 86 paragraphs that spanned 19 pages, comprehensively assessed all of the evidence before it. The RAD ultimately reasonably concluded that for a variety of reasons, the agent of persecution’s motivation to follow them in the IFAs has not been established on balance (*Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13). No point was raised at the hearing that would allow this Court to find that the RAD decision contained any reviewable error on the basis of either speculation or contradiction.

[9] As pointed out by counsel for the Respondent, the Applicants are effectively asking this Court to reweigh and reassess the evidence that was before the RAD, which is not this Court's role on judicial review. They are also asking the Court to find that the onus of proof lay with the RAD to show that the IFAs were not viable for the Applicants, which would be a reversal of the said onus (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 9). The decision was reasonable under *Mason* and *Vavilov*. This application for judicial review is therefore dismissed.

JUDGMENT in file IMM-5254-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.
2. The parties raised no question for certification and none arises.
3. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5254-23

STYLE OF CAUSE: JOSE FELIX MONTIEL GARCIA ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: MAY 23, 2024

JUDGMENT AND REASONS: DINER J.

DATED: MAY 23, 2024

APPEARANCES:

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