Federal Court  Cour fédérale

Date: 20250704

Docket: IMM-4168-24

Citation: 2025 FC 1179

Toronto, Ontario, July 4, 2025

PRESENT: Justice Andrew D. Little

BETWEEN:

CARLOS ACOSTA HERNANDEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] By decision dated February 13, 2024, the Refugee Appeal Division (the "RAD") dismissed the applicant's claim for protection under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the *"IRPA"*). The RAD concluded that there were serious reasons for considering that the applicant was complicit in crimes against humanity. He was therefore excluded from *IRPA* protection under Article 1F(a) of the Refugee Convention and section 98 of the *IRPA*.

[2] In this application for judicial review, the applicant submitted that the RAD's decision was unreasonable and should be set aside, applying the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, [2019] 4 SCR 653.

[3] For the following reasons, the application will be allowed.

I. **Background**

[4] The applicant is a citizen of Mexico. He served as a corporal in the Federal Forces Division of the Mexican Federal Police for approximately five years. His claim for *IRPA* protection in Canada was based on fears that the Los Zetas cartel will kill or harm him if he returns to Mexico because he was involved in the arrest of one of its members.

[5] When the applicant's claim reached the Refugee Protection Division (the "RPD"), the Minister intervened and argued that the applicant should be excluded from *IRPA* protection because he was complicit in crimes against humanity due to of his work with the Federal Police.

[6] In a decision dated January 5, 2024, the RPD found the applicant was not excluded from *IRPA* protection because of insufficient evidence, but that he had an internal flight alternative within Mexico.

[7] The applicant appealed to the RAD. On appeal, the RAD requested and received additional submissions concerning complicity from the applicant and the Minister, who also intervened on the appeal.

[8] The RAD concluded that the applicant was excluded from *IRPA* protection because there were serious reasons for considering that he voluntarily made a significant and knowing contribution to the Federal Police's crimes against humanity. Unlike the RPD, the RAD determined there was sufficient evidence to make a finding of complicity.

[9] The RAD found that there were serious reasons for considering the Federal Police committed the crimes against humanity of torture, murder, and enforced disappearance of persons. Before the RAD and in this Court, the applicant did not contest that the Federal Police committed such crimes.

[10] Individuals who are culpably complicit in crimes against humanity are excluded from refugee protection under Article 1F(a) of the Refugee Convention. The RAD's reasons recognized that the principles to determine complicity were established in *Ezokola v. Canada (Minister of Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 SCR 678. The parties did not dispute that the principles in *Ezokola* apply to the present case, which concerns the applicant's alleged complicity in crimes against humanity committed by the Mexican Federal Police.

[11] In *Ezokola*, the Supreme Court concluded that individuals may be excluded from refugee protection for international crimes through a variety of modes of commission, including actual participation in the crimes and through complicity, but not through guilt by association or passive acquiescence: *Ezokola*, at paras 3, 53, 75, 81–83.

[12] An individual's complicity arises by contribution to a group's crimes or criminal purpose. The Court in *Ezokola* stated at paragraph 8:

> While individuals may be complicit in international crimes without a link to a *particular crime*, there must be a link between the individuals and the *criminal purpose* of the group — a matter to which we will later return. In the application of art. 1F(a), this link is established where there are serious reasons for considering that an individual has voluntarily made a significant and knowing contribution to a group's crime or criminal purpose. As we shall see, a broad range of international authorities converge towards the adoption of a "significant contribution test".
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> [Original italics.]

[13] As *Ezokola* instructs at paragraphs 86-90, the assessment of complicity involves a determination of whether a person has made each of the following:

- a voluntary contribution to the crime or criminal purpose of the group;
- a significant contribution to the crime or criminal purpose of the group; and
- a knowing contribution to the crime or criminal purpose of the group.

[14] These three considerations draw the critical line between complicity in crimes committed by an organization, and guilt by association: *Singh v. Canada (Citizenship and Immigration),* 2025 FC 838, at para 9.

[15] The RAD's analysis addressed only the applicant's complicity in crimes committed by the Federal Police. As the respondent recognized at the hearing, the RAD's reasons did not address whether the applicant was complicit due to a voluntary, knowing and significant contribution to the criminal purpose of the Federal Police: see *Ezokola,* at paras 86-90.

[16] In *Ezokola*, the Supreme Court set out the following six non-exhaustive factors (the "*Ezokola* factors") to determine whether an individual's conduct should be considered as complicity in an organization's crimes or criminal purpose (at paragraph 91):

1. the size and nature of the organization;
2. the part of the organization with which the claimant was most directly concerned;
3. the claimant's duties and activities within the organization;
4. the claimant's position or rank in the organization;
5. the length of time the claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and
6. the method by which the claimant was recruited and the refugee claimant's opportunity to leave the organization.

[17] The RAD applied the six *Ezokola* factors. First, the RAD found that the size and nature of the organization did not weigh in favour of finding the applicant was complicit in the Federal Police's crimes. The Federal Police was created in 2009 to be Mexico's national police force. The applicant joined its predecessor force in 2007. Between 2006 and 2012, the force grew from 6,500 to 37,000 persons. The Federal Police provides public security across Mexico. The RAD found that it served legitimate functions and was not a group with a limited and brutal purpose.

[18] The RAD found that the second, third and fourth *Ezokola* factors weighed in favour of finding that the applicant's contribution was significant. He started as a Policeman and was promoted to Cabo (Corporal) around three months later. He remained at that rank until the end of

his employment in August 2012. He served with the Federal Forces Division. During his career, he worked in many locations across Mexico.

[19] The RAD found that the main function of the Federal Forces Division was to provide security. The applicant testified that they patrolled and fought crime and that the Federal Forces Division cooperated with the army and municipal police. Country evidence confirmed that during the time the applicant served with the Federal Police, the President of Mexico declared a frontal assault on Mexico's drug cartels and deployed the military to lead counter-drug operations until the Federal Police could fully assume its public security role.

[20] The RAD described the applicant's involvement in security operations in several locations where he was assigned. Those locations included:

(a) Veracruz and Tamaulipas, where he participated in several operations and there were confrontations against criminality;
(b) Ciudad Juarez, Chihuahua, in 2010, where he was part of counter-narcotic operations. The applicant's unit detained people. He made one arrest, and the person was handed to the local municipal police. During these operations, the applicant provided perimeter security and other officers would make the drug seizures or arrests;
(c) Zacatecas in November 2011, where the applicant participated in the arrest of a major criminal. The applicant was part of a group of four police who arrested him. He provided security to the arresting police. The criminal was handed over to local police after his arrest.

[21] The RAD found that the applicant testified that he had only arrested four people during his career with the Federal Police. The applicant did not directly answer how many people he had detained. He maintained that for most operations, he provided "perimeter security".

[22] The RAD was not persuaded by the applicant's submission that he was not complicit because he had not personally committed any of the crimes. The RAD found that the applicant's "activities do not need to be linked to specific crimes" and "neither does he need to have personally committed any crimes against humanity to be complicit in crimes against humanity."

[23] A central component of the RAD's reasoning is found in the following paragraphs:

> [45] I acknowledge the [applicant] did not hold a high-ranking position with Federal Police and the evidence before me demonstrates he did not personally arrest or detain large numbers of persons. However, he made some arrests and detentions. Further, his testimony is that a large part of his duties and activities was providing security so other officers could carry out operations, which included arrests and detentions. I find there are serious reasons for considering the [applicant's] duties and activities as a Cabo with the Federal Forces Division furthered the commission of the Federal Police's crimes.
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> [46] This is because the evidence before me discloses that the timing of the crimes against humanity began immediately after arrests and detention were made. This happened even if the arrests and detentions themselves may have been legitimate police work. In other words, <u>the [applicant's] work making some arrests and detentions and providing security to facilitate arrests and detentions was a significant contribution to the chain of events that enabled the crimes against humanity to happen</u>.
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> [Underlining added.]

[24] The RAD's reasons referred to a report from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, which concluded that "[t]orture and ill-

treatment in the moments following detention and before detainees are brought before a judge are generalized in Mexico …" The RAD referred to examples of crimes that occurred following arrests and detentions where the applicant was stationed, including:

(a) two crimes in August 2010 described in separate reports from Human Rights Watch and from Amnesty International, while the applicant was stationed in Ciudad Juarez, Chihuahua, from June to December 2010; and

(b) the torture of a man by the Federal Police in Monterrey, where the applicant was stationed in 2011.

[25] The RAD found that a Human Rights Watch report advised that torture occurred most often between the time when a person is detained and before they are handed over to prosecutors. The same report detailed how suspected enforced disappearances happened after detention. The report documented how murders included civilians executed by authorities or killed by torture. The RAD found that the report "documented crimes in numerous states, including Chihuahua and Nuevo Leon where the [applicant] worked".

[26] The RAD found that although the applicant "was carrying out legitimate law enforcement work, there are serious reasons for considering his duties and activities was a significant contribution to the Federal Police's crimes that happened after arrets [*sic*] and detentions."

[27] The RAD found that the fifth *Ezokola* factor (the length of time the claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose)

weighed in favour of finding that the applicant made a knowing contribution to the crimes committed by the Federal Police.

[28] The RAD found serious reasons for considering the applicant had knowledge of the Federal Police's crimes "by mid-2011 at the latest". The RAD determined that the applicant remained in the organization for more than a year after acquiring knowledge of the Federal Police's crimes. He participated in at least one arrest after that time, in November 2011. The RAD based its finding on the timing of applicant's knowledge on an excerpt from the applicant's testimony, from which the RAD inferred that he had knowledge that "some Federal Police officers committed crimes". This knowledge arose while the applicant was working in Monterrey from January to June 2011. The RAD also found he had knowledge based on his testimony that in the "newspaper, on the news, I hear about it but I don't want to deal with it". Given the context of the testimony, which was "about times when the applicant served in the Federal Police", the RAD inferred that the applicant's comment that he did not "want to deal with it" referred to incidents "at the time he was working for the Federal Police."

[29] The RAD found that the sixth *Ezokola* factor (recruitment into and departure from the organization) weighed in favour of the voluntariness of the applicant's contribution to the crimes of the Federal Police. He voluntarily joined the force in September 2007, and his termination in August 2012 was unrelated to whether he was complicit in the crimes against humanity. The RAD found no coercion or duress.

[30] The RAD concluded that there were serious reasons for considering that the applicant's contribution to the crimes against humanity were significant because the evidence disclosed that:

> … the timing of the crimes against humanity began immediately after arrests and detention were made. The [applicant's] work making some arrests and detentions and providing security to facilitate arrests and detentions was a significant contribution to the chain of events that enabled the crimes against humanity to happen.

[31] On knowing contribution, the RAD concluded:

> [67] Finally, I also find there are serious reasons for considering the [applicant's] contribution was knowing. The [applicant] generally denied knowledge of any crimes the Federal Police were committing. However, as explained above, when asked more specific questions by his counsel, the [applicant's] answers reveal there are serious reasons for considering he had knowledge of the Federal Police's crimes since at least mid-2011. He therefore continued working in the organization for more than a year after acquiring knowledge of the Federal Police's crimes.

[32] For these reasons, the RAD concluded that the applicant was complicit in the crimes against humanity of the Federal Police and that there were serious reasons for considering the applicant voluntarily made a significant and knowing contribution to the Federal Police's crimes. The applicant was therefore excluded from *IRPA* protection.

II. **Standard of Review**

[33] The standard of review for the RAD's substantive decision is reasonableness: see e.g., *Singh*, at para 5; *B.Y. v. Canada (Citizenship and Immigration)*, 2025 FC 777, at para 29; *Alamri v. Canada (Citizenship and Immigration)*, 2024 FC 1333, at para 33. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons

provided by the decision maker, which are read holistically and contextually, in conjunction with the record that was before the decision maker and with due sensitivity to the administrative regime in which the reasons were given: *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 60-61, 91; *Vavilov*, esp. at paras 94, 97, 103. 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 constrained the decision maker: *Mason*, at paras 8, 59-61, 66; *Vavilov*, esp. at paras 85, 105-106 and 194.

[34] In applying the deferential standard of reasonableness, the Court focuses on the reasoning process used by the decision maker and the applicable constraints: *Mason*, at paras 60-61, 64-66. The Court does not to come to its own view of the merits (here, the applicant's complicity), or measure the impugned decision against the Court's assessment: *Vavilov*, at paras 83, and *Mason*, at para 62 (both citing *Delios v. Canada (Attorney General)*, 2015 FCA 117, at para 28). Absent exceptional circumstances, the Court's role is not to reassess or to reweigh the evidence: *Vavilov*, at paras 125-126.

[35] A reviewing court may intervene if it loses confidence in the decision because it was "untenable in light of the relevant factual … constraints". The court may intervene if the decision maker fundamentally misapprehended the evidence, failed to account for critical evidence in the record that runs counter to a material conclusion, ignored evidence, or if there is no evidence to rationally support a finding: *Vavilov*, at paras 101, 126 and 194; *Mason*, at para 73; *Kahkewistahaw First Nation v. Canada (Crown-Indigenous Relations)*, 2024 FCA 8, at paras 56-57; *Maritime Employers Association v. Syndicat des débardeurs (Canadian Union of Public*

Employees, Local 375), 2023 FCA 93, at paras 116-117; *Walls v. Canada (Attorney General)*, 2022 FCA 47, at para 41; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 F.C. D-53, [1998] FCJ No 1425 (QL), at paras 14-17; *Federal Courts Act*, RSC 1985, c F-7, paragraph 18.1(4)(d).

[36] Not all errors or concerns about a decision will warrant the Court's intervention. To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. The problem(s) cannot be merely superficial or peripheral, but must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100.

III. **Analysis: was the RAD's decision unreasonable?**

A. *The Crimes against Humanity Committed by the Mexican Federal Police*

[37] The applicant did not contest that the Mexican Federal Police engaged in crimes against humanity, including abuse of detainees and "disappearances". However, it is helpful to this analysis to set out the RAD's finding on this issue:

> Federal Police committed crimes against humanity
>
> [28] The Minister says the Mexican Federal Police committed the crimes against humanity of extrajudicial killings, enforced disappearances, violations related to the deprivation of liberty, torture, and other forms of cruel, inhuman, or degrading treatment. They give examples of such crimes by the Federal Police in the record, including during times and in places where the Appellant served as a police officer.
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> [29] In his reply, the Appellant says he is not contesting that the Federal Police committed such crimes.
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> [30] Having considered the record before me and the submissions of the parties, I find there are serious reasons for considering the

> Federal Police committed the crimes against humanity of torture, murder, and enforced disappearance of persons.

[38] From the excerpts above, one can see that the RAD's initial finding concerning the Federal Police's crimes was made at a very high level of generality. The RAD's reasons did not identify a date range, specific places such as states, cities, or prisons where relevant crimes occurred, or any specific units or parts of the Federal Police that committed torture, murder or disappearances. The RAD did not describe the crimes, or what led up to them, with any additional factual detail – including to identify a pattern, strategy or common features concerning how the individuals were apprehended, detained and arrested before the crimes were committed. The RAD's reasons also did not mention initially that the crimes were associated with a "war" on organized crime (drug cartels) in Mexico.

[39] That is not to say that there was no evidentiary basis for a broad finding based on the country evidence the RAD relied on. The Minister's written submissions to the RAD contained significant detail, as did the country reports relied on by the RAD. I have reviewed them. For example, later in its reasons, the RAD provided the following excerpt from the conclusions in a December 2014 report by the United Nations Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment:

> **Torture and ill-treatment in the moments following detention and before detainees are brought before a judge are generalized in Mexico and occur in a context of impunity, the aim usually being to inflict punishment or to extract confessions or information.** There is evidence of the active participation of police and ministerial police forces from almost all jurisdictions and of the armed forces, but also of tolerance, indifference or complicity on the part of some doctors, public defenders, prosecutors and judges.
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> [Emphasis added by the RAD.]

[40] The dearth of detail related to the Federal Police's crimes to ground the RAD's assessment of complicity is material to the outcome of this application, given the RAD's subsequent reasoning on key issues in *Ezokola* and its findings about the nature of the applicant's conduct (including his conduct when he had knowledge of the crimes) that was alleged to contribute significantly to the Federal Police's crimes. While *Vavilov* mandates the Court to review the reasons in light of the record before the RAD, the Court cannot fill fundamental gaps in the RAD's reasoning: *Vavilov*, at para 96; *Canadian Pacific Railway Company v. Sauvé*, 2024 FCA 171, at para 16; *Saulteaux First Nation v. Canada (Crown-Indigenous Relations)*, 2024 FCA 100, at para 33; *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, [2021] 1 FCR 374, at para 45.

B. *Assessment of the applicant's position*

[41] The focus of the applicant's submissions was on whether the RAD reasonably concluded that his conduct constituted a significant contribution to the crimes of the Federal Police, and whether the RAD reasonably concluded that he made a knowing contribution to those crimes. The applicant advised that the voluntariness of his conduct was not at issue.

(1) The RAD's alleged misunderstanding of the RPD's decision

[42] The applicant first contended that the RAD erred by finding that the RPD failed to address whether he was complicit in the crimes of the Federal Police. The applicant submitted that the RPD considered the issue and concluded that there was insufficient evidence that he was complicit.

[43] After a careful reading of the RPD's decision, I conclude that the RAD did not err fundamentally in finding that the RPD had not considered all aspects of the legal test for complicity. However, it was an overstatement for the RAD to find that that the RPD "did not apply the test" from *Ezokola* and was "silent" as to the applicant's complicity in the crimes. The RPD identified and correctly set out the legal test for complicity in *Ezokola*. The RPD concluded that there was "insufficient credible evidence to establish that there are serious reasons for considering that the [applicant] has made a knowing, significant, and voluntary contribution to crimes against humanity". The RPD also found that there was evidence that police in Mexico are engaged in the abuse of detainees, the torture and disappearance of detainees, and the routine disregard for the rights of accused. However, the RPD found that evidence did not establish that all police officers in Mexico had knowingly, voluntarily and significantly contributed to such actions, and the fact that certain members of the police had engaged in crimes against humanity was "insufficient to conclude that there are serious reasons for considering that the [applicant was] complicit in crimes against humanity". It appears that the RPD appreciated, considered and applied at least some of the critical components of the test from *Ezokola*.

[44] At two key moments, the RPD's analysis of the circumstances referred to whether the applicant was "involved in committing crimes against humanity", or "committed or participated in a crime against humanity". Depending on the scope of the phrase "involved in", these findings could be read to leave open the possibility that the applicant contributed to the crimes, short of direct personal involvement, commission or participation, but more than by passive acquiescence or mere association. That could have been the basis on which the RAD identified the issue and sought written submissions from the applicant and the Minister. The applicant does not allege

that the RAD did not have the ability to do so, only that it erred in its understanding of the RPD's decision. In the circumstances, I do not find that the RAD's understanding constituted a independent reviewable error warranting this Court's intervention.

[45] The applicant's submissions to the Court on the RPD's finding of insufficient evidence led to additional submissions concerning the RAD's treatment of the evidence, particularly on the link between the applicant's conduct and the crimes against humanity, and on significant contribution and on knowing contribution.

(2) Substantial Contribution and the link between the applicant's conduct and the crimes of the Federal Police

[46] The applicant submitted that the onus was on the Minister to show a nexus or link between the applicant's conduct that was alleged to have contributed to an organization's crimes, and the crimes committed by the organization, based on clear and non-speculative evidence. The applicant submitted that no link existed in this case, because he was a low-ranking Corporal in the force for almost all of time he worked for the Federal Police and there was no evidence that he personally engaged in any crimes. Rather, as the RAD concluded, the applicant only carried out legitimate law enforcement activities and was part of a police force that the RAD concluded was not an organization with a limited and brutal purpose.

[47] According to the applicant, the RAD failed to carefully assess the necessary nexus or link and whether his contribution had a significant impact on the crime, contrary to the requirements of *Ezokola*, at paragraph 94. The applicant referred to his testimony about his security patrols, involvement in counter-narcotics operations, and his training. He had only made four arrests in

his career with the Federal Police and testified that he did not witness any torture and had no knowledge of human rights violations by the units with which he worked. It was on this basis that the RPD concluded that he was not complicit in the Federal Police's crimes. The applicant maintained that his legitimate conduct in locations where one hundred, and more than four hundred officers, were stationed could not constitute a "significant" contribution because if that were the case, then all of the other hundreds of officers would also have made a significant contribution which could not be justified if the RAD properly understood and applied *Ezokola*.

[48] I agree with the respondent that, in some respects, some of the applicant's submissions concerned the merits of the significant contribution issue. The Court is only concerned with reviewable errors, applying *Vavilov* principles. However, in this case, I have material concerns about the RAD's reasoning process, specifically whether the RAD's findings on substantial contribution are justified by the evidence used in its reasoning.

[49] The applicant's arguments related to the absence of evidence of any link or nexus between his conduct and the crimes against humanity committed by the Federal Police. According to the RAD, the applicant's duties "furthered the commission" of the crimes because of the timing of the crimes against humanity. The RAD's decision found that the torture most often occurred immediately after arrests and detentions were made and before the persons were handed over to prosecutors. The RAD found this contribution occurred even if the arrests and detentions were legitimate police or law enforcement work. According to the RAD, the applicant's conduct contributed to the "chain of events that enabled the crimes against humanity to happen" and "facilitate[d] arrests and detentions".

[50] *Ezokola* required the RAD to carry out a careful and individualized assessment of a person's actual contribution to the crimes or criminal purpose of the organization on the facts of each case, based on the individual's conduct and role in that organization: *Ezokola*, at paras 88, 91, 94, 100; *Singh*, at paras 37, 44, 49, 56, 75-76; *Alamri*, at paras 40, 43, 48, 49-54, 57-59. Failure to do so is a reviewable error: *Canada (Citizenship and Immigration) v. Badriyah,* 2016 FC 1002, at paras 28-29, 31-32.

[51] This Court's cases show that a decision maker assessing complicity must examine the facts to determine the individual's actual significant contribution to an organization's systemic or persistent crimes: in addition to *Singh* and *Alamri*, see *Ahuday v. Canada (Citizenship and Immigration),* 2025 FC 39, at paras 40, 42, 46; *Memon v. Canada (Citizenship and Immigration),* 2024 FC 2015, at paras 58-63; *Eraso Agudelo v. Canada (Citizenship and Immigration),* 2023 FC 1342, at paras 30, 34, 36-39; *Firooznam v. Canada (Citizenship and Immigration),* 2023 FC 571, at paras 22, 54-58; *Eriator v. Canada (Citizenship and Immigration),* 2022 FC 1154, at paras 30-34; *Rutayisire v. Canada (Citizenship and Immigration),* 2021 FC 970, at para 48; *Ali v. Canada (Public Safety and Emergency Preparedness),* 2021 FC 698, at para 56; *Talpur v. Canada (Citizenship and Immigration),* 2016 FC 822, at paras 36-40; *Shalabi v. Canada (Public Safety and Emergency Preparedness),* 2016 FC 961, at paras 48-51.

[52] To support the significant contribution of the applicant's conduct, the RAD's decision referred to country evidence about the generalized nature of the torture and ill-treatment following detention and to three examples of incidents, two in 2010 and one in 2011, that occurred in places where the applicant was stationed.

[53] The country evidence supported the persistent use of torture and ill-treatment by law enforcement in Mexico at the relevant times. However, the RAD's decision did not refer to any country evidence suggesting a pattern in the Federal Police's crimes involving the use of (perimeter) security in the "chain of events" that enabled arrests and detentions that led to torture, murder or disappearances. Neither the RAD nor the respondent referred to the applicant's testimony nor anything in the country evidence that explained its systematic or regular use during law enforcement in Mexico (legitimate or criminal).

[54] The three examples identified and relied upon in the RAD's reasons to support its conclusion on significant contribution did not support a connection between the applicant's conduct and the crimes by the Federal Police. Two incidents occurred in Cuidad Juarez. In one, the RAD stated that the Federal Police pulled over a man driving with his family. There is no suggestion that the applicant was personally involved in any way in the events, or that the incident involved any officers providing "perimeter security" or security that led to an arrest or detention. The second incident involved the arrest of five men by the Federal Police. They were handcuffed, forced into a police vehicle and taken to a federal police command centre where they were repeatedly beaten, kicked and threatened to elicit a confession to involvement in a bomb explosion. There is no suggestion that the applicant was involved in any way in the events of this incident and there is nothing in the report to support an inference that there were officers providing (perimeter) security at the time of the arrests. The RAD's third example occurred in Monterrey in 2011, where the applicant was stationed for part of the year. The RAD's reasons did not identify when the incident occurred during 2011, and the report only referred to 2011. During three interactions, Federal Police twice extorted a taxi driver at the roadside and on a

third occasion, physically abused him after taking him to a police station. Again, there is no suggestion that the applicant was personally involved in any way in the events. The reports do not refer to the use of (perimeter) security to facilitate the arrest or detention.

[55] The RAD's reasoning relied on these three examples to support its finding about the timing of the Federal Police's crimes. However, I am unable to see how these three incidents rationally supported the RAD's finding that the applicant's conduct in providing (perimeter) security "furthered" the Federal Police's crimes or contributed to a chain of events that led to them, or a conclusion that the applicant's conduct significantly contributed to the crimes by the Federal Police.

[56] The RAD found that the three crimes occurred where the applicant was "stationed" and recognized that he was involved in legitimate police work. Merely being stationed in the same city in which crimes occurred, without more, does not reasonably support a significant contribution to the crimes for the purposes of complicity: see e.g., *Eriator*, at paras 31-32.

[57] While the respondent submitted that the Minister only needed to show a contribution that was more than "infinitesimal", I do not agree. The onus on the Minister was to show a substantial (as well as knowing and voluntary) contribution by this applicant to the crimes of the Federal Police.

[58] For these reasons, I conclude that the RAD's decision contains a chain of analysis that is not rationally or sufficiently justified by the evidence in the record, which undermines the

reasonableness of its findings on the issue of substantial contribution: *Vavilov*, at paras 85, 87, 96, 103, 126.

(3) Knowing Contribution

[59] On knowing contribution, the applicant submitted that there was no evidence that he had the requisite knowledge that his conduct in making a small number of arrests and providing (perimeter) security would assist in the furtherance of the Federal Police's crimes.

[60] The Supreme Court stated in *Ezokola*:

> [89] To be complicit in crimes committed by the government, the official must be aware of the government's crime or criminal purpose and aware that his or her *conduct* will assist in the furtherance of the crime or criminal purpose.
>
> [Original emphasis.]

[61] The RAD found that there were serious reasons for considering the applicant had knowledge of the Federal Police's crimes "by mid-2011 at the latest". He continued in the organization for more than a year after acquiring knowledge of the crimes and participated in at least one arrest during that period, in November 2011.

[62] However, the RAD's reasons made no express finding that the applicant was aware that his conduct would assist in the furtherance of the Federal Police's crimes, as required by *Ezokola*. At the hearing, the respondent submitted that it was "implicit", i.e., the RAD must have concluded that applicant was aware that his conduct was assisting in the furtherance of the crimes.

[63] I do not agree. In my view, the absence of an express finding and any supporting analysis for an implied finding constituted a reviewable error. The RAD's reasoning did not support a finding on this necessary element related to knowledge. First, the fact that the applicant remained in his position for a year after acquiring knowledge is not, in itself, sufficient, to find a culpable contribution for complicity: *Ezokola*, at para 82. Rather, he must have engaged in conduct while having the requisite knowledge and must have been aware that the conduct would assist to further the crimes at issue.

[64] Second, the single arrest in November 2011 relied upon by the RAD did not support the necessary finding on knowledge. The arrest involved a "major criminal". The applicant was one of four officers who arrested the man. The applicant provided "security" for the arresting police (the applicant testified it was perimeter security, at a distance, and was cross-examined about whether that was accurate; the RAD did not make a finding on that particular point). According to the applicant's testimony, the man fell and hit his lip while being subdued and drugs were found in his vehicle. He was handed over to local police after the arrest. The RAD's reasons did not suggest, nor did the respondent refer to any underlying testimony or the reports of the events in the record to show, that the man was the victim of a crime against humanity. This incident is therefore not an example of the applicant personally, or anyone, making an arrest or providing perimeter security that led to a crime against humanity by the Federal Police.

[65] What remains is the general finding that the applicant carried out (legitimate) duties for the Federal Police for a year while stationed in the large cities of Cuidad Juarez and Monterrey where the RAD found the Federal Police engaged in crimes. It is not disputed that the applicant

was a low-ranking Cabo throughout these periods and there is no suggestion that he had a supervisory role or control over any other Federal Police officers, or any role in maintaining watch or security at a police station while torture, murder or other ill-treatment occurred: see *Ezokola*, at para 82.

[66] Accordingly, the cited evidence and the reasoning provided by the RAD did not adequately support a finding that the applicant engaged in conduct in 2011 with the requisite knowledge to constitute "culpable conduct" or a "guilty act" that contributed to the Federal Police's crimes: *Ezokola*, at paras 80, 82, 89.

[67] Without additional analysis on this point, supported by evidence, the RAD's decision falters materially and does not comply with the requirements of *Ezokola*.

C. *Were the errors in the RAD's reasoning sufficiently important to set aside its decision?*

[68] The reasoning errors identified above relate to significant and knowing conduct, two issues of central importance to a reasonable outcome in this case. A key objective of the complicity analysis is to distinguish between persons whose actual conduct contributed significantly and knowingly to an organization's crimes or criminal purpose, and persons who are not culpable because their conduct did not do so. The RAD's reasoning in this case does not support the former. As a result, I do not have sufficient confidence in the analysis to find that the outcome was justified by the evidence and reasoning provided in the RAD's decision.

[69] As a result, I conclude that the RAD's decision must be set aside as unreasonable.

[70] I observe that these concerns with the RAD's reasoning may have been, in part, a function of several additional related elements: the absence of a deeper dive into the available evidence related to the Federal Police's crimes in the RAD's initial description of them; the RAD's focus solely on the Federal Police's crimes, rather than its criminal purpose; an apparently thin evidentiary record related to the applicant's actual activities, partially attributable to the applicant's own testimony; and perhaps the RAD's decision not to rely on or engage with the RPD's findings about the applicant's testimony (that he was "evasive" and "intentionally obtuse" in testifying his knowledge of abuses committed by the Mexican Federal Police).

[71] On redetermination, a different member of the RAD will decide how to proceed with the appeal against the RPD's decision.

IV. **Conclusion**

[72] For these reasons, the application is allowed. The appeal from the RPD's decision will be remitted for redetermination by another member of the RAD.

[73] Neither party proposed a question to certify for appeal and none arises in the circumstances of this application.

JUDGMENT in IMM-4168-24

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. The decision of the Refugee Appeal Division dated February 13, 2024, is set aside. The appeal from the Refugee Protection Division's decision dated January 5, 2024, is returned to the Refugee Appeal Division for redetermination by another member.
3. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4168-24
STYLE OF CAUSE:	CARLOS ACOSTA HERNANDEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 17, 2024
CONFIDENTIAL JUDGMENT AND REASONS:	A.D. LITTLE J.
DATED:	JULY 4, 2025

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