

Federal Court



Cour fédérale

Date: 20221129

Docket: IMM-2326-21

Citation: 2022 FC 1641

Ottawa, Ontario, November 29, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**NELSON ARAIZA CAMPOS, MARIA
GUADALUPE ARAIZA CAMPOS, HUGO
ARAIZA ACOSTA, MARIA ANGELINA
CAMPOS CERVANTES, and DANIEL
ARAIZA MACIAS, JUAN ARAIZA
MACIAS, KEIDEN ARAIZA MACIAS and
DOMINIC ARAIZA CAMPOS (by their
Litigation Guardian NELSON ARAIZA
CAMPOS)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The dismissal of the Applicants' claims for protection because they had an internal flight alternative [IFA] in Merida, Mexico, fails to meet the standard of reasonableness and will be set aside.

Background

[2] The Applicants are nationals of Mexico and an extended family consisting of the father, Nelson Araiza Campos, his minor sons Keiden Samuel Araiza Macias, Juan Octavio Araiza Macias and Daniel Alejandro Araiza Macias, his minor brother Dominic De Jesus Araiza Campos, his sister Maria Guadalupe Araiza Campos, and his parents Maria Angelina Campos Cervantes and Hugo Araiza Acosta.

[3] They arrived in Canada in two tranches. In July 2018, Nelson, his wife, their sons and Maria Guadalupe arrived in Canada and requested asylum. Nelson's wife was ineligible to make a refugee claim, as she had been included in her parent's refugee claim as a child. In March 2019, Nelson's parents and his minor brother arrived in Canada and requested asylum. The agent of persecution is the *Cártel de Jalisco Nueva Generación* [CJNG].

[4] The Refugee Protection Division [RPD] found that their claims, other than that of Maria Guadalupe, did not fall under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, as Nelson, who had been targeted by the CJNG, was not targeted for reasons of race, ethnicity, nationality, religion, political opinion or membership in a particular social group. It found that Maria Guadalupe's claim fell under section 96 because she had been sexually assaulted by members of the CJNG, and therefore could claim persecution because of her gender.

[5] The RPD found the Applicants credible and held that the determinative issue leading it to dismiss the claims was the existence of a viable IFA in Merida, Mexico.

[6] The Refugee Appeal Division [RAD] adopted all of the RPD's material findings of fact although it did not support the finding of the RPD regarding the Applicants' changing their names, which is discussed below. It specifically upheld the RPD finding that the Applicants had a viable IFA in Merida, Mexico.

The Law Relating to an IFA finding

[7] If safety or protection can be found within a claimant's national territory and it is not unreasonable to require the claimant to relocate there, then the claimant has an IFA and does not require international protection.

[8] The question of whether a claimant can find safety in another part of the country is a separate and distinct question from whether it is reasonable to require the claimant to relocate there. If there is no part of the claimant's own country that provides safety, then there is no IFA and the enquiry is ended. If it is found that there is a location within the claimant's country that provides safety, then the second question must be addressed: Is it reasonable in all of the circumstances for the claimant to relocate to that safe area? In order for a decision-maker to find that a claimant has a viable IFA, it must find both that the claimant would not be at risk there and that it is not unreasonable for the claimant to relocate there.

[9] To be clear, it is not a requirement that the decision-maker be satisfied that the claimant will be safe in the IFA. The test, as set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at p 710, is whether the decision-maker is “satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.”

[10] The burden is on the claimant to establish on the balance of probabilities that there is a serious possibility of being persecuted in the proposed IFA location, or that it is unreasonable in all the circumstances for the claimant to relocate there: see *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 13.

[11] In *Nimako v Canada (Minister of Citizenship and Immigration)*, 2013 FC 540 at para 7, this Court held that when assessing whether there is a serious possibility that a claimant will be persecuted in the proposed IFA, it is appropriate to consider whether the agent of persecution “has the probable means and motivation to do so.” If the agent of persecution has both the means and the motivation, then there is a serious possibility that the claimant will be persecuted in the proposed IFA, and it is not viable.

[12] In order to make the proper analysis of the proposed IFA, one must analyse the facts relevant to the claimant, the agent of persecution, and the country of origin.

Facts Relating to the Claimants

[13] The following are the facts relating to the Applicants as found by the RPD and affirmed by the RAD.

[14] In early April of 2018, Nelson was approached by some men he did not know, asking if he wanted to purchase drugs. He declined. The men offered him a “job” and mentioned some former coworkers of his who recommended him for his skills. He knew those friends to be involved with the CJNG.

[15] The men approached Nelson again shortly thereafter and asked if he had thought about their offer. Nelson declined and the men became angry and grabbed him by the neck, prompting him to say that he would think about their offer.

[16] Several days later, while once again waiting for his transportation to work, the same men approached Nelson. When he declined their offer, they assaulted him.

[17] In the middle of May 2018, because of these encounters, Nelson, his common law spouse, and their children went to stay with his sister, Maria Guadalupe, for a month.

[18] After they returned to their family home, a strange man asked Nelson’s son Keiden at a store where his father was and he said “with Lupita” (a nickname for Guadalupe). When his mother Leslie tried to intervene, the man threatened her, said that they now knew where to find Nelson, and that they would kill her and the kids if they did not co-operate with the cartel.

[19] Because of these threats, Nelson's spouse and children went to visit her mother in Juarez for a short time, returning to Maria Guadalupe's house.

[20] In June of 2018, Maria Guadalupe was abducted by two men in a black vehicle. They took her to an isolated area outside of the town, beat her, and sexually assaulted her. They told her that they were doing this to her because she helped Nelson. They told her that they would continue to go after the family if they did not work for the cartel. Nelson states:

They also told her that if I didn't cooperate with them then they would keep hurting us. Specifically, they noted that they would rape and kill her and that they would go after our whole family - making our lives living hells because no one makes fun of the Jalisco Cartel.

[21] Maria Guadalupe stayed with her parents while Nelson and his family stayed at a hotel. She filed a denunciation with the authorities but did not feel that she was taken seriously. Within a month, they left for Canada. They all arrived on July 26, 2018, and filed for refugee protection on September 7, 2019.

[22] After they left Mexico, Nelson and Maria Guadalupe's father Hugo started having problems with the CJNG. Beginning in late July 2018, while leaving home to go to work in the early hours of the morning, Hugo noticed a man outside his house. After seeing this man at the same time in shadows three days in a row, Hugo decided to change his route to get closer to the man, but he fled to the fields before he could see him.

[23] On August 7, 2018, Hugo was driving his dairy truck and some people he did not know flagged him to stop. This was not unusual as this was how many of his sales occur. The men

began asking him about his son Nelson. They were cursing and grabbed him by the neck, and threatened his family. A co-worker who happened to be driving by stopped to ensure Hugo was okay and the men left.

[24] Two days later Hugo saw the men again while out driving around and they signalled him to stop. They swore at Hugo and told him to tell Nelson to come back. Hugo says they said “they were going to fuck me up and that they were going to fuck up my wife and my son Dominic.” The men said they would chop them into pieces and then punched Hugo in the stomach and hit him on the head with a gun.

[25] Hugo, his wife and son went to live with a friend in Aguascalientes, an hour and a half away, and remained there for two months without issue.

[26] In October 2018, while Hugo’s wife was walking to the store with Dominic, a man in a black car tried to pull Dominic into the vehicle. A pedestrian helped him and the abduction attempt was unsuccessful. The man in the vehicle told Dominic that they were being watched.

[27] That day the family went to stay with Hugo's sister in Tepic, Nayarit from October until February 2019, when they came to Canada and claimed refugee protection in March of 2019.

[28] In addition to these facts, the RAD admitted new evidence - a letter from Nelson’s aunt [the Aunt] dated March 13, 2020, that established additional facts after the extended family arrived in Canada.

[29] The Aunt owns the house in which Nelson and members of his extended family had stayed for a time. After they left, she went to the house to find that it had been broken into. Neighbours said they had seen people come out of a truck. After she cleaned up the mess, she rented the house. The renters left after five months. During their time at the house, the Aunt writes, “they were constantly calling me to tell me that regularly, men were coming to the house asking for my nephews and if they knew anything about them.” A neighbour informed the Aunt that a month prior to the date of the letter (i.e. mid February 2020) that some men had entered her house and broken the windows. Upon inspection, the house was found to have broken windows and “the initials on the wall CJNG.”

Facts Relating to the Agent of Persecution and Country of Origin

[30] The RPD found that the CJNG are based in the state of Jalisco. The RAD further found:

In 2015, the Mexican government designated the CJNG as one of the most dangerous in the country and one with a national reach. CJNG is known to have a presence in at least 22 of the 32 Mexican states. [emphasis added]

[31] The documents before the RPD and RAD illustrate the nature and scope of the operations of the CJNG. The following are excerpts from the Applicants’ memorandum that summarizes information in the National Documentation Package. These statements reflect the relevant descriptions found in the documents - some are duplicative of those noted by the RPD:

- The CJNG is one of the nine main crime groups in Mexico.
- It is considered “one of the most dangerous cartels in the country”. It has “been able to pursue an aggressive growth strategy”.
- The CJNG has “extended its geographic reach and maintained its own cohesion” while exploiting the splintering of other groups. It is considered “an extremely

powerful cartel, with a presence in 27 of 32 Mexican states in 2020. Its reputation for extreme and intimidating violence continues”.

- “Recently, some analysts have identified the CJNG as a cartel with a national reach like the Sinaloa...”.
- The CJNG is now “Mexico’s foremost criminal threat and appears set to continue expanding”.
- “The group has expanded rapidly, and the CJNG now has some sort of presence in every part of Mexico, except Sinaloa and the Golden Triangle of heroin production.” It “does not necessarily control every area it is present in”.
- Some smaller gangs have also allied themselves with the CJNG.

[emphasis added and sources omitted]

[32] Also material are the facts related to the interactions between the CJNG and the police authorities, which the Applicants take from the National Documentation Package, and summarize in their memorandum as follows:

- “police officers collude with organized crime”, and there are reports that police have “handed ... over to the CJNG” those wanted by them.
- Corruption within the armed forces and federal police “underpins state collusion with criminals.” Police corruption remains a major problem in Mexico.
- Organized crime “has deeply permeated police institutions”.
- Local police are “particularly vulnerable to corruption and infiltration from organized crime groups”.

[emphasis added]

The RPD Decision

[33] The RPD found the Applicants’ allegations credible; including their evidence that they had been threatened and assaulted by the CJNG on multiple occasions and that Maria Guadalupe was abducted and raped.

[34] Considering the first prong of the IFA test, the RPD found that the CJNG lacked the ability and motivation to locate the Applicants in Merida in the Yucatan state. It found CJNG was not active in Merida. Referring to Yucatan state, the RPD found that the “CJNG cartel does not have a known presence in these states.” It further found that the CJNG are not present in Merida and did not have alliances there that could assist the cartel in locating the claimants.

[35] The RPD found the Applicants had not established that the CJNG would be able to track them in Merida. The RPD found that their testimony regarding being located if they worked or registered for school or healthcare was speculative.

[36] The RPD concluded that legally changing their last names was a “reasonable precaution” they could take that would allow them to escape detection by the CJNG.

[37] Based on insufficient evidence that the CJNG continued to search for the Applicants after they fled Mexico, the RPD found that the Applicants failed to establish that the cartel was motivated to locate them.

The RAD Decision

[38] The RAD conducted an independent assessment of the evidence and concurred that the Applicants were credible.

[39] The RAD found that the RPD erred by requiring the Applicants to change their names. In this regard, the RAD stated:

[26] I agree that the RPD erred by asking about a name change for the Appellants without providing them with advance notice of this line of enquiry or an opportunity to make submissions on this issue. I find that the specificity of this issue would have taken the Appellants by surprise and, for that reason, was unfair. There was also no evidence upon which the RPD could have reached a conclusion that a name change is an example of how the family could find safety in Merida. I find that the RPD erred in making this suggestion on the record before it. However, the Appellants have now provided new evidence in the form of a legal opinion about the mechanics and impacts of legal name changes and Mr. Araiza Campos' affidavit. I find that I can correct this error by completing my independent analysis.

[27] Based on the legal opinion, I find, on a balance of probabilities, that a name change in Mexico would not provide safety for the Appellants. The legal opinion indicates that a name change is done in the public domain and changes of name are recorded in a publicly accessible database as well as being noted on the original birth certificate.

[40] The RAD found insufficient evidence that the CJNG had the ability to track the Applicants and no evidence that a large debt or personnel vendetta could motivate them to attack outside their area.

[41] The RAD recognized that there is documentary evidence that the CJNG has a presence in every part of Mexico but also noted that "the CJNG does not necessarily control every area it is present in." The RAD also referenced the Stratfor map that indicates "that the CJNG is not active in the Merida area" [emphasis added].

[42] The RAD found that the CJNG is one of "the most dangerous cartels in Mexico with a well-established and expansive bribery and corruption network." However, it found that "it is not active in the Merida area and is warring with the groups who have a presence in the Yucatan"

[emphasis added]. The RAD found insufficient evidence to establish the cartel was still motivated to find the Applicants.

[43] The RAD considered the new evidence of the Aunt but stated that the letter “has limited information about the period when her rental property was broken into and vandalized.”

[44] The RAD concluded that the familial connection creates Maria Guadalupe’s “potential for future risk – the cartel hurt Maria to get to Nelson.”

[45] The RAD concluded that there is insufficient evidence that CJNG continues to be motivated to find the Applicants “more than 2 years later.”

Issue

[46] The sole issue in this application is whether the RAD decision is reasonable.

[47] Before addressing the reasonableness of the IFA finding, I first wish to comment on the suggestion of the RPD that a name change is a “reasonable precaution” that these Applicants could have taken.

Change of Name

[48] At the RPD, it was the Applicants’ position that requiring a name change was akin to requiring them to live in hiding. The RPD states that a name change is a reasonable precaution

to be taken: “Prior decisions of the RAD have likewise found certain reasonable precautions to be distinct from requiring a claimant to live in hiding in an IFA location.” It cites as support and authority for that proposition *X (Re)*, 2017 CanLII 61312 (CA IRB). The reference in that decision is to claimants being circumspect about their location:

The RAD finds that the RPD’s recommendation that the Appellant limit those to whom she provides information about her whereabouts is no doubt what the Appellant and her husband have been doing since fleeing from the agents of persecution in June 2016. The RAD finds this to be an obvious precaution that does not necessitate the Appellants living in hiding.

[49] There is a significant difference between being circumspect in providing information about one’s whereabouts and changing one’s name.

[50] Juliet may be correct that Romeo’s family name should not have stood in the way of their love (“What’s in a name? That which we call a rose by any other name would smell as sweet.”). However, a person's name connects to their identity, family history, and individuality. In my view, it is not reasonable to suggest that claimants seeking protection ought to change their names to ensure safety in a proposed IFA. In my view, the suggestion of a name change being a reasonable precaution is akin to requiring the claimant to hide their personal identity. I hope that such a suggestion will never again be put to a claimant.

[51] The Applicants submit that the RAD’s finding at paragraph 27 above suggesting that the name change would not ensure their safety implies that the RAD must have found that they are at risk in the IFA. I do not agree.

[52] In my view, the RAD is saying nothing more than that a name change provides no protection anywhere. In fact, on the record, it may increase risk because the change would be in the public domain. If the agent of persecution has the means and motivation to persecute a person, changing one's name only makes locating them easier. If there are little means or motivation in the IFA, a name change provides no increased protection.

Viability of the IFA

1. Means of the CJNG to harm the Applicants

[53] The RAD found that the CJNG did not have the means to harm the Applicants because “there is insufficient evidence to establish that the CJNG have geographic reach to find the Appellants in the proposed IFA of Merida.”

[54] The RAD bases that conclusion on the following:

- a. “The Stratfor map indicates that the CJNG is not active in the Merida areas”;
- b. “there are alliances between the CJNG along the Gulf Coast but ... these alliances do not extend to the Yucatan (Merida)”;
- c. Although there is a document that indicates that “the CJNG has a presence in every part of Mexico [it] goes on to indicate that ‘the CJNG does not necessarily control every area it is present in’ and mentions several areas that it does control but Yucatan is not on that list”;
- d. “The objective evidence indicates that the CJNG are [one] of the most dangerous cartels in Mexico with a well-established and expansive bribery and corruption

networks ... it also establishes that the CJNG is not active in the Merida area and is warring with the groups that have a presence in the Yucatan”; and

e. “Yucatan has consistently been one of the most peaceful areas of Mexico”.

[55] The RAD engaged in a selective review of the objective evidence and mischaracterized some of it. Specifically, the RAD confused and conflated the terms “influence,” “activity,” “presence,” and “control” as found in the objective evidence.

[56] The Stratfor map shows areas of “influence” of the cartels, not areas of where a cartel is “active” as the RAD states. Contrary to the RAD’s finding, the map shows alliances between the CJNG and other cartels along the Gulf Coast including the Yucatan, but not in Merida.

[57] The RAD fails to provide any chain of reasoning as to why “control” of the Merida area would be necessary to establish the means to harm the Applicants given that the RAD found the CJNG to have a presence in every part of Mexico.

[58] The RAD fails to provide any chain of reasoning to support why the well-established and expansive bribery and corruption networks of the CJNG could not be used to find the Applicants in Merida. In particular, it does not refer to the documentary evidence that corrupt local police often assist cartels in locating persons of interest and, on occasion, step into the shoes of the cartel in killing them.

[59] Lastly, the RAD fails to explain the relevance the Yucatan being peaceful has to the means of the CJNG finding and harming a few specific individuals.

[60] The RAD does not address a submission made by the Applicants regarding the RPD decision that has equal application to the RAD's analysis. Specifically, they noted that the CJNG was able to locate Maria Guadalupe, who was not living in the same city, after learning merely her nickname. This is evidence that the cartel has the means to track down the Applicants.

[61] In my view, this finding is not “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).

2. Motivation of the CJNG to harm the Applicants

[62] The RAD finds that “there is evidence that the cartel may have been motivated to find the Applicants.” However, it also observes that “[t]here is no information about the time that a cartel would continue to look for a person, which is undoubtedly a situation specific question.” I agree with both findings.

[63] The RAD looks to the evidence of efforts to find the Applicants as indicative of motivation. At paragraph 24 of its decision, it states:

I have reviewed the evidence about the cartel's efforts to find Nelson after he refused their recruitment. Between the time that he was beaten, his nephew Keiden was contacted at a store in La

Piedrera; Maria was kidnapped and sexually assaulted; and Hugo saw people watching his home. I have also noted the inquiries and incidents which followed Nelson's departure from Mexico: the assault and intimidation of Hugo in August 2018 and the incident in October 2018 where a man tried to abduct Dominic in town.

[64] All of these incidents occurred in the six-month period between April and October 2018 to Nelson and four of his family members. Moreover, the RAD accepted that the CJNG broke into the aunt's house after Nelson and his family left Mexico in July/August 2018, and that the fears of the new tenants of strange men lurking about between August 2018 and November 2019 were the CJNG looking for Nelson.

[65] This strongly suggests that there was a determination on the part of the CJNG to recruit Nelson and punish him and his family for refusing. The RAD fails to make this connection. The strength of the motivation to harm a person established by incidents personal to a claimant and to his family when they are in the country of origin, is indicative of the length of time that motivation will continue.

[66] The RAD fails to consider the evidence in the record of police corruption and the fact that they often work with the CJNG and others. Specifically, it makes no mention of the statement in the National Documentation Package that "[t]here have been reports that police have 'handed ... over to the CJNG' those wanted by them."

[67] The RAD also fails to reference evidence in the National Documentation Package that the CJNG often retaliates against those such as Nelson, Maria Guadalupe, and Nelson's wife who have filed police reports against them:

The Assistant Professor stated that making a complaint to a state authority against a gang would lead to pressure to drop the complaint and “almost certainly” lead to death if the individual did not comply.

[68] While the RAD is presumed to have considered all of the documents before it, the evidence not specifically addressed by the RAD is very material to its conclusion and ought to have been specifically referenced and dealt with.

[69] As to the suggestion that “there is insufficient evidence to show that the CJNG would now have the motivation to find the Appellants more than 2 years later” the Applicants point to the *obiter* statement of Justice Little in *Rivera Benavides v Canada (Minister of Citizenship and Immigration)*, 2020 FC 810 [*Rivera Benavides*] at paragraphs 74 and 75:

Third, the RAD's decision at paragraph 21 found that the newly admitted evidence showed the motivation and ability of the cartel to find the applicants “up to August 2018” only. The RAD relied on the absence of any evidence that the agents of persecution had pursued the applicants “in the last year”, i.e., in the year leading up to the RAD's decision in September 2019. The applicants submit that only the period between the last event in August 2018 and the filing of their Application Record in December 2018 should be considered a period in which the cartel members made no known inquiries for the applicants. On that submission, the remaining nine or ten months from their filing to the RAD's decision should not form the basis of any inference that the cartel had become disinterested in finding them.

The applicants have a point, but it does not need to be resolved in this case. The argument is more attractive when coupled with the evidence. It is of course factually correct that there was “no evidence” that the Gulf Cartel members have been looking for the applicants in the year leading up to the RAD's decision. But equally, there was no evidence that the cartel had lost interest -- the evidence showed threatening conduct over more than a year between late May 2017 and August 2018, including specific threats of sexual assault and death, evidence of financial and non-financial motivation, and a geographically diverse effort to locate the

applicants within Mexico. The respondent did not identify a reason in the evidence why the cartel had stopped looking or lost interest.

[70] Like Justice Little, I do not need to resolve the issue of whether the failure to file evidence showing a continued interest from the agent of persecution after the filing of the Appeal Record is material. However, I note that it is less likely that such evidence will be readily available once the claimants have fled, and even more so when it is the extended family who have arrived in Canada.

[71] I agree with the Applicants that the observation of Justice Little has equal application to the facts before me. To paraphrase: it is of course factually correct that there was “no evidence” that the CJNG has been looking for the Applicants in the 10 months leading up to the RAD's decision. But equally, there was no evidence that the CJNG had lost interest -- the evidence showed threatening conduct over more than two years between April 2018 and February 2020, including physical assault, rape, threats of death, and a geographically diverse effort to locate the applicants within Mexico. The Respondent did not identify a reason in the evidence why the cartel had stopped looking or lost interest.

[72] Having found that the RAD failed to address materially relevant evidence and failed to properly analyze the evidence establishing a continuing motivation to pursue the Applicants, I find that its finding on the motivation of the CJNG is not justified in relation to the facts and is thus unreasonable.

[73] Neither party proposed a question for certification.

JUDGMENT in IMM-2326-21

THIS COURT'S JUDGMENT is that this application is allowed, the decision under review is set aside and the Applicants' appeal of the decision of the Refugee Protection Division is to be determined anew by a different member of the Refugee Appeal Division, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2326-21

STYLE OF CAUSE: NELSON ARAIZA CAMPOS, MARIA GUADALUPE ARAIZA CAMPOS, HUGO ARAIZA ACOSTA, MARIA ANGELINA CAMPOS CERVANTES, and DANIEL ARAIZA MACIAS, JUAN ARAIZA MACIAS, KEIDEN ARAIZA MACIAS and DOMINIC ARAIZA CAMPOS (by their Litigation Guardian NELSON ARAIZA CAMPOS) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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