

Federal Court



Cour fédérale

Date: 20221222

Docket: IMM-8890-21

Citation: 2022 FC 1790

Ottawa, Ontario, December 22, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**GUSTAVO MEDINA PANTOJA
BRENDA LIZZETTE MEDINA AVILES
TAMARA MEDINA MEDINA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Gustavo Medina Pantoja, his wife, Brenda Lizzette Medina Aviles, and their minor daughter, Tamara Medina Medina, are citizens of Mexico. They seek judicial review of a decision of the Refugee Appeal Division [RAD] dated November 16, 2021 [Decision] confirming the decision of the Refugee Protection Division [RPD] finding the Applicants are

neither Convention refugees nor persons in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The determinative issue for the RAD was the existence of a viable internal flight alternative [IFA] for the Applicants in the city of Campeche in Campeche state or Mérida in Yucatán state.

[3] For the following reasons, the application for judicial review is allowed.

II. Background

A. *Factual Context*

[4] For convenience and not out of disrespect, I will refer to each family member by their first names in these reasons. The background to the Applicants' claims for refugee protection is outlined in the narrative attached to Gustavo's Basis of Claim form and is summarized below.

[5] Gustavo claims that on or about March 27, 2019, he was confronted by two men who assaulted him and then stole his car.

[6] At the recommendation of a relative, Gustavo sought assistance from a lawyer who advised him that if he did not make a report, and the vehicle was used in a crime, he could be imprisoned. As a result, the lawyer filed a report on behalf of Gustavo with the prosecutor's office in Cuautla.

[7] After the report was filed, Gustavo started receiving threatening calls from various phone numbers. The callers threatened Gustavo and his family, stating that they were aware that he had filed a complaint, and that he would suffer the consequences.

[8] Gustavo changed his phone number; however, the threatening calls resumed a few days later. Gustavo informed his lawyer that he suspected there was an information leak in the prosecutor's office, as they had to update his phone number as part of the investigation – and this was the only way he could conceive of the callers being able to get his new number so quickly after changing it.

[9] Gustavo and his family subsequently moved to Mexico City to escape the harassment; however, the calls continued and escalated in terms of the threats and aggression.

[10] On his lawyer's advice, Gustavo attempted to file a complaint regarding the extortion at the district prosecutor's office in Cuernavaca in early July, 2019. As part of this process, Gustavo had to provide his updated contact information and address to the authorities. During his meeting with the district prosecutor, Gustavo was told not to trust his lawyer. The district prosecutor explained to Gustavo that his complaint could be extended to include the extortion allegations, but that he would first need to obtain a letter from the Public Ministry of Cuautla declaring itself unqualified to deal with his complaint.

[11] After failing to obtain the requested letter from the Public Ministry of Cuautla, Gustavo returned to the office of the district prosecutor on July 18, 2019 to plead his case. The district Prosecutor refused to do anything until he received the requested letter from Cuautla.

[12] Later that day, Gustavo received another threatening call. The caller said they knew where Gustavo was and described the house where he and his family were staying. The caller stated they had checked out his daughters, referring to them in a sexual way, and then added that “no one messes” with the Jalisco Nueva Generación Cartel [CJNG].

[13] Gustavo suspected that the district prosecutor’s office had leaked his contact information given that the caller was able to track him so quickly. The next day after receiving the latest threat, the Applicants fled Mexico for Canada by plane and claimed refugee protection upon arrival at the airport.

B. *The RPD Decision*

[14] Following a hearing, the RPD accepted the claim of Gustavo’s adult daughter (who is not an applicant in the present application) on the basis of her sexual orientation.

[15] The RPD found that the Applicants had not provided sufficient evidence to establish that the alleged perpetrators were receiving assistance from the prosecutor’s office to carry out their criminal acts. It otherwise had no significant credibility issues relating to the Applicants’ alleged problems in Mexico. The RPD was satisfied , on a balance of probabilities, that the Applicants were victims of criminality perpetrated by criminals operating in and around the area where they

lived. However, it refused their claims on the basis of viable IFAs in the city of Campeche or Mérida.

[16] The RPD found the Applicants provided insufficient evidence that the men who robbed Gustavo have continued to pursue them. The RPD further found the Applicants had not established their agents of persecution were linked to the CJNG, but even if they were, it was not satisfied that the agents of persecution had the means or motivation to locate them in the proposed IFAs.

[17] The RPD relied on evidence in the National Documentation Package [NDP] for Mexico indicating Campeche and Yucatán are among the safest states in Mexico and not subjected to elevated levels of cartel activity.

[18] The RPD also found the Applicants had not established it would be unreasonable for them to relocate to the proposed IFAs in their circumstances.

C. *The RAD Decision*

[19] In dismissing the Applicants' appeal, the RAD made a number of key findings.

[20] First, the RAD assessed the Applicants' claims under subsection 97(1) of the IRPA, because it found, like the RPD, that section 96 did not apply to the Applicants' claims, which were based on criminality.

[21] Second, the RAD found the Applicants will not be subject to a section 97 danger or risk in the proposed IFAs of Campeche or Mérida because:

- a) Gustavo did not see the perpetrators except for when they stole his car, and he does not know anything about them, other than their mentioning in the last phone call that they are members of the CJNG;
- b) Assuming the perpetrators to be CJNG members, the objective evidence does not support that the CJNG has a meaningful presence in either Campeche state or Yucatán state, and more specifically, the cities of Campeche and Mérida;
- c) The Applicants did not provide evidence to support their argument that the CJNG has developed strategic alliances with others to extend their influence beyond their areas of operation;
- d) The NDP report which refers to CJNG alliances in various states carries low weight; and
- e) Two NDP documents indicate that Yucatán and Campeche are among the safest states in Mexico.

[22] Third, the RAD concluded that, even if the CJNG had a meaningful presence in the proposed IFAs, there is a lack of evidence that they have the motivation to track the Applicants there for the following reasons:

- a) The Applicants provided insufficient evidence to support the likelihood that the CJNG would expend resources to monitor their return to Mexico, and to track and locate them in the proposed IFAs;

- b) While the Applicants assert that the CJNG wants revenge, they also filed a police report over 2.5 years prior to the RAD's Decision that did not result in any consequences to the Cartel. This action does not constitute a large debt or personal vendetta for which the NDP documents indicate the Cartel might monitor or track the Applicants;
- c) The objective evidence also indicates that cartels target those with high profiles such as government officials, political candidates and journalists, which is not the Applicants' profile;
- d) The RPD did not err in pointing out that the Applicants have the burden of establishing they would be unsafe in the proposed IFAs, and there was no evidence the perpetrators had pursued the Applicants after they left Mexico. The absence of such evidence does not warrant assuming the perpetrators were pursuing the Applicants after they left Mexico; and
- e) The Applicants did not provide sufficient evidence that the CJNG would have the capability to track them in the proposed IFAs. Their allegation that the authorities were leaking Gustavo's phone number to the alleged perpetrators is speculative and insufficient evidence that such activity would occur in the proposed IFAs.

[23] Fourth, regarding the second prong of the IFA test, the conditions in the proposed IFAs do not make them unreasonable in all the circumstances, including the Applicants' particular circumstances:

- a) Gustavo's fear of finding employment and housing in Campeche or Mérida due to the perpetrators does not render the IFAs unreasonable; and

- b) The Applicants will not have to live in hiding because the weight of the evidence does not support that the CJNG has the ability or motivation to track and pursue them in the proposed IFAs.

III. Analysis

[24] The determinative issue in this application is whether the RAD reasonably determined the Applicants' agents of persecution lack the means and motivation to locate them in the proposed IFAs.

[25] The applicable standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]; *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 9; *Lopez Gomez v Canada (Citizenship and Immigration)*, 2022 FC 1160 at para 22).

[26] The Applicants submit that the RAD's determinative finding that there was no evidence that the CJNG would have the means and motivation to find them in the IFA locations was unreasonable. According to the Applicants, every one of the key findings supporting this conclusion was flawed. While I do not agree entirely with the Applicants' submissions, I do agree that certain findings made by the RAD are not justified, as explained below.

[27] The RAD was not persuaded by the Applicants' argument that the CJNG has strategic alliances with the cartels that are present in Campeche state and Yucatán state because they had not provided evidence to support their position.

[28] In reaching this conclusion, the RAD assessed a report on organized crime in Mexico, NDP Item 7.2, indicating the CJNG only has reach in 27 out of 32 Mexican states. The RAD relied on a shaded map of areas of cartel influence in the report as dispositive of the report's contents and of the evidence in the more specific report on the CJNG, NDP Item 7.17.

[29] However, the RAD's analysis does not sufficiently engage with evidence in NDP Item 7.17 stating the CJNG is present to varying degrees in all states of Mexico. While this report describes the CJNG as having a permanent presence in 24 states, it also indicates the CJNG has a presence in all 32 Mexican states when accounting for alliances and small cells.

[30] The RAD does not appear to have taken into account statements in the Immigration Refugee Board's own Response to Information Request [RIR] report on the subject at Item 7.15 of the NDP. Under the heading "4.2 Ability of Cartels to Track People," the RIR report states that the CJNG "has developed "strategic alliances" with groups in other regions, including Los Zetas and Gulf Carter splinter groups along the Gulf Coast." These are precisely the groups shown to control the IFA states in the shaded map relied on by the RAD in NDP Item 7.2. Having relied on this map as conclusive evidence that other groups controlled the proposed IFA states, it was unreasonable for the RAD to then disregard the evidence of alliances with these same groups – and conclude the opposite.

[31] While the RAD was not bound to treat this evidence as dispositive, its failure to even acknowledge it in the reasons lacks the justification required by *Vavilov*.

[32] Moreover, the RAD states that only one of three sources for NDP Item 7.17 referred to the CJNG having strategic alliances in the IFA states. However, these are not the only three sources for the report itself, but merely the three sources referenced for one table in the report. The 42-page report, which relates specifically to the CJNG, synthesizes information from myriad sources. By way of example, with regard to Campeche State, one source for the report refers to an alliance between the CJNG and La Familia, which appears to contradict the RAD's conclusion that there was no evidence of an alliance in that state.

[33] Even looking at the table itself, the RAD appears to have misapprehended or selectively read the evidence. While the RAD suggests the phrase in NDP Item 7.17 "CJNG is disputing leadership with rivals or has an alliance," made in reference to Yucatán state, is ambiguous, it goes on to find no ambiguity in regard to other states, including Quintana Roo state, which the RAD cites as a state where the CJNG does have a presence, seeking to distinguish it from the IFA states. In addition, the RAD's finding that "there is no indication in any event that even if the CJNG has alliances in those states, that they have an alliance in the cities of Campeche and Merida, the proposed IFAs" does not appear to be based on any evidence. None of the documents in the NDP provides a city-by-city breakdown of the CJNG's presence; they all break down the group's activities at the state level.

[34] The Respondent argues that the RAD explained why it gave little weight to the NDP documents specific to the CJNG, and why it did not find statements about the CJNG's rapid expansion and wide presence in Mexico indicative of its meaningful presence in the proposed IFAs. However, the RAD fails to acknowledge evidence that the CJNG is one of the most

powerful cartels in Mexico, with a national reach and the ability to influence and corrupt authorities at the local, state, and national levels. Its reasoning rests on a presumption premised on precisely the opposite: namely, that unless a document mentions the CJNG operating in a specific city, then there is no evidence that it has reach there. This rests on the notion that the CJNG is a localized entity that has no reach beyond a precisely defined sphere. This framing of the CJNG, at best, relies on a highly selective reading of the evidence and disregards the totality of the evidence before the RAD.

[35] The RAD's Decision was based heavily on its finding that the Applicants had not provided evidence showing the CJNG has strategic alliances with cartels in the proposed IFAs. The RAD's reference to evidence supporting its conclusions and its silence on evidence contrary to them, particularly when that evidence is found in the same sources on which the RAD relied, suggest that the RAD reached its conclusions without regard for the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 157 FTR 35 at paras 15-17; *Buitrago Salazar v Canada (Citizenship and Immigration)*, 2022 FC 1048 at para 25).

[36] The RAD's flawed assessment of the evidence concerning the CJNG's strategic alliances fundamentally undermines its dispositive conclusion. Because the flawed findings are interconnected with other key findings, including CJNG's motivation to find the Applicants in the proposed IFAs, I consider the Decision to be unsafe.

IV. Conclusion

[37] The application for judicial review is granted and the matter will be referred back for redetermination by a differently constituted panel of the RAD.

[38] Counsel agree there is no question for certification.

JUDGMENT IN IMM-8890-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is referred back for redetermination by a differently constituted panel of the RAD.
3. No question of general importance is certified.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8890-21

STYLE OF CAUSE: GUSTAVO MEDINA PANTOJA, BRENDA LIZZETTE
MEDINA AVILES, TAMARA MEDINA MEDINA v
THE MINISTER OF CITIZENSHIP AND
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PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 7, 2022

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: DECEMBER 22, 2022

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