

Federal Court



Cour fédérale

Date: 20230710

Docket: IMM-4971-21

Citation: 2023 FC 937

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 10, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**HERMINIO DARINE ABADIA GORDILLO
ANA GABRIEL MENDEZ GOMEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, Herminio Darine Abadia Gordillo and his wife, Ana Gabriela Mendez Gomez, citizens of Mexico from the city of Comitàn, are seeking judicial review of a Refugee Appeal Division [RAD] decision dated June 23, 2021, confirming the Refugee Protection Division [RPD] decision dated October 23, 2020. The applicants submit that the RAD erred in its

analysis of their credibility. Before me, the applicants sought to argue that the RAD also erred by finding that the applicants had a viable internal flight alternative [IFA] in Mexico. However, since the RPD's conclusion regarding the viability of the IFA was not challenged before the RAD and the applicants did not challenge the RAD's findings in their written submissions, I did not allow the applicants to challenge the reasonableness of this finding for the first time before me. Indeed, the undisputed assertion regarding the existence of a viable IFA in Mexico is sufficient, in itself, to justify the dismissal of this application.

[2] The applicants allege that they fear Ms. Mendez Gomez's three brothers, who do not approve of their romantic relationship. In 2014, they allegedly assaulted the applicants physically and verbally several times for this reason. On December 24, 2014, Mr. Abadia Gordillo was allegedly attacked by his brothers-in-law. He spent two months in recovery because of the injuries he allegedly suffered. Fearing for his life, Mr. Abadia Gordillo left the country for the United States on February 28, 2015, but returned to Mexico 11 days later. Since he was afraid to return to Comitàn, Mr. Abadia Gordillo allegedly decided to remain in Talapucha and work in his grandmother's small business. At times, Ms. Mendez Gomez would go visit him. In August 2015, Mr. Abadia Gordillo allegedly returned to Comitàn because his mother was ill. Except for a simple statement by Mr. Abadia Gordillo that his mother was ill, there is no evidence on record regarding his mother's health, or any statement from her confirming the health issues she may have had. At any rate, as the applicants' counsel confirmed before me, the status of Mr. Abadia Gordillo's mother's health that required him to return to Comitàn remained the same until, without explanation, the applicants left for Canada in 2018.

[3] In any event, while Mr. Abadia Gordillo was back in Comitàn to take care of his mother, the applicants allegedly also opened a laundromat together. Mr. Abadia Gordillo worked from home while Ms. Mendez Gomez, who was living with her brothers, travelled to work. They had no problems for two and a half years, until early 2018, when Ms. Mendez Gomez's brothers learned—supposedly for the first time—that Mr. Abadia Gordillo was again living in Comitàn and the applicants had been running a small business together since 2015. Although the applicants had changed the location of their business several times, Ms. Mendez Gomez's brothers allegedly threatened them and vandalized their business four times. In October 2018, the applicants discovered that their business had been destroyed, supposedly by Ms. Mendez Gomez's brothers. She did not file a police complaint against her brothers because she feared for her safety. Instead, she and Mr. Abadia Gordillo decided to leave the country.

[4] On December 28, 2018, the applicants left for Canada and claimed refugee status. However, one week prior to their departure, Ms. Mendez Gomez was forcibly confined at her home by her brothers. Mr. Abadia Gordillo apparently did not know where she was and, for some reason, was unable to communicate with her. However, Ms. Mendez Gomez was allegedly able to escape the evening prior to the applicants' departure to Canada with the help of her mother. The record does not include any evidence from Ms. Mendez Gomez's mother.

[5] On October 23, 2020, the RPD dismissed their refugee protection claim. The RPD accepted the applicants' testimony about the facts that occurred prior to 2018, that Mr. Abadia Gordillo was physically assaulted by his brothers-in-law in 2014 and that Ms. Mendez Gomez was the victim of physical and sexual violence by her brothers. However, the RPD found that

their credibility was not established for the facts that occurred after 2018 because of contradictions and inconsistencies in their testimony. The RPD also found that the applicants had state protection and an IFA in the cities of Mexico, Guadalajara or Monterrey. The RAD confirmed the RPD's negative decision.

[6] The applicants submit that the standard of correctness applies to the issue of procedural fairness, whereas reasonableness applies to the other issues. However, the applicants did not raise any specific procedural fairness issues in their written submissions. They tried to argue in a general manner before me, for the first time, that there had been a breach of procedural fairness, with no other clarifications. I did not allow them to present this argument, as it would have been unfair for the respondent. Therefore, the only standard of review that applies is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23; *Adefisan v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 359 at para 10). A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and the law that constrain the decision maker” (*Vavilov* at para 85). The Court cannot intervene unless the applicants show that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

I. The applicants' credibility

[7] With regard to the RAD's findings on the applicants' credibility, in particular Mr. Abadia Gordillo's inconsistent behaviour following the 2014 assaults, the RAD confirmed the RPD's uncontested finding that Mr. Abadia Gordillo's behaviour, by staying at the same address—

known to his brothers-in-law—after having suffered multiple assaults in 2014, is inconsistent with that of a person who fears for his life, because it would have been easy for his brothers-in-law to find him. I find nothing unreasonable about this finding, and moreover, this finding was not challenged before the RAD.

[8] The RAD also agreed with the RPD in drawing a negative inference on Mr. Abadia Gordillo's credibility: the RPD felt it was inconsistent that Mr. Abadia Gordillo opened a business with Ms. Mendez Gomez in August 2015 in the same city where he was allegedly assaulted, when his fear of harm is directly linked to his relationship with his spouse. In response to this inconsistency, the applicants argued before the RAD that it was Ms. Mendez Gomez who travelled daily to the laundromat while Mr. Abadia Gordillo worked at home; that it was hasty to conclude that Ms. Mendez Gomez's brothers were aware that the applicants had opened a business together merely because it was a small city and Ms. Mendez Gomez lived with her brothers; that it was plausible that Ms. Mendez Gomez's brothers did not seek further details about their sister's employment if they had no reason to believe the laundromat had been opened with Mr. Abadia Gordillo; and that Mr. Abadia Gordillo's brothers had no reason to suspect that she had opened a business with Mr. Abadia Gordillo, when they did not know that the applicants were still together as a couple. However, I find nothing unreasonable in the RAD's findings that the issue is not whether Ms. Mendez Gomez's brothers knew or did not know, but rather the assessment of Mr. Abadia Gordillo's actions, as he returned to the eye of the storm when it was reasonable to conclude that at some point, his brothers-in-law would find him.

[9] Even if I were to accept that Mr. Abadia Gordillo worked from home, where he was supposedly doing laundry, I agree with the RAD that this does not explain his behaviour.

Considering Ms. Mendez Gomez lived with her brothers, that the business was in the city where everyone lived and that this situation lasted for two and a half years, I see nothing unreasonable in the RPD's finding, confirmed by the RAD, that the brothers would eventually learn that the applicants had opened a business together, which is exactly what happened. The place the brothers thought Ms. Mendez Gomez went every morning for two and a half years when she left the family home remains a mystery.

A. *Contradictions about the acts of vandalism against the laundromat*

[10] The RAD confirmed the RPD findings that, on one hand, the applicants' explanations to justify why they did not contact the police after the laundromat was vandalized are not consistent and, on the other, the applicants contradicted themselves about how the events unfolded between March and October 2018. Neither of these findings by the RPD was challenged before the RAD. At any rate, before the RAD, the applicants submitted that the RPD had erred by drawing a negative inference from their testimony that they waited until their business had been vandalized four times, allegedly by Ms. Mendez Gomez's brothers, before closing it. The applicants explained at the hearing that they had equipment to sell and they needed the profits to finance their departure. The RAD found that this answer did not explain why the applicants had not closed the business after the first, the second or the third attack.

B. *Contradictions about the female applicant's confinement*

[11] During the hearing before the RPD, Ms. Mendez Gomez testified, on one hand, that her mother had not been informed of her imminent departure from Mexico and, on the other, that her mother did not intervene when her brothers forcibly confined her to the family residence to prevent her from leaving Mexico, which is contradictory. Similarly, the RPD feels that it is unlikely that Mr. Abadia Goirdillo did not know that his spouse was being forcibly confined by her brothers the week prior to their departure to Canada to prevent her from leaving Mexico with him. The applicants argued that the RPD granted disproportionate significance to the perceived contradiction in Ms. Mendez Gomez's testimony, and that it did not grant the required weight to the family context in which Ms. Mendez Gomez found herself. In their opinion, it is not reasonable to expect her to challenge her brothers' authority to let her spouse know that they had forcibly confined her. Moreover, according to the applicants, it was impossible for Mr. Abadia Gordillo to go to his spouse's home to find out how she was, because he had already been assaulted at least four times by his brothers-in-law.

[12] The RAD found that the RPD did not grant disproportionate significance to this contradiction and instead drew a negative inference that it added to the other inconsistencies and contradictions in the applicants' testimony to conclude that they were not credible with regard to the events that occurred in 2018. Regarding Ms. Mendez Gomez's family context, the RAD considered that the fact her mother was a [translation] "submissive person" does not overcome the contradictions in Ms. Mendez Gomez's testimony. Lastly, the RAD found that although Mr. Abadia Gordillo could not go to Ms. Mendez Gomez's family home, this does not explain why he did not inquire about his spouse in another way during this period, because there are other ways to reach a person or find out how they are doing by proxy. As for me, I do not find

anything unreasonable in the RAD's findings and, specifically, I was not convinced that it was unreasonable for the RAD to conclude that the RPD had not erred in thinking that it was unlikely that Mr. Abadia Gordillo was unaware that his spouse had been forcibly confined by her brothers or by finding he should have been able to contact her one way or another.

II. Prospective risk

[13] The RAD did not accept the applicants' statement that Ms. Mendez Gomez could not request state protection because, according to her, the authorities play down gender-based violence and the state is neither willing nor able to protect women against violence. Although the RAD agreed with the applicants that the Mexican authorities do not adequately protect women and girls against family violence and sexual assault, this does not establish a prospective risk for Ms. Mendez Gomez. The RAD stated that, when the RPD asked Ms. Mendez Gomez why her brothers would look for her in Mexico, she replied that it was because they did not accept her relationship with Mr. Abadia Gordillo. However, this alleged prospective risk is tied to the part of the testimony the RPD correctly considered not to be credible. The RAD explained that there was no evidence that Ms. Mendez Gomez's brothers were looking for her or still objected to her relationship with Mr. Abadia Gordillo, or that the brother who had sexually abused Ms. Mendez Gomez was looking for her to threaten her. The applicants claim that there is nothing to indicate that Ms. Mendez Gomez's brothers now accept their relationship. However, I do not find it unreasonable that the RAD concluded that Ms. Mendez Gomez had left the family home and was no longer under the control of her brothers. Although the RAD sympathized with Ms. Mendez Gomez, past sexual violence at the hands of her brother does not in itself establish a prospective risk, particularly considering that Ms. Mendez Gomez lived with her brothers for two and a half

years without incident. In this case, the evidence does not show that her brothers were involved in any illegal activities, that they were members of or close to a cartel or that they had contacts in the police.

[14] Moreover, the RAD added that despite the family violence Ms. Mendez Gomez experienced, the *Immigration and Refugee Protection Act*, SC 2001, c 27, does not allow it to render decisions based on humanitarian and compassionate grounds. I find nothing unreasonable in this conclusion.

III. Existence of an IFA

[15] The RAD found that the RPD's findings regarding the existence of an IFA for the applicants, which the applicants are not contesting, are correct. Again, I see no reason to question this finding. At any rate, even if I were to agree with the applicants about the manner in which the RAD assessed their credibility, the fact that there is an uncontested finding of a reasonable IFA in Mexico and no argument was presented before me as to the motivation or ability of Ms. Mendez Gomez's brothers to follow the defendants to these cities, the issue is sufficient in itself to dismiss this application for judicial review. Lastly, the applicants submit for the first time before me that they now have a child who was born in Canada and, if the family were to return to Mexico, she will have to live in hiding and it would be impossible to give the child a normal life. Other than the fact that this argument was not presented before the RPD or the RAD,

it seems to me that when the agents of persecution are family members, it is not unreasonable to hide from them.

[16] For the above-noted reasons, I find that the application for judicial review should be dismissed.

JUDGMENT in IMM-4971-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. There is no question to be certified.

“Peter G. Pamel”

Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4971-21

STYLE OF CAUSE: HERMINIO DARINE ABADIA GORDILLO, ANA
GABRIEL MENDEZ GOMEZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JULY 5, 2023

JUDGMENT AND REASONS: PAMEL J.

DATED: JULY 10, 2023

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