Federal Court  Cour fédérale

Date: 20240123

Docket: IMM-3911-22

Citation: 2024 FC 108

Ottawa, Ontario, January 23, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

REBECCA AYELEN TORRES
ROMAN VALENTINO CASTILLO TORRES
MARIANO SERGIO CASTILLO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the decision of the Refugee Appeal Division ("RAD"), finding that they are neither Convention refugees nor persons in need of protection because they have an internal flight alternative ("IFA") in Argentina.

[2] The Applicants submit that the RAD's decision is unreasonable because although it accepted their testimony of repeated attacks, kidnapping and rape as credible, the RAD demanded corroboration of the identity of their attackers without a valid reason. In addition, they say that the RAD failed to address their compelling reasons for not wanting to return to Argentina.

[3] For the reasons that follow, I find that the RAD decision is reasonable. It found an IFA based, in part, on the insufficiency of the Applicants' evidence and there is no basis to disturb this conclusion. As for the compelling reasons argument, I find that it does not apply to the Applicants' situation and cannot be considered because they did not raise it before the RAD.

I. Background

[4] The Applicants are a family of three from Cordoba, Argentina. Rebecca Ayelen Torres is the Principal Applicant; her partner is Roman Valentino Castillo Torres (the "Associate Applicant"), and their son is Mariano Sergio Castillo (the "Minor Applicant"). The Applicants are all Argentinian citizens. The Associate Applicant last worked as a Police Officer in Argentina.

[5] The Applicants allegedly fear the *Los Monos* gang. The Principal Applicant alleges that *Los Monos* gang members targeted her in order to force her into prostitution. These issues began when three men approached the Principal Applicant and offered her work as a model for an entertainment company. They visited her several times and made the same offer to some of her friends and family, including her younger sister.

[6] When the Principal Applicant refused the job offer, the thugs threatened to take her by force. She told them she could not leave because she had a young son. On September 15, 2019, two men attempted to kidnap the Principal Applicant and her sister at gunpoint. While fighting off the assailants, the Principal Applicant sustained a cut on her arm resulting in a hospital visit and 12 stitches. Her sister was also injured in this incident. The attackers made threats and said they would kill the two women if they did not leave the neighbourhood. They reported the incident to police but say "nothing ever happened."

[7] Three men then kidnapped the Principal Applicant on September 20, 2019. Her assailants took her to the Malvinas neighbourhood in Cordoba, where they beat and sexually assaulted her. The Principal Applicant sustained injuries to her jaw, left arm, head, and left knee. She did not report the incident to police because the assailants warned against it. The Associate Applicant did not take any action; he said that as a rookie policeman he was paralyzed by these threats.

[8] The family moved to another location after these incidents, but the Principal Applicant saw vehicles circling the place they were staying. The Applicants then obtained visas and travelled to Canada where they claimed refugee protection on the basis of the threats and violence they had experienced in Argentina. The Principal Applicant subsequently submitted an Addendum to her Basis of Claim narrative, and the end of which she states that the "name of the criminal gang that has been threatening and attacking us is called Los Monos…"

[9] The Refugee Protection Division ("RPD") dismissed the Applicants' claims, finding their evidence not to be credible. The Applicants appealed this to the RAD. The Applicants received a letter from the RAD inviting them to make further submissions on a series of issues, including how they knew that their assailants were the *Los Monos* gang. The letter also identified Santa Rosa and Rio Gallegos as possible IFA locations and invited the Applicants to make submissions on the IFA issue.

[10] In response to this letter, the Applicants submitted two news articles together with their appeal submissions. The RAD accepted the new evidence because it addressed the issues raised in the procedural fairness letter about how the Applicants knew their assailants were members of the *Los Monos* gang, which was relevant for the question of whether the Applicants had an IFA.

[11] The determinative issue for the RAD was the viability of the IFA in Santa Rosa and Rio Gallegos. The RAD found no serious possibility of harm for the Applicants in these locations, because it found their evidence linking the violent incidents to the *Los Monos* gang to be insufficient. The RAD observed that the Applicants had not initially identified their assailants as connected to this gang, and only did so briefly in the amendment. They had not elaborated on this claim in their testimony, nor did they indicate that the assailants had claimed to be from this gang. The supporting letters from the Applicants' family and friends also did not indicate that the agents of harm are *Los Monos* members. Based on this, the RAD found the Applicants' evidence to be insufficient.

[12] The RAD did not accept the Applicants' submission that the agents of harm are *Los Monos* members because the gang is "present all over their community." While the National Documentation Package evidence for Argentina refers to *Los Monos* as one of Argentina's most influential gangs/criminal organizations, this does not establish that the agents of harm are members of *Los Monos*. The RAD also dismissed the Applicants' assertion that the *Los Monos* has corrupt influence over the authorities – in particular, members of police.

[13] Given the limited information on the identity of the agents of harm, the RAD concluded that the evidence did not establish that they are members of *Los Monos*, nor did it prove that they have the means to locate the Applicants in Santa Rosa or Rio Gallegos. The evidence also failed to establish that the agents of harm are motivated to pursue the Applicants. On this point, the

RAD noted that none of the Applicants' family members who remained in Argentina indicated they had been contacted by the gang.

[14] Based on the analysis set out above, the RAD concluded that the first part of the IFA test had not been met, because the Applicants faced neither a serious possibility of persecution nor a danger of torture, risk to their lives or cruel and unusual treatment or punishment at the hand of their assailants if they relocated to the IFA locations: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA).

[15] The RAD then turned to the second prong of the test, and determined that the two cities were reasonable IFA locations. No challenge was brought to this aspect of the RAD's reasoning, and so it will not be summarized in detail here.

[16] The RAD dismissed the Applicants' appeal based on its finding that they had viable IFA locations in Argentina. The Applicants seek judicial review of this decision.

II. Issues and Standard of Review

[17] The issue in this case is whether the RAD decision is reasonable.

[18] The Applicants argue that the RAD erred by: (i) demanding corroboration of their credible testimony that their agents of persecution were the *Los Monos* gang; and (ii) failing to consider the compelling reasons exception in subsection 108(4) of *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[19] These questions are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[20] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at para 102).

III. Analysis

A. *The RAD's assessment of the evidence about the agents of persecution*

[21] The Applicants begin by noting that the RPD dismissed their claim solely on credibility grounds, which therefore formed a large portion of their appeal submissions to the RAD. Despite this, the RAD did not address any of their credibility arguments, nor did it make its own independent findings. Therefore, the RAD must have accepted their narrative as credible, including that the gang members tried to recruit the Principal Applicant into prostitution, and thereafter attacked, robbed, kidnapped and raped her.

[22] In the view of the Applicants, the RAD must have accepted their evidence as credible because it moved on to consider the IFA question. They rely on *Torres v Canada (Citizenship and Immigration)*, 2011 FC 581 [*Torres*], where Justice Shore stated at paragraph 1 that "[a]n internal flight alternative (IFA) is only taken into account once the applicant's credibility has been accepted."

[23] In their testimony, the Applicants said their attackers were members of the *Los Monos* gang. They argue that the RAD erred by requiring corroboration of this evidence instead of giving credence to their evidence. The Applicants submit that the Principal Applicant identified the gang in her Addendum to her Basis of Claim form, which forms part of her claim. She testified that she knew they were members of the gang by their face tattoos. They also submitted

newspaper articles about similar situations where young women had been targeted by the gang. Since *Los Monos* is the largest gang with the biggest network in Argentina, they say that the evidence strongly suggests that the gang in question was in fact *Los Monos*.

[24] The Applicants contend that this is an important question, because a proper assessment of their risks of persecution in the IFA location depends in large part on the reach and motivation of their agents of persecution. Even if their assailants were not members of the *Los Monos* gang, the Applicants point out that the thugs located them even after they relocated in Argentina, and this indicates that they will be at risk anywhere in the country.

[25] The Respondent submits that the RAD did not demand corroboration but rather simply found the Applicants' evidence to be insufficient. The Respondent points out that the RAD expressly invited the Applicants to provide submissions about their assertion that the agents of persecution were members of *Los Monos*. In response, the Applicants put forward a broad generalized statement that the thugs must have been members of *Los Monos* because it is "present all over their community."

[26] Although the Applicants asserted that the Principal Applicant had recognized the face tattoo of her attackers as a sign of gang membership, there was no evidence before the RPD to support this. In the testimony before the RPD there was no mention about face tattoos, nor any other evidence to support this claim. The Respondent asserts that the RAD reasonably found the evidence on this point to be insufficient.

[27] I am not persuaded by the Applicants' argument that the RAD's assessment of this question is unreasonable.

[28] The RAD decision regarding the evidence about the identity of the agents of persecution was not based on a lack of corroboration. Rather, the RAD found the evidence on this question to be insufficient.

[29] The Applicants' reliance on *Torres* is misplaced. As pointed out by Justice Zinn in *Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at paragraphs 8-9:

> In my view, neither *Torres* or the case cited within (*Bokhari v Canada (Minister of Citizenship and Immigration)*, 2005 FC 574) supports the Applicant's position here. In both of the above cases, the Court found that the tribunal, in moving directly to the issue of an IFA, must be seen to have accepted the evidence of the claimant. Where that evidence conflicts with the IFA finding, as it did in those cases, then the tribunal had to first examine the other issues before considering the IFA. They do not stand for the bald proposition that where credibility is at issue, it must be assessed first, before an IFA is considered.
>
> I agree with the Respondent that it is not an error for the RAD to find that the IFA was determinative as the credibility issues raised by the RPD in this case (the Applicant's clan's traditions, her exit from Nigeria, and her entrance into Canada) were not issues that affected the IFA analysis. Moreover, in general, it is not an error to move immediately to an IFA analysis provided that analysis considers a claimant's particular situation, and the testamentary and documentary evidence before the tribunal.

[30] In the case at hand, the RAD's IFA finding does not conflict with the Applicants' evidence about the violence and abuse they experienced. Even accepting that these incidents occurred, the RAD reasonably concluded that the Applicants had failed to establish that their

agents of persecution were members of the *Los Monos* gang. Without such a connection, the Applicants failed to show that their agents of persecution would have the means and motivation to track them down in the IFA locations. That is the central finding made by the RAD, and the Applicants have not demonstrated that it is unreasonable.

[31] For these reasons, I reject the Applicants' arguments on the first issue.

B. *The "compelling reasons" exception does not apply*

[32] The Applicants submit that their case falls within the "compelling reasons" exception set out at subsection 108(4) of *IRPA*.

[33] The relevant provisions of *IRPA* state:

Cessation of Refugee Protection	**Perte de l'asile**
Rejection	**Rejet**
108 (1) A claim for refugee protection shall be	108 (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de

rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

(a) the person has voluntarily reavailed themself of the protection of their country of nationality;

(b) the person has voluntarily reacquired their nationality;

(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;

(d) the person has voluntarily become re-established in the country that the person left or remained outside of and

réfugié ou de personne à protéger dans tel des cas suivants :

a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;

b) il recouvre volontairement sa nationalité;

c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;

d) il retourne volontairement s’établir dans le pays qu’il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l’asile au Canada;

e) les raisons qui lui ont fait demander l’asile n’existent plus.

in respect of which the person claimed refugee protection in Canada; or

(e) the reasons for which the person sought refugee protection have ceased to exist.

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

(4) L’alinéa (1)e) ne s’applique pas si le demandeur prouve qu’il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu’il a quitté ou hors duquel il est demeuré.

[34] The Applicants argue that there is no question that they suffered persecution in Argentina and that these incidents were appalling and atrocious. They cite case-law in support of their argument that mental abuse can rise to the level of a compelling reason, and that such abuse does not need to rise to the level of "appalling or atrocious" in order to constitute a compelling reason: *Suleiman v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1125 at para 20; *Ismail v Canada (Citizenship and Immigration)*, 2016 FC 650 [*Ismail*] at para 15.

[35] The Applicants claim that this Court has a long line of jurisprudence where persons similarly situated to the Principal Applicant qualified for the subsection 108(4) exemption. They cite further case-law, where the Court found the RPD erred in not considering the compelling reasons exception (*Rose v Canada (Minister of Citizenship and Immigration)*, 2004 FC 537 at paras 1-6). Finally, the Applicants note that, per *Zuniga v Canada (Citizenship and Immigration)*, 2020 FC 488, the existence of an IFA does not preclude the applicability of this exception.

[36] I am not persuaded by this argument, for two main reasons. First, the Applicants did not make this submission to the RPD nor raise it in their appeal to the RAD. Subject to very limited exceptions which do not apply here, new issues cannot be raised for the first time on judicial review.

[37] Moreover, the Applicants' case simply does not fall within the subsection 108(4) exception. The jurisprudence establishes that this exemption is only applied when a claim for refugee or protected person status is rejected because the reasons for which the person sought refugee protection have ceased to exist (*Mahdi v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1576 at paras 31-34; *Sow v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1313 at para 62). That is not the situation here, and therefore the exception simply does not apply.

[38] For both reasons set out above, I reject the Applicants' argument on the second issue.

IV. Conclusion

[39] Based on the analysis set out above, there is no basis to find the RAD decision to be unreasonable. The application for judicial review will be dismissed.

[40] There is no question of general importance for certification.

JUDGMENT in IMM-3911-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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