Federal Court  Cour fédérale

Date: 20231215

Docket: IMM-9306-22

Citation: 2023 FC 1700

Ottawa, Ontario, December 15, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

JUAN LUIS AYOMETZI IGLESIAS
YESENIA AGUIRRE SERRANO
MATEO ANTONIO AYOMETZI AGUIRRE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by the Refugee Appeal Division (the "RAD") of the Immigration and Refugee Board (the "IRB"). The Decision dismissed an appeal from the Refugee Protection Division (the "RPD"), which found that Juan Luis Ayometzi Iglesias (the "Principle Applicant"), Yesenia Aguirre Serrano, and Mateo Antonio

Ayometzi Aguirre (collectively, the "Applicants") were not Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicants allege that the Decision is unreasonable. They request that this Court quash the Decision and remit the matter for re-determination by a different RAD panel.

[3] For the reasons that follow, I find that the Decision is reasonable.

II. Background

[4] The Applicants are citizens of Mexico. The Principal Applicant worked as a manager of a local convenience store in the Mexican state of Tlaxcala. During one of his shifts, he refused to sell alcohol to a customer. That customer was a member of a gang that the Principal Applicant alleges is associated with the Jalisco New Generation Cartel ("CJNG"). The gang member pulled a gun and threatened the Principal Applicant with death.

[5] The Principal Applicant was followed home the next day after his shift ended. He was held at gun point, robbed, and threatened with death a second time. The Principal Applicant made a report to the local police, whom he said failed to provide him with adequate protection.

[6] The Principal Applicant left Mexico for Canada in January 2019, his common-law spouse and their son (the other Applicants) joined him in November 2019. The Applicants sought refugee protection in September 2020.

[7] In a decision dated April 21, 2022, the RPD found that the Applicants' circumstances do no establish a nexus with any of the grounds enumerated in the definition of a Convention refugee under section 96 of the *IRPA*. The RPD focused its analysis on whether the Applicants are persons in need of protection under section 97.

[8] The RPD concluded that the Applicants had a viable internal flight alternative ("IFA") in Mérida, Yucatán. The RPD summarized the applicable two-prong test to establish a viable IFA as follows:

> 1) the Applicant would not be subject personally to a danger of torture or to a risk of life or a risk of cruel and unusual punishment, or face a serious possibility of persecution in the proposed internal flight alternative; and
>
> 2) that [*sic*] conditions in that part of the country are such that it would be objectively reasonable, in all the circumstances, including those particular to the Applicant, for him to seek refuge there.

[9] Respecting the first prong of the IFA test, the RPD concluded that the Applicants were not at risk because the "agents of harm" lacked the means and the motivation to find or harm the Applicants. The RPD based this conclusion on the following findings:

A. the Principal Applicant was threatened by members of a local gang, but that gang was not associated with the CJNG;

B. even if there was an association with CJNG, that cartel lacks the control or organizational capacity necessary to find the Applicants in Mérida;

C. beyond the Applicants' speculation, there was no evidence that the CJNG had connections with members of the police, either in Mérida or in the Applicants' city of origin;

D. the local gang originally pursued the Principal Applicant because the store he managed offered a unique advantage to their operation, but the Principal Applicant would no longer offer that advantage in Mérida;

E. two of the Applicants resided for eight months in a town relatively close to the one in which the Applicants originally lived, without any evidence of threat or harm; and

F. the Applicants were not presently pursued.

[10] As for the second prong of the IFA test, the RPD concluded that relocating to Mérida was objectively reasonable in the circumstances of the Applicants. It based its conclusion on the following findings:

A. the adult Applicants are young and educated and would be able to find employment in Mérida; and

B. the Applicants can reach Mérida by various means, without passing through their city of origin.

[11] The RPD therefore determined that the Applicants were not persons in need of protection under section 97 of the *IRPA*, in addition to not being Convention refugees under section 96.

III. The Decision

[12] The Applicants do not challenge the finding that their claim lacked a nexus to a Convention ground of persecution. Only section 97 of the *IRPA* is at issue. The determinative issue is whether the Applicants have a viable IFA. The Applicants argued that the RPD was incorrect to conclude that the CJNG lacked the means to find or harm the Applicants. They submitted three news articles in support of this argument. The RAD admitted two of the three news articles as fresh evidence pursuant to subsection 110(4) of the *IRPA*.

[13] The RAD accepted the Applicants' contention that the articles show that members of the CJNG were present in Mérida and Yucatán. However, the RAD also observed that, according to the articles, those members were arrested by local police. Far from showing that the CJNG exercises any "control" over police in Mérida or Yucatán, the articles demonstrated that authorities are willing to arrest members of the CJNG. In the RAD's view, the evidence supported the RPD's conclusion.

[14] The Applicants also argued that the RPD failed to take into account documentary evidence contained within the IRB's National Documentation Package for Mexico (the "NDP"), which shows that cartels maintain ties with corrupt Mexican police. The RAD rejected this argument and simply stated that the RPD did not overlook any evidence and that they considered the NDP. It also found no issue with the RPD's view that the Applicants were merely speculating about the

relationship of police officers to the CJNG. The RAD also stressed that the RPD's conclusion did not rest on whether there were ties between cartels and corrupt Mexican police generally, but on whether the specific cartel at issue had ties with police in Mérida, and whether the local gang was even associated with that specific cartel.

[15] The RAD confirmed the RPD's decision and concluded that the Applicants were neither Convention refugees under section 96 of the *IRPA*, nor persons in need of protection under section 97 of the same.

IV. Issue

[16] The sole issue in this application is whether the RAD's decision was reasonable.

V. Analysis

[17] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

[18] To rebut a possible IFA, the Applicant must show (1) that there is a serious possibility of the Applicant being persecuted or harmed in the proposed IFA, or (2) that in all the circumstances, including circumstances particular to the Applicant, it would be unreasonable for him to seek refuge there.

[19] The Applicants argue that it was unreasonable for the RAD to conclude that the CJNG lacked the organizational capacity to find the Applicants in Mérida. The Applicants rest their argument on the following submissions:

A. The RAD unreasonably required the Applicants to demonstrate that the CJNG maintained “control” over Mérida;

B. The RAD’s interpretation of the new evidence was logically flawed; and

C. The RAD’s conclusion disregarded evidence in the NDP.

[20] The RPD never agreed that the local gang that threatened the Principle Applicant was associated with the CJNG. I do not accept the Applicants’ suggestion that the RAD interfered with that conclusion or that its reasons effectively “accepted [that] the identity of the agent of [harm] was the CJNG”. The RAD focused its reasons on the Applicants’ submissions before it, which were concerned with the CJNG’s ability to reach them.

[21] The RAD found that, regardless of the CJNG’s association with the local gang, the CJNG did not have the means to harm the Applicants in Mérida. Given this finding, it was not necessary for the RAD to go further to assess (a) whether the CJNG had the motivation to pursue the Applicants, or (b) whether it was associated with the local gangs. Therefore, even if the RAD did accept that the CJNG was able to harm the Applicants in Mérida, the Applicants would have still had to show that the RPD was incorrect to find that the local gang was not associated with the

CJNG, and that the CJNG was not motivated to pursue them. The Applicants simply did not discuss those matters in their submissions before the RAD.

A. *The Requirement to Establish Control*

[22] In *Sargsyan v Canada (Citizenship and Immigration)*, 2015 FC 333, this Court summarized the applicable test as follows, at paragraph 12:

> 1. The RPD must be satisfied, on a balance of probabilities, that there is no serious possibility of the Applicant being persecuted in the part of the country in which it finds an IFA exist; and
>
> 2. That the conditions in that part of the country are such that it would not be unreasonable for the Applicant to seek refuge there. […]

[23] The Applicants say that the RAD required them to show that the CJNG maintained both "complete criminal control" over Mérida as well as "complete control over the authorities" to overcome the first prong of the analysis. The Applicants say this was unreasonable. They also argue that the RAD essentially conflated the assessment of risk required by the first prong of the IFA test with an assessment of state protection – that is, whether the Applicant is unable to rely on the local authorities for protection.

[24] The RAD did not require the Applicants to show that the CJNG maintained complete control over Mérida. Instead, it required them to show that the CJNG had the organizational capacity in Mérida that would enable them to find and harm the Applicants. It was the Applicants who argued at their RPD hearing that "the police and the government [at the proposed IFAs] are

also part of the cartel" and that the police "are in collusion with the same cartel". It was also the Applicants who alleged before the RAD that the CJNG "prevents authorities from acting against them". In effect, the Applicants were arguing that the police were part of the CJNG's organizational capacity. The RAD's comments regarding "control" were in response to those allegations. Those comments were reasonable.

B. *The Interpretation of the New Evidence*

[25] The Applicants argue that the RAD's interpretation of the new evidence was faulty. They say that the RAD reviewed articles that show that *some* local police forces are willing to arrest CJNG members and concluded that *all* police forces would do the same, and that none could be corrupted by the CJNG to find or harm the Applicants. They submit that this is logically flawed, and that the RAD's conclusion is unreasonable.

[26] I do not agree with the Applicants. The new evidence must be read contextually in light of the totality of evidence before the Court. It showed local police forces in Mérida arresting CJNG members. The RAD inferred from this evidence that, in line with the RPD's findings, the CJNG's organizational capacity in Mérida was not large enough to provide it with the means to pursue and harm the Applicants. It was reasonable for the RAD to draw that inference.

[27] I find that the RAD's interpretation of the new evidence was reasonable.

C. *The Evidence in the NDP*

[28] The Applicants say that the RAD's findings directly contradict the evidence in the NDP. In *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 (CA), the Court of Appeal examined when the Court may infer an error from a decision maker's failure to mention an important piece of evidence.

[29] The Court held that it may intervene only if (1) the decision maker fails to mention in its reasons a piece of evidence before it, (2) that evidence was relevant to the finding, and (3) that evidence pointed to a different conclusion, so as to allow the Court to infer that the decision maker disregarded it. The more significant the piece of evidence, the stronger the inference and the higher the decision maker's obligation to explicitly address that evidence. This legal principle remains good law post-*Vavilov*, and was recently cited with approval in a concurring opinion by Gleason J.A. in *Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161 at paragraph 123.

[30] The Applicants say that NDP Document 7.7 and NDP Document 7.8 provide critical information that runs directly against the RAD's findings. Both reports pre-date the RPD and RAD hearings.

[31] NDP Document 7.7 makes the following relevant observations:

A. the CJNG has the "most operational capacity" in Mexico;

B. the CJNG retains a "national presence" in Mexico;

C. the CJNG maintains a “supranational” presence through its own presence or through allies;

D. the CJNG does not control the state of Yucatán (in which Mérida is located), which is “controlled” by another cartel called Los Zetas; and

E. the CJNG does not “control” every area in which it is present.

[32] I do not agree with the Applicants that the RAD’s findings are in direct contradiction with NDP Document 7.7. The RAD found no issues with the RPD’s conclusion that the CJNG did not have a significant presence in Mérida and Yucatán, even though it is present in several other Mexican states. This is in line with the substance of NDP Document 7.7.

[33] Nor are the RAD’s findings in direct contradiction with NDP Document 7.8. While the document does state that large cartels in Mexico could locate an individual, it says they would do so only if the individual in question is of particular importance to the cartel. Further, the document also states that Yucatán is a relatively peaceful state where criminal groups tend to keep a “low-profile”. It was reasonable for the RAD to decide that Mérida is an IFA, even in light of this evidence.

[34] In any case, the onus was on the Applicants to bring whatever evidence they felt was important to the attention of the RAD for consideration. While they went as far as to adduce new evidence for the RAD, at no point did they bring NDP Documents 7.7 or 7.8 to the RAD’s attention. The Applicants’ submissions before the RAD on this issue were limited to a few

statements regarding the NDP's commentary on the relationship between cartels and local police. The Applicants cannot raise this alleged error now for the first time on judicial review (*Davis v Canada (Citizenship and Immigration)*, 2021 FC 1036 at para 25; *Dahal v Canada (Citizenship and Immigration), 2017 FC 1102* at para 39).

[35] In addition, the RPD's other findings – that (1) the CJNG are not associated with the local gang that threatened the Principal Applicant, and (2) the Applicants are no longer pursued or there is no motivation to pursue them to Mérida – remain unchallenged.

VI. Conclusion

[36] The application is dismissed.

JUDGMENT in IMM-9306-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

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