Date: 20250116

Docket: IMM-12999-23

Citation: 2025 FC 95

Ottawa, Ontario, January 16, 2025

PRESENT: Mr. Justice Pentney

 BETWEEN:

AXEL FERNANDO SANTOS VEGA

Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1]   The Applicant, Axel Fernando Santos Vega, is a 30-year-old citizen of Mexico.

[2]   The Applicant alleges that he witnessed a murder in December 2021 in Mexico while on his way to work. He believes that the murder was committed by a cartel. The following day, the cartel perpetrators allegedly attended the Applicant's workplace and threatened to kill him if he reported what he saw. They demanded that the Applicant pay them 20,000 pesos. The Applicant

says he told them that he did not have the funds, but the cartel members claimed they would return to collect it. A week later, the Applicant states that he quit his job and thereafter he remained at home in hiding.

[3]   On March 2022, the Applicant left Mexico for Canada and claimed refugee protection. He alleges that he fears persecution by a cartel because he witnessed them commit a murder and did not pay the amount they demanded.

[4]   The Refugee Protection Division (RPD) rejected the Applicant's claim because it found he had a viable internal flight alternative (IFA) in Merida, Yucatan. The Applicant appealed this decision to the Refugee Appeal Division (RAD) on the basis that the RPD erred in engaging in a microscopic examination of the evidence because of its "zeal to find contradictions." He also claimed that interpretation issues at the RPD hearing breached procedural fairness.

[5]   The RAD dismissed the Applicant's appeal, giving rise to the present application for judicial review.

I.   Issues and Standard of Review

[6]   The issues in this case are:

1. Was the Applicant denied procedural fairness because the translation of his testimony was inadequate?
2. Was the RAD's IFA determination unreasonable because it failed to take proper account of the fact that the Applicant had witnessed a murder by cartel members?

[7]   Procedural fairness is to be reviewed on a standard that is akin to "correctness," although technically no standard of review is applied at all: *Canadian Pacific Railway Company v Canada (Attorney General), 2018 FCA 69 [Canadian Pacific]* at para 55; see also *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107. Under this approach, a reviewing Court is required to assess whether the decision-making process was fair in all of the circumstances, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual…" (Canadian Pacific at para 54). The ultimate question is "whether the applicant knew the case to meet and had a full and fair chance to respond" (Canadian Pacific at para 56).

[8]   The second question is to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[9]   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 (Vavilov at para 85; Mason at para 8). The onus is on the Applicants to demonstrate that "any shortcomings or flaws … are sufficiently central or significant to render the decision unreasonable" (Vavilov at para 100). Absent exceptional circumstances, a reviewing court will not interfere with factual findings; it is not the role of a reviewing court to reweigh or reassess the evidence (Vavilov at para 125).

II.   Analysis

A.   *The Applicant was not denied procedural fairness*

[10]   In his appeal to the RAD, the Applicant had argued that he was denied natural justice because there were several instances where problems in the interpretation of his testimony affected the RPD's understanding of his evidence. He referred to several instances where words were not properly translated, and one example where his evidence was recounted in Spanish and not translated at all. The RAD listened to the recording of the RPD hearing, and concluded that there had been no breach of procedural fairness.

[11]   The Applicant submits that the RAD erred in making this finding because the problems with the translation caused the RPD to misunderstand his evidence. He says a key point is that the translator failed to include the word "Jalisco" when interpreting his testimony, but this is vital information because the Jalisco New Generation Cartel [JNGC] is recognized as one of the strongest and most violent cartel in Mexico. The Applicant submits that the RAD failed to appreciate this fact, which undermined its analysis of the risk he faced in the IFA location.

[12]   I am not persuaded by this argument. The RAD listened to the recording of the RPD hearing and discussed the issue of the translator's failure to include the word "Jalisco." The RAD noted that the translator did refer to the word "Jalisco," and that the Applicant had testified that he did not know the name of the cartel who had threatened him. The RAD found that while the translation was not perfect, the Applicant was able to convey his evidence and the RPD member understood it.

[13]   The Applicant has not established a breach of procedural fairness because of inadequate translation. As the RAD properly noted, the law does not require interpreters to be perfect; they must provide continuous, precise, competent, impartial and contemporaneous translation of the testimony: *R v Tran*, 1994 CanLII 56 (SCC), [1994] 2 SCR 951 at p 979. Moreover, the Applicant had to demonstrate that the translation errors were serious, non-trivial and that they affected his ability to answer questions on material points: *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at paras 28–32; *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497 at para14. I am not satisfied that the Applicant has established any such errors here, or that the RAD failed to deal with his arguments on the translation point in an appropriate fashion.

B.   *The RAD's IFA analysis was reasonable*

[14]   The Applicant argues that the RAD failed to appreciate the nature of the risk he would face anywhere in Mexico, because he witnessed cartel members assassinate a wealthy person. His evidence was that the assassins were not wearing face coverings and he saw their faces; he was therefore at grave risk because he could identify them. The Applicant submits that the RAD fundamentally failed to appreciate that the cartel would be motivated to locate him because he witnessed an assassination by cartel members. He says that because of this error, the RAD's IFA analysis missed the mark.

[15]   The RAD questioned the cartel's motivation in part because the Applicant was not sought out in the period between December 2021, when he was threatened, and March 2022, when he left Mexico. The Applicant argues that the RAD's analysis fails to take into account his evidence

that he remained in hiding during this period, and that the cartel knew where he worked but not where he lived. According to the Applicant, the RAD erred in drawing a negative inference from the cartel's failure to find him during such a short period of time.

[16]   The Applicant also says that the IFA analysis is unreasonable because he will never escape the risk of being located by the cartel, and so he would be condemned to live in fear if he is forced to return to Mexico. The objective country condition evidence shows that cartels are able to track people who they want to find anywhere in Mexico. The Applicant relies on this evidence to show that the RAD's analysis of the risks he would face, and whether it would be reasonable for him to relocate to Merida, are both unreasonable.

[17]   I disagree. The RAD carefully examined the evidence, taking into account both the Applicant's prior experience after he was threatened, and the prospective risks he might face on a return to Mexico. The RAD's analysis is rooted in the evidence and logically and clearly explained. That is all that reasonableness requires.

[18]   The RAD accepted that cartels were able to track individuals if they had sufficient motivation to locate them, but it found that the Applicant had not demonstrated that such motivation existed in respect of him. The fact that he had stayed in his residence after he was threatened was an obviously relevant factor, given the evidence about the cartels' ability to find people. In addition, the RAD reasonably considered the evidence about the types of situations that appeared to motivate cartels to expend time and resources in locating people they wanted to hunt down.

[19]   Although the Applicant does not agree with the RAD's assessment of the evidence, that alone does not make it unreasonable. The Applicant bears the onus of demonstrating that the RAD's decision is marred by a fundamental misapprehension of the evidence, or a failure to grapple with essential points, or a significant gap in the logic of the analysis on an essential point (*Vavilov* at para 100). I am not persuaded that the Applicant has demonstrated that the RAD made any of these sorts of mistakes.

[20]   Based on the analysis set out above, I reject the Applicant's argument regarding the RAD's analysis of the IFA question.

III.   Conclusion

[21]   Based on the analysis set out above, the application for judicial review will be dismissed.

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

JUDGMENT in IMM-12999-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

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

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"William F. Pentney"
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Judge

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