Federal Court Cour fédérale

**Date: 20250923**

**Docket: IMM-15293-24**

**Citation: 2025 FC 1563**

**Ottawa, Ontario, September 23, 2025**

**PRESENT: The Honourable Mr. Justice Thorne**

**BETWEEN:**

**GERSON AGUIRRE CACHO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [“RAD”], confirming a finding by the Refugee Protection Division [“RPD”] that he is neither a Convention refugee nor a person in need of protection. In particular, he alleges that the RAD’s decision was unreasonable, stating that it misapprehended evidence and erred in its assessment of

the agent of harm's means and motivation to locate him in the proposed internal flight alternative ["IFA"].

[2] For the following reasons, this application is dismissed.

## II. Background

[3] The Applicant is a Mexican citizen, who was a resident of Veracruz. He states that in May 2021 he joined his former spouse in operating her family's lime production business, a venture that she had owned since 2018.

[4] The Applicant asserts that in December 2021, the Los Zetas cartel [the "Cartel"] telephoned the couple, in an effort to begin extorting them. The Cartel demanded that they begin to make payments, telling them that it knew their address and about their family members. Over a period of a few days, the Cartel allegedly continued to call, text and threaten both the Applicant and his ex-spouse.

[5] The Applicant also alleges that he was then once followed while driving in January 2022. He states that he called the police, who told him that they would send an officer, but one never arrived. He asserts that he believes the people who followed him were likely from the Cartel. A few days after this, he received another threatening call.

[6] The Applicant and his former spouse then fled Mexico and claimed asylum in Canada.

[7] The RPD found the Applicant's narrative to be credible but denied his claim, holding that he had a viable IFA in the city of Merida. In light of the evidence before it, the RPD concluded it was unlikely that the Cartel would be motivated to pursue and harm the claimant throughout Mexico. It noted that his ex-partner had been the owner of the business and held that even if the Cartel had the means to locate him, there was no evidence that it had any interest in doing so.

[8] The RAD affirmed the RPD's decision on appeal. Though it found that the RPD had been incorrect in finding that the Applicant had been threatened because of his ex-wife, on its independent assessment of the evidence, it ultimately also found that the Applicant had a viable IFA. This was because it held that while the Cartel may have had the means to locate him throughout the country, it lacked the motivation to do so as the Applicant was not an important enough target to warrant their attention.

## III. Issue and Standard of Review

[9] The sole issue in this matter is whether the decision under review is reasonable.

[10] In this respect, the role of a reviewing court is to examine the decision maker's reasoning and determine whether the decision is based on an "internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 64. Although the party challenging the decision bears the onus of demonstrating that the decision is unreasonable

(*Vavilov* at para 100), the reviewing court must assess "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility": *Vavilov* at para 99.

## IV. Analysis

[11] The underlying basis for an IFA is the notion that refugee claimants should seek safety elsewhere in their home country, before seeking protection in Canada. The test for the determination of an IFA is well-established: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 711; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at 592. It holds that an individual who faces a risk of harm in one part of a country may only be found to have an IFA in another part of that country if two criteria are met:

1. There must be no serious possibility of the claimant being persecuted, or subject to a personalized risk of torture, risk to life, or risk of cruel and unusual punishment in the part of the country where the IFA exists; and

2. It must not be unreasonable for the claimant to seek refuge in the IFA, considering all of their particular circumstances.

[12] Under the first branch of this test, a serious possibility of persecution, or a risk of torture, risk to life, or risk or cruel and unusual punishment can only be found if it is demonstrated that the agents of harm have both the means and motivation to search for an applicant in the suggested IFA: Saliu v Canada (Citizenship and Immigration), 2021 FC 167 at para 46, citing Feboke v Canada (Citizenship and Immigration), 2020 FC 155 at para 43; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21 [*Adeleye*]; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8. With respect to the second branch, the

threshold to establish unreasonableness is very high, requiring "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area": *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, 2000 CanLII 16789 (FCA) at para 15. Once an IFA is proposed, the onus is on the claimant to prove that they do not have a viable IFA: *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 9; *Adeleye* at para 20.

## V. Analysis

### A. *The RAD's decision is reasonable*

[13] The Applicant concedes the second part of the IFA test, as he presented no arguments with respect to this issue. Instead, he centers his arguments on the first prong of the test and the Cartel's means and motivation to locate him in the proposed IFA. In this respect, the Applicant raises three arguments.

[14] First, he submits that "means" and "motivation" are "inextricably linked." Here, the Applicant posits that if an agent of harm was one of great means that had the capacity to easily locate someone throughout the country, then their motivation to find that person need not be excessive for them to decide to do so. That is, for a party with extensive means, it would take less effort to find a target and, accordingly, that party would not require the same motivation to make the effort to do so as might someone else with less means. The Applicant contends that the converse proposition would also be true: An agent of harm with less means would need greater motivation to locate someone. It was, frankly, not clear how the Applicant believed that this

notion should functionally impact the analysis of means and motivation in this matter, however. During the hearing, counsel for the Applicant eventually clarified that they were not positing that agents of harm with great power or means should somehow be automatically taken to also possess the motivation to pursue any target. Instead, the Applicant seemed to simply be saying that the relationship between motivation and means was something that should be kept in mind in assessing the first prong of the test.

[15] Second, the Applicant contends that the RAD fundamentally misapprehended or failed to account for the evidence before it. In particular, he argues that the RAD found that the Applicant had only come to the Cartel's attention because his "ex-wife ran a lime business," whereas his Basis of Claim ["BOC"] indicated that the business was run by the Applicant and his ex-wife. He states that this misapprehension affected the RAD's conclusion on the Cartel's motivation to find the Applicant. As his oral testimony was that the Cartel was originally targeting him and his former partner "because [they] were the ones running the business," rather than because she was the owner of the business, the Applicant states the RAD could not use his ex-spouse's ownership of the business as a reason to conclude that the Cartel would not also be interested in harming him. The Applicant further asserts that there is simply no evidence suggesting that cartels consider who holds the official title to a business when deciding whether to pursue an individual who is involved in running a business. The Applicant also argues that the RAD erred when, in the Decision, it stated that the Cartel had "initially extorted his ex-wife", since his evidence had been that he had been the first person who had received a threatening call from the group.

[16] Third, the Applicant argues that the RAD selectively engaged with the objective evidence before it. He states that Item 7.53 of the Immigration and Refugee Board's National Documentation Package ["NDP"] for Mexico indicates that cartels are involved in the agricultural industry at every stage of the production process. The Applicant notes that his narrative is consistent with this evidence, since he and his wife had been operating a business involving agriculture, and he faults the RAD member for not addressing this evidence with respect to his claim.

[17] With respect, I do not find these arguments persuasive, and despite the able submissions of Counsel for the Applicant, all three must fail. I will address each in turn.

[18] As noted, with respect to the Applicant's first argument as to the supposed relationship between means and motivation, it is not clear how keeping this notion in mind is supposed to impact the functional analysis of the means and motivation in this matter. It remains true that regardless of their means, an agent of harm would only pursue a target in circumstances where they possessed sufficient motivation to do so. The finding of the RAD, and the issue faced by the Applicant in this matter, is that there was little to no evidence indicating that the Cartel had any such motivation. In its evaluation of the evidence, the Applicant was, in the words of the RAD, too "low level" a target for the Cartel to be motivated to pursue and harm him in the proposed IFA city of Merida. The Applicant has not established that this finding of the RAD was unreasonable.

[19] I also note that to the extent that this nebulous means and motivation argument is intended to indicate that motivation should simply be assumed when the agent of harm is one of great means, this is surely conceptually incorrect. It is also squarely at odds with this Court's jurisprudence on the matter, the oft-cited summary of which was provided by Justice McHaffie in *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at paragraph 13:

> It is important to note that there is a difference between a persecutor's *ability* to pursue an individual throughout a country and his *desire* to do so or *interest* in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution.

[20] I see no reason to depart from this analysis. On a basic conceptual level, there is clearly a distinction between one's ability to do something and their desire to do it. This distinction is key for decision makers tasked with evaluating a possibility of harm. Even an agent of harm with an abundance of resources or means to locate someone cannot reasonably be expected to do this if they have no interest in doing so. Despite their resources, such a party thus presents a low risk as they fail to present a serious possibility of doing so. On the other hand, an agent of harm that lacks the means to locate someone despite a pronounced interest in doing so, also might present that same low degree of risk, but for a different reason. Decision makers are rightfully expected to abide by that distinction in their analysis of the first prong: see *Belhedi v Canada (Citizenship and Immigration)*, 2023 FC 1449 at para 33; *Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 at para 30; *Sachdeva v Canada (Citizenship and Immigration)*, 2024 FC 1522 at para 56; *Fuentes Hernandez v Canada (Citizenship and Immigration)*, 2024 FC 1682

at para 22). Ultimately, an agent of harm's motivation must be assessed and borne out in the evidence, regardless of their means.

[21] More generally, it is also worth reiterating that "[any] precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide": *Vavilov* at para 112. It would have accordingly been unreasonable for the RAD to conduct the IFA analysis without due regard for precedent on the assessment of means and motivation.

[22] Turning to the Applicant's second argument, I find that it mischaracterizes both the evidence before the decision maker and the RAD's line of reasoning. The Applicant's BOC narrative states "[his ex-spouse] owned her own citrus company, selling limes, since approximately 2018," and that "[her] family has been in the business for a long time." As to his own role in the business, he claimed that "[he] joined her in approximately May 2021," and that his "responsibilities [included] picking up the limes from the sellers, bringing them to [their] warehouse, picking them for distribution and packaging them for sale." Describing his reasons for fleeing Mexico, the Applicant spoke of his realization that "[his ex-spouse] would be an obvious target for cartel violence." In my view, to the extent that the RAD traces a distinction between the Applicant and his ex-spouse's role in the business, it does so in the exact manner submitted by the Applicant in his own narrative.

[23] More importantly, however, the distinction the RAD traced between these roles is immaterial to the decision. Rather than dwell on who owned the lime business, the RAD simply

accepted "[the Applicant's] evidence that he came to the attention of [the Cartel] because of the lime business," but later found that he was too low-level a target to be tracked and harmed in the proposed IFA, especially if he was to leave the agricultural industry. On this point, the RAD noted that objective evidence established that cartels "typically do not track individuals for unpaid extortion fees, unless the target is of particular interest, for example, there is substantial monetary gain, the target has too much knowledge, etc." On its analysis of the evidence, the RAD simply concluded that the Applicant was not likely to be of interest, regardless of his formal position within the lime business. While I take counsel for the Applicant's point that the RAD decision was somewhat meandering, it is simply not correct to say that the RAD had indicated that the consideration of who holds official title to a business was key in the Cartel's decision as to whether to pursue them.

[24] I do note that Counsel for the Applicant was correct in noting that the RAD's statement that the ex-wife of the Applicant had been the one "initially extorted" was wrong. The evidence made clear that it had indeed been the Applicant who had received the first call from the Cartel. However, as Counsel for the Respondent asserted in conceding this point, ultimately nothing of substance turned on this error, as the RAD had clearly accepted that both the Applicant and his ex-wife had been threatened by the Cartel.

[25] Finally, the Applicant's third argument must also fail, because it too mischaracterizes the RAD's appreciation of the evidence. The RAD accepted "[the Applicant's] evidence that he came to the attention of [the Cartel] because of the lime business," even noting that this evidence "[was] supported by the objective country documentation." The objective evidence considered

here was Item 7.53 of the Mexican NDP, the same source referred to by the Applicant. This Item was expressly referenced by the RAD in its determination of the Applicant's claim. It is simply incorrect to state that the RAD failed to consider the information in Item 7.53 of the NDP that Mexican cartels are heavily involved in the agricultural sector. In fact, it is in light of this objective evidence that the RAD concluded that the Applicant should "cease to work in the agricultural sector to prevent himself from being targeted by the cartels." Perhaps this conclusion is not favourable to the Applicant, but it cannot be said that this objective evidence was simply not considered by the RAD. Further, nor can the Applicant now invite this Court to reweigh that evidence and substitute its own assessment for that of the RAD. That is not something the Court may do on judicial review: *Vavilov* at para 125.

## VI. Conclusion

[26] For the reasons set out above, this application for judicial review is dismissed. The parties proposed no question for certification, and I agree that none arises.

**JUDGMENT in IMM-15293-24**

**THIS COURT'S JUDGMENT is that**:

1. The application is dismissed.

2. No question of general importance is certified.

3. No costs are awarded.

"Darren R. Thorne"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-15293-24 |
| **STYLE OF CAUSE:** | GERSON AGUIRRE CACHO v THE MINISTER OF CITZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO (ONTARIO) |
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| **JUDGMENT AND REASONS:** | THORNE J. |
| **DATED:** | SEPTEMBER 23, 2025 |

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