

CANADA / JUDGMENT

MB9-20974

COURT

Refugee Appeal Division

DECIDED

10 March 2020

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RAD File No. / No de dossier de la SAR : MB9-20974 MB9-20975 / MB9-20976 Private Proceeding / Huis clos Reasons and Decision - Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal, Quebec Appel instruit / entendu à Date of decision March 10, 2020 Date de la décision Panel Me Love Saint-Fleur Tribunal Counsel for the persons who are the subject of the appeal Me Gisela G Barraza Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] The principal appellant, XXXX XXXX XXXX XXXX, and her minor children, the associate appellants, XXXX XXXX XXXX and XXXX XXXX XXXX, are citizens of Mexico. The principal appellant was appointed as the designated representative of the minor appellants. They allege that they fear that their lives are in danger in Mexico at the hands of the same people who want to harm XXXX XXXX XXXX, the principal appellant's common-law spouse and the father of the associate appellants, because he was an active supporter of LGBTQ rights. XXXX XXXX XXXX testified at the appellants' hearing before the Refugee Protection Division (RPD); his refugee protection claim was allowed and he is in Canada.
- [2] On August 12, 2019, the RPD rejected the appellants' refugee protection claims because it concluded that the threats from the agents of persecution were not directed at them and that they had internal flight alternatives (IFA) in Mexico City and Campeche. The RPD concluded that, for these reasons, the appellants had not demonstrated that there is a serious possibility of persecution or that, on a balance of probabilities, they would be subjected to cruel and unusual treatment or punishment if they returned to Mexico.
- [3] The appellants are appealing the RPD's decision rejecting their refugee protection claims. They allege that the RPD erred in its assessment of the danger they would face if they returned to Mexico and that it erred in law by concluding that there is an IFA available to them in Mexico.

- [4] In my opinion, the determinative issue for the Refugee Appeal Division (RAD) is whether the RPD erred in its assessment of the danger the appellants would face if they returned to Mexico. After a complete and independent analysis of the evidence submitted, I find that the RPD's decision was correct in that regard.
- [5] Consequently, I dismiss this appeal and confirm the determination. I am of the opinion that the RPD correctly determined that the appellants are neither Convention refugee nor persons in need of protection.

BACKGROUND

- [6] The appellants lived in the city of Cancun, in the state of Quintana Roo. XXXX XXXX XXXX, the principal appellant's common-law spouse and the father of the associate appellants, was a member of the Partido de la Revolución Democrática (PRD) political party and the Cancun Freemasons, and was also an LGBTQ rights activist in Mexico. He participated in marches and protests to campaign for those rights. In XXXX and XXXX 2018, he was supposedly verbally harassed and followed home by presumed members of organized crime. On XXXX XXXX, 2018, he was allegedly kidnapped in Cancun by four people dressed as police officers. On XXXX XXXX, 2018, he was reportedly kidnapped a second time, in the state of Guerrero. Since XXXX 2018, he has been receiving death threats over the telephone from unidentified people. XXXX XXXX XXXX suspects the Green party, the Cancun Freemasons and XXXX XXXX XXXX, a member of both these organizations with whom he was in conflict, of using their positions of power, and their connections to organized crime in the area to harm him and attempt to silence him. ROLE OF THE REFUGEE APPEAL DIVISION
- [7] The RAD must apply the correctness standard of review in accordance with the Federal Court of Appeal in *Huruglica*.¹ Consequently, I will carry out my own analysis of the record, including listening to the hearing, in order to establish whether the RPD committed any errors. ANALYSIS OF THE MERITS OF THE APPEAL Risk for the appellants in Mexico
- [8] The RPD concluded that the appellants were not at risk in Mexico and that they could return there because the threats proffered by XXXX XXXX XXXX agents of persecution were not directed at them, and that their interest was only for him so that he would stop supporting LGBTQ causes.
- [9] The appellants allege that the RPD erred in erroneously concluding that they would not be personally subjected to danger if they returned to Mexico. They maintain that the danger to which they would be subjected is a result of a subjective fear, and that their fears also have an objective basis.
- [10] According to the appellants, the RPD based its analysis on the fact that the threats and the kidnappings experienced by XXXX XXXX XXXX were designed to oppress him and prevent him from sharing his opinions, that the appellants had not received any threats during the XXXX days they spent separated from him, that the telephone calls received on the principal appellant's cellphone were directed at him and that the principal appellant's family has not

been threatened since the appellants left Mexico. The appellants allege that the RPD's interpretation of these events contradicts the evidence on the record. With all due respect to the appellants, I am of the opinion that these criticisms have no merit, for the following reasons.

- [11] To begin, I note that in its assessment of the appellants' fear in Mexico, the RPD considered the testimony given by the principal appellant and her common-law spouse, who was the principal claimant in the case before it.
- [12] Listening to the recording of the hearing reveals that, when questioned by the RPD about her fear for herself and her children, the principal appellant replied that she was afraid because of what had happened to her common-law spouse and because of the threats received. She specified that she feared her common-law spouse's aggressors because she and the children are part of his family. She also testified that the aggressors are not specifically looking for her and the children.² In my opinion, this testimony, which the principal appellant does not challenge on appeal, explains, in the plainest of terms, that she does not consider that she and her children are targets of her common-law spouse's agents of persecution. I am of the opinion that this testimony would be sufficient in itself to establish that the appellants have not demonstrated that they face a risk at the hands of XXXX XXXX XXXX aggressors.
- [13] But there is more.
- [14] XXXX XXXX XXXX testified that [translation] "My wife is not being directly pursued. The problem is that, when we are reunited, I put her in danger."³ In my opinion, this testimony, which is not contradicted on appeal and which clearly shows that XXXX XXXX XXXX, who is the principal claimant in the appellants' refugee protection claims and on whose claim they are basing their own claim, demonstrates that the principal appellant is not targeted by the aggressors, and their children even less so.
- [15] Furthermore, like the RPD, I note that in both instances where XXXX XXXX XXXX was kidnapped outside of his residence, his wife and children were inside the house and that another time on a different occasion, they remained hidden there in his absence and the aggressors did not attempt to harm them. According to the appellants, this demonstrates that the criminals have no issues with showing their victim XXXX XXXX XXXX that his family is also targeted by the threats. In my opinion, it simply demonstrates that XXXX XXXX XXXX aggressors did not show any interest in harming the appellants when they had the opportunity to do so.
- [16] The appellants allege that the RPD failed to consider the threatening telephone messages due to a lack of evidence corroborating that aspect of the appellants' testimony. According to my analysis, this criticism is without merit. Although the RPD noticed that the appellants failed to submit evidence of these messages, it nonetheless considered these threats and accepted that they had been made. However, the RPD simply concluded that the appellants had not demonstrated that, on a balance of probabilities, they were the targets of these

threats. Furthermore, considering the principal appellant's testimony that she and her children are not the ones whom her spouse's aggressors are searching for and his testimony to that effect, I am of the opinion that the RPD's conclusion is correct. In addition, the principal appellant testified that she did not know whether the threatening telephone calls received on her cellphone were directed at her common-law spouse or at her,⁴ and he testified that he did not have a cellphone and that he would give people his spouse's telephone number so that they could reach him.⁵

- [17] Lastly, I considered XXXX XXXX XXXX testimony that his aggressors harmed him to make him quit his political career because he was involved with the PRD political party, which they were successful in doing, and to prevent him from making positive changes to society.⁶ In these circumstances, and considering all of the observations above, I conclude that the appellants have not demonstrated their speculative allegation that, instead of protecting them, XXXX XXXX XXXX exile would place them in even greater peril because they would be the only pressure tactic for the true target.
- [18] Considering all of the above, I am of the opinion that it is not necessary to draw conclusions from the lack of threats during the XXXX days the appellants spent in Cancun. In any event, in my opinion, this is not telling of whether or not XXXX XXXX XXXX aggressors would harm them, because they were hidden in Cancun.
- [19] In light of the above, I am of the opinion that the appellants have not demonstrated that XXXX XXXX XXXX aggressors would harm them if they returned to Mexico or that there is a prospective risk for them if they return to Mexico. In these circumstances, I conclude that it is not necessary to assess the question of an IFA. Separation of the appellants and XXXX XXXX XXXX
- [20] The appellants' argument-namely, given that XXXX XXXX XXXX refugee protection claim was allowed, any IFA in Mexico is unreasonable, because they would be definitively separated-was formulated in the context of the IFA. Considering my previous conclusion that it is not necessary to assess the IFA, it is consequently unnecessary to assess this argument either.
- [21] In any event, in this case, it should be noted that the principal appellant's common-law spouse and the father of the associate appellants is not a person without status in Canada, since his refugee protection claim was allowed and he is now a person in need of protection who can include his common-law spouse and his children in his application for permanent residence. Consequently, I am of the opinion that at this point in time, it has not yet been demonstrated that the appellants would necessarily be separated from XXXX XXXX XXXX, and that this argument is speculative.
- [22] That said, I would like to point out that, under the IRPA, neither the RAD nor the RPD have the authority to make decisions based on humanitarian and compassionate grounds. Rather, the role of the RPD, and of the RAD on appeal, is to determine whether, for the refugee protection claimants, there exists a serious possibility of persecution or whether, on a

balance of probabilities, they would be subjected to a risk of cruel and unusual treatment or punishment or a danger of torture if they returned to their country of citizenship, in this case Mexico.⁷

- [23] It is my view that in this case, the main conclusion is that I am of the opinion that the appellants have not established and that they are not refugees or persons in need of protection under section 96 and subsection 97(1) of the IRPA. I am of the opinion that the RPD did not err in its analysis and that its decision on the matter is correct.

CONCLUSION

- [24] Pursuant to paragraph 111(1)(a) of the IRPA, the RAD dismisses the appeal and confirms the determination that the appellants, XXXX XXXX XXXX XXXX, XXXX XXXX XXXX and XXXX XXXX XXXX, are neither Convention refugees nor persons in need of protection. (Signed) Love Saint-Fleur Me Love Saint-Fleur March 10, 2020 Date IRB translation Original language: French 1 Canada (Minister of Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 2 Minute 00:28:41 and following of the recording of the hearing before the Refugee Protection Division (RPD). 3 Minute 02:32: 47 and following of the recording of the RPD hearing. 4 Minute 01:17:25 and following of the recording of the RPD hearing. 5 Minute 02:02:29 and following of the recording of the RPD hearing. 6 Minute 02:03:42 and following of the recording of the RPD hearing. 7 X (Re), 2017 CanLII 142905 (CA IRB), available online: <http://canlii.ca/t/hrzk8>.

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