

CANADA / JUDGMENT

MB9-29364

COURT

Refugee Appeal Division

DECIDED

10 February 2020

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RAD File No. / No de dossier de la SAR : MB9-29364 MB9-29365 / MB9-29366 / MB9-29367
MB9-29368 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who
are the subject of the appeal XXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXX
XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal
considered / heard at Toronto, Ontario Appel instruit / entendu à Date of decision February 10,
2020 Date de la décision Panel H. Shepherd Tribunal Counsel for the persons who are the subject
of the appeal Alfredo Garcia Conseil des personnes en cause Designated representative XXXX
XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre
REASONS FOR DECISION OVERVIEW

- [1] The principal appellant (PAXXXX XXXX XXXX XXXX XXXX, the associate appellant (AA),
XXXX XXXX XXXX XXXX (his spouse), and the minor appellants, XXXX XXXX XXXX (their
six-year-old son), XXXX XXXX XXXX (seven-year-old son) and XXXX XXXX XXXX (one-year
old son), citizens of Mexico, are appealing against the decision of the Refugee Protection
Division dated November 20, 2019.

Determination

- [2] The Refugee Appeal Division (RAD) dismisses the appeals and confirms the determination of
the RPD that the appellants are neither Convention refugee nor persons in need of
protection. Summary of the Basis of Claim Form
- [3] The principal appellant was targeted by XXXX, a truck driver who was dismissed following
reports of the PA. Subsequently, XXXX started to harass the appellants. One time, he
grabbed the AA's arm while she was walking in the street. XXXX threatened them with a
firearm. After their arrival in Canada, the PA's brother told him that he had seen XXXX with
a group of people who were consuming drugs in the street. XXXX killed his brother's dogs
one week before the hearing. Refugee Protection Division's findings

- [4] According to the RPD, there is no link between this risk and the definition of Convention refugee. This conclusion was not contested. The determinative issues for the RPD were whether the risk achieves the threshold of cruel and unusual treatment or punishment set out in section 97 of the Immigration and Refugee Protection Act (IRPA) and, alternatively, whether the appellants have an internal flight alternative (IFA) in the city of Mexico or in Mérida.
- [5] According to the RPD, the appellants are not at risk at home within the meaning of section 97 of the IRPA. In addition, they have a viable IFA. The risk is localized, and XXXX has neither the motivation nor the means to locate them in either city. Given their personal situation, it would be reasonable for them to move there. Grounds of appeal
- [6] The appellants submit that the RPD committed the following errors.
- i) The RPD's decision is not reasonable because, without a credibility analysis, one cannot understand the reasoning concerning the risk that the claimants faced in relation to XXXX;
 - ii) The reasons provided by the panel to explain the conclusion that the appellant failed to establish a risk to their lives or cruel and unusual treatment are neither legible nor intelligible and, therefore, are unreasonable; iii) As for the IFA, the appellants do not have any friends or family to help them get settled in those cities. XXXX can corrupt the authorities to obtain information about the appellants anywhere in Mexico. Administrative issues
- [7] I have applied the correctness standard of review.¹ In this case, the RPD did not enjoy a meaningful advantage over the RAD.
- [8] The appellants did not ask to submit new evidence and did not request a hearing.
- [9] The hearing transcript is not available. I listened to the digital audio recording of the hearing.
- [10] The version of the National Documentation Package (NDP) that was before the RPD on August 30, 2019. This version is still in effect.

ANALYSIS

Lack of analysis and intelligible reasons Appellants' objections

- [11] According to the appellants, the RPD did not conduct a detailed credibility analysis, which undermines the reasonableness of the decision. One cannot follow its reasoning on key aspects of the appellants's persecution. The reasons for decision do not reveal how the RPD analyzed the facts and what probative value it assigned to each. The reasons provide a minimized profile of XXXX.

- [12] The RPD's conclusion that the allegation that XXXX killed the dogs of the PA's brother is not credible because the event occurred a week before the hearing is unfounded and lacks a reasonable explanation. According to XXXX, to find that a person is lying is a serious matter. Convincing reasons must support such a conclusion.² A neighbour noticed XXXX giving meat to the dogs. The link seems logical.
- [13] The conclusion that the appellant failed to establish a risk to their lives or cruel and unusual treatment or punishment is neither legible nor intelligible and is therefore unreasonable.

Analysis

Lack of analysis

- [14] I agree with the lawyer that the RPD erred in paragraph 7 of the Reasons and Decision. The RPD could not evaluate the definition of the risk under section 97 without first having made findings of fact. According to paragraph 170(h) of the IRPA, the RPD receives evidence it considers credible and bases its decision on it. Furthermore, the testimony under oath is presumed to be true. In the absence of negative credibility findings, the RPD is presumed to have accepted that all the evidence is trustworthy. The RPD did not address the credibility of the allegations in detail. The RPD could forego a detailed analysis if it had no concerns about the appellants' credibility, but it was not entitled to do so because, in the RPD's opinion, the appellants do not meet the definition of persons in need of protection. The RPD requires a factual basis that is credible and trustworthy to come to such a conclusion. However, this error is not fatal because it respected the presumption of truth. The dogs' death
- [15] The RPD did not err with respect to the death of his brother's dogs. According to the PA, his brother called him and told him that a neighbour had seen XXXX feed his dogs. The RPD questioned the timing of the event (about one week before the hearing) and also concluded that the allegation was speculative. I agree that the conclusion that XXXX intentionally killed the dogs has not been established. No evidence was provided concerning the cause of death, and the third-hand report contains no background details. At best, it is a possibility, not a probability. However, the facts do not warrant a negative conclusion with respect to the calendar. The definition of person in need of protection
- [16] The RPD did not err in its application of section 97 of the IRPA. According to the RPD, the treatment the appellants suffered does not constitute a risk to their lives or unusual treatment or punishment. The forms of harassment experienced do not meet that threshold. Although XXXX had a firearm, he never discharged it, never called the appellants and never went to their house. Although XXXX caught the AA's arm once, she pulled her arm back and walked away. According to the RPD, this was not serious enough for her to remember the date. Despite the error in paragraph 7, the RPD assessed the events as stated by the appellants, with the exception of the speculations about the cause of the dogs' death, and correctly concluded that they do not meet the threshold of risk set out in section 97 of the IRPA. The IFA The appellants' objections

- [17] With respect to the first prong, one must consider XXXX interest in locating the appellants. He showed his interest in finding their house and harassing them. He threatened the AA with a firearm.
- [18] [Translation] "It is easy to corrupt the authorities who are the custodians of information to obtain information about a person," therefore, it would be easy for XXXX to corrupt the authorities. Although the appellant cited Tab 3.5 of the NDP as an authority, this document concerns driver's licenses.
- [19] With respect to the second prong, the RPD erred by concluding that the appellants could successfully settle in Mexico or Mérida because the unemployment rate is 6.9%. One must consider the totality of their profiles. They have neither friends nor family to help them in those cities.
- [20] The comment at paragraph 28 regarding humanitarian and compassionate considerations shows that the RPD did not understand that this pertained to the appellants' subjective fear and objective fears.³

Analysis

The first prong

- [21] The RPD did not err, as alleged, with respect to the first prong. According to the RPD, XXXX likely does not have the interest, power or wealth needed to conduct a nation-wide search of the appellants. Given that XXXX moved near him, the PA believes that XXXX tracked him down and wanted to live near him in order to harass them. The appellants cite Aviles Yanez to argue that the RPD should have taken the assailant's profile into consideration.⁴ That case is distinguishable from the facts in this appeal. The agent of persecution was a senator who had the means of finding the claimant after moving to another city. In this case, the appellants did not move, and XXXX did not find them elsewhere.
- [22] According to the appellants, XXXX is currently unemployed. The RPD did not err by concluding that the evidence fails to establish that he is a member of a drug trafficking group. XXXX is not pleased that the PA is partly responsible for the loss of his employment and wants to harass him. The RPD did not err with respect to the fact that the problems are local, meaning that they all occurred in his city of residence. These facts do not establish that XXXX would likely find the appellants if they lived in Mexico or Mérida. The second prong
- [23] The RPD did not err in its assessment of the second prong of the IFA test. The PA completed three years of high school, followed by a job in construction from 2000 to 2012, and then a job as security guard until his departure from the country. The AA also completed three years of high school. She worked as an XXXX between 2005 and 2012. A lack of family and friends, and the need to find work, do not make an IFA unreasonable. The appellants cited safety issues for not wanting to live there. The RPD consulted the relevant evidence and

correctly assessed the issue.

- [24] According to the Federal Court of Appeal,⁵ But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.
- [25] The RPD duly considered safety and other relevant factors and did not err by concluding that it would be reasonable for the appellants to live in the proposed IFAs.
- [26] The RPD did not err by determining that the appellants are neither Convention refugees nor persons in need of protection.

CONCLUSION

- [27] Pursuant to paragraph 111(1)(a) of the IRPA, the RAD dismisses the appeal and confirms the determination of the RPD that the appellants are neither Convention refugees nor persons in need of protection. (signed) " H. Shepherd " H. Shepherd February 10, 2020 Date IRB translation Original language: French 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 2 Peter v. Canada (Citizenship and Immigration) 2015 FC 619 (CanLII) at paragraph 7. 3 Exhibit SPR-1, RPD record, RPD reasons, at pp. 9-10, para. 28. 4 Aviles Yanez v. Canada (Citizenship and Immigration), 2010 FC 1059, at para. 41. 5 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 F.C. 589.

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MB9-29368 RAD.25.02 (January 2020) Disponible en français 8 Immigration and Refugee Board of
Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada
Section d'appel des réfugiés RAD.25.02 (January 2020) Disponible en français

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