

CANADA / JUDGMENT

MB9-15394

COURT

Refugee Appeal Division

DECIDED

7 February 2020

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RAD File / Dossier de la SAR : MB9-15394 MB9-15395 / MB9-15396 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
(a.k.a. XXXX XXXX XXXX XXXX) XXXX XXXX (a.k.a. XXXX XXXX XXXX XXXX) XXXX XXXX
(a.k.a. XXXX XXXX XXXX XXXX) Personnes en cause Appeal considered / heard at Vancouver, BC
Appel instruit / entendu à Date of decision February 7, 2020 Date de la décision Panel Douglas
Bruce Fortney Tribunal Counsel for the persons who are the subject of the appeal N/A Conseil des
personnes en cause Designated representative XXXX XXXX (a.k.a. XXXX XXXX XXXX XXXX) for
XXXX XXXX (a.k.a. XXXX XXXX XXXX XXXX) Représentant(e) désigné(e) Counsel for the Minister
N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX XXXX (Principal Appellant), his wife XXXX XXXX XXXX XXXX, and their minor son, XXXX XXXX XXXX XXXX (Associate Appellants), citizens of Mexico, appealed a decision of the Refugee Protection Division (RPD), dated June 10, 2019, rejecting their claims for refugee protection. BACKGROUND AND OVERVIEW OF APPEAL
- [2] The Appellants alledge that they were victims of threats and extortion by members of the Jalisco Nueva Generacion drug cartel (Jalisco Cartel), who wanted to obtain a list of clients who XXXX XXXX XXXX where the Principal Appellant worked as a XXXX XXXX. The threats began in XXXX 2017. The Appellants left Mexico on XXXX XXXX, 2017, and arrived in Canada the same day. They claimed refugee protection on November 17, 2017.
- [3] The Appellants' claim for refugee protection was heard by the RPD on May 7, 14, and 21, 2019 and rejected in written reasons dated June 10, 2019. The RPD Member identified the determinative factor to be credibility.
- [4] The Appellants were not represented by Counsel at the RPD hearing or in this appeal.
- [5] The Minister did not intervene at the RPD or in this appeal.
- [6] The Appellants have not challenged the credibility determination of the RPD Member nor have they clearly identified what constitutes any error in the RPD decision rejecting their claim. In the Principal Appellant's Application for an Extension of Time to Perfect the Appeal, he stated, "I need the extension of time for the Commissioner to review in detail the operation of the Jalisco cartel and the real danger that my family and I have if we return [to Mexico]." In the appeal record, the Principal Appellant states that the risk to him and his

family is real as his cousin XXXX was beheaded by the Jalisco Cartel in 2011 by not collaborating with them. He also alleged that his brother was also assaulted, threatened and beaten by gang members who confused his brother with the Principal Appellant.

- [7] While the Appellants have not clearly identified what remedy they seek in this appeal, it is deemed that they have requested that the Refugee Appeal Division (RAD) set aside the determination of the RPD and find that the Appellants are Convention refugees or persons in need of protection or alternatively refer the matter back to the RPD for redetermination by another Member.
- [8] I find that the determinative issue in this appeal is credibility. NEW EVIDENCE AND ORAL HEARING
- [9] The Appellants seek to enter new evidence in this appeal. Section 110(4) of the Immigration and Refugee Protection Act (IRPA)¹ provides that an Appellant may present only evidence that arose after the rejection of their claim, or that was not reasonably available, or that they could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.
- [10] Should the new evidence meet the statutory requirement outlined above, I will also consider the "Raza2 principles" as modified by Federal Court of Appeal in Singh.³ It directs the RAD to consider the credibility and relevance of the document in addition to the newness of the evidence.
- [11] The Appellants have not submitted any documentation as new evidence as required under the Refugee Appeal Division Rules (RAD Rules)⁴ but have included in the appeal record references to internet web links to two websites. The first website link refers to the alleged execution of his cousin XXXX by the Jalisco Cartel in 2011. The second internet web link was referenced as "The leader of the Jalisco cartel wants to submit to the judicial Authority".
- [12] I first note that any submission of new evidence must be in printed form not a simple reference to an internet web link. Secondly, I note that the Appellants have not made any submission as to how this evidence would meet the requirements of constituting new evidence as required under section 110(4) of IRPA. I further note that the Appellants did not refer to the murder of the Principal Appellant's cousin or any connection to their claim in their Basis of Claim (BOC) Forms or in testimony at the RPD hearing.
- [13] The request for new evidence has not been made in compliance with the RAD Rules and there have been no submissions to indicate how this evidence would meet the requirements of constituting new evidence as required under section 110(4) of IRPA. I therefore decline to accept these references to internet websites as new evidence in this appeal.

- [14] The Appellants have not requested an oral hearing. Under section 110(6) of the IRPA, the RAD can only consider ordering a hearing when new evidence has been accepted and that new evidence raises a serious issue with respect to credibility. This appeal will therefore proceed without an oral hearing. ROLE OF THE RAD
- [15] With respect to questions of fact, mixed fact and law, I have applied the standard of correctness as per Huruglica.⁵
- [16] I have analyzed this appeal based on documents submitted by the Appellant and all of the evidence contained in the RPD Record.
- [17] In this appeal, I find that the RPD did not have any real advantage in assessing the credibility that would lead to deference to its finding regarding it. The RPD does not state that there were any difficulties with the Appellants' testimony where the RPD would have been in a better position than the RAD to judge it.

ANALYSIS

- [18] As noted above, the Appellants have not challenged the credibility determination of the RPD Member nor have they clearly identified what constitutes any error in the RPD decision rejecting their claim. The RPD Member found the Principal Appellant not credible with respect to key elements of his refugee protection claim, and therefore did not believe the allegation that he was threatened by members of the Jalisco Cartel. As his wife and minor son based their claims for refugee protection on that of the Principal Appellant, the RPD Member did not believe the allegations made by his wife and son.
- [19] In making this credibility finding, the RPD Member noted what she considered to be key omissions in the Principal Appellant's BOC Form and contradictions in his testimony, involving key allegations such as when the first encounters with gang members occurred and when the gang members started giving him and his family death threats.
- [20] In the Principal Appellant's Application for an Extension of time to Perfect the Appeal, he stated, "I need the extension of time for the commissioner to review in detail the operation of the Jalisco cartel and the real danger that my family and I have if we return [to Mexico]". In the appeal record, the principal appellant states that the risk to him and his family is real as his cousin XXXX was beheaded by the Jalisco Cartel for not collaborating with them. He also alleged that his brother was also assaulted, threatened and beaten by gang members who confused his brother with the Principal Appellant. I note that the alleged incidents involving his brother and cousin were not referred to in his BOC Form or in testimony at the hearing.
- [21] The RPD Member found the Principal Appellant was not credible with respect to key elements of his refugee protection claim, and therefore did not believe the allegation that he and family members threatened by members of the Nueva Generacion Cartel. Based on my independent review of the evidence and on the balance of probabilities, I agree with this

finding by the RPD Member. I therefore dismiss this appeal on the same grounds as the RPD Member as I have also found on the balance of probabilities that the Appellants' allegations are not credible.

CONCLUSION

[22] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention⁶ refugees nor persons in need of protection, pursuant to section 111(1) (a) of the Immigration and Refugee Protection Act. (signed) "Douglas Bruce Fortney" Douglas Bruce Fortney February 7, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27. 2 Raza v. Canada (Minister of Citizenship and Immigration), 2007 FCA 385. 3 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96. 4 Refugee Appeal Division Rules, SOR/2012-257. 5 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 6 1951 Convention Relating to the Status of Refugees: Office of the United Nations High Commissioner for Refugees, "Handbook on Procedures and Criteria for Determining Refugee Status", under the 1951 Convention.

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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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