

CANADA / JUDGMENT

MB8-21435

COURT

Refugee Appeal Division

DECIDED

24 November 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR : MB8-21435

MB8-21436

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXXXXXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Vancouver, BC

Appel instruit / entendu à

Date of decision

November 24, 2020

Date de la décision

Panel

Ron Liberman

Tribunal

Counsel for the persons who are the subject of the appeal

N/A

Conseil des personnes en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

[1] XXXX XXXX (Principal Appellant) and his adult daughter XXXX XXXX XXXX (Associate Appellant), citizens of the Philippines (collectively, the Appellants), appeal a decision of the Refugee Protection Division (RPD) dated August 20, 2018. The RPD found that the Principal Appellant is excluded from Refugee Protection under Article 1F(a) of the Convention,¹ and that in any event the Appellants' claims to be Convention refugees or persons in need of protection are without merit. I have conducted an independent analysis of all the evidence concerned, including the entire Appellant Record and the oral testimony. In making my decision, I have considered the Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution (Gender Guidelines).² I find that the Principal Appellant is excluded by Article 1F(a) of the Convention from refugee protection. I find the RPD erred by unnecessarily continuing to examine the refugee claim of the Principal Appellant after making this determination. I find, with regard to the claim of the Associate Appellant, that she has an Internal Flight Alternative (IFA) in the proposed IFA location of Manila. In view of these findings, the appeals of both Appellants fail.

BACKGROUND

[2] The Appellants allege as follows. The Principal Appellant's career with the military services of the Philippines spans 25 years, since 1981. His final assignment was to the Washington D.C. Embassy as an administrative assistant, and as such the Appellants have been living in the United States (US) since 2002. The Appellants fear returning to the Philippines because they allege the Climaco family is under threat from unknown criminals. Their relatives have been victims of criminality, and the Principal Appellant's uncles and cousin were killed.

Both father and daughter believe they will be further targeted as returnees from abroad. They arrived in Canada in XXXX 2015, and they brought a refugee claim once it was apparent that the Principal Appellant's application for an extension of his work visa with the Embassy of Afghanistan in Washington, DC was not progressing.

MINISTER'S SUBMISSIONS

- [3] Minister's Counsel intervened in person at the RPD hearing. The Minister submitted that the Principal Appellant's claim should be excluded under Article 1F(a) of the Convention, and furthermore that the claims of both Appellants to be Convention refugees, and to be persons in need of protection, should be denied. The Minister made further submissions to the Refugee Appeal Division (RAD) in response to the Appellants' appeal.

RPD FINDINGS

- [4] The RPD found the Principal Appellant is excluded under Article 1F(a) of the Convention for voluntarily making knowing and significant contributions to crimes against humanity committed by successive governments of the Philippines. The allegations that the Appellants' family were targeted for political or personal reasons were not substantiated by the evidence, and the Appellants' delay in claiming was inconsistent with their having subjective fear of returning to the Philippines. The RPD further found that both Appellants have an IFA in Manila.

APPELLANTS' ARGUMENTS

- [5] The Appellants, who are self-represented in this appeal, argue the RPD made no negative credibility findings, but nevertheless failed to accept the testimony of the Appellants. The Appellants allege the RPD was confrontational and openly disbelieved the testimony. To summarize the Appellants' arguments on the issue of exclusion, the Appellants argue the RPD failed to prove that the Principal Appellant was involved in crimes against humanity, failed to consider that the Principal Appellant remained in his position with the military owing to economic conditions, failed to assess the level of the Principal Appellant in the military appropriately, and failed to mention specific jurisprudence relied on in making its decision. The Appellants argue that if returned to the Philippines, they are at risk from unknown individuals who previously attacked their family, and because they would be treated as foreigners on return having been away in the US for so long, they would therefore be targets for kidnapping and ransom.

NEW EVIDENCE

- [6] The Appellants have not applied to admit new evidence, but the Principal Appellant has supplied an affidavit with his memorandum.
- [7] To decide whether to admit this affidavit as new evidence, I must consider the requirements of section 110(4) of the Immigration and Refugee Protection Act³ (IRPA or the Act) to determine whether this is evidence that arose after the rejection of the claim, or was not reasonably available when the claim was rejected, or is evidence which the Appellant could not reasonably have been expected to present at the time of the rejection. If I find that the evidence meets the test in section 110(4), I must also, in order to admit it, determine that the evidence meets the modified factors of credibility, relevance and newness as specified in

Raza⁴ and Singh.⁵ The Appellants are required to explain how the new evidence that has been provided meets the requirements of section 110(4), as is clarified in Tiodunmo,⁶ but have not done so in this instance.

- [8] No request has been made to admit the Principal Appellant's affidavit as new evidence, but as the Appellants are self-represented in their appeal, I will afford them some leeway in this regard. I find the affidavit deals with some matters that arose prior to the RPD rendering its decision, including the Appellants' attempts to obtain a transcript of the hearing following the decision as well as a request for an extension of time until December 10, 2018 to obtain a transcript and perfect the appeal. There are also legal arguments contained with the affidavit.
- [9] I find that statements in this affidavit about attempts by the Appellants to obtain a transcript of the hearing meet the requirements of section 110(4) because they relate to events that occurred after the RPD decision. However, they do not meet the modified Raza criterion of relevance, because a transcript is available and this affidavit is incapable of proving or disproving a fact that is relevant to the claim for protection. I do not admit the affidavit, but I have considered the legal arguments contained in paragraphs 22 and 23 of this affidavit.

ORAL HEARING

- [10] Section 110(6) of IRPA⁷ states that the RAD may hold a hearing if there is new evidence that raises a new issue with respect to the credibility of the person who is the subject of the appeal, that is central to the decision with respect to the refugee protection claim and that, if accepted, would justify allowing or rejecting the refugee protection claim.
- [11] Since no new evidence has been admitted, the RAD will not hold an oral hearing.

ROLE OF THE RAD

- [12] In accordance with the decision in Huruglica,⁸ when reviewing the decision of the RPD, I have applied a standard for my review of correctness while conducting an independent assessment of the entirety of the evidence before me.

ANALYSIS

- [13] The RPD found that the Principal Appellant is excluded under section 98 of IRPA⁹ with regard to Article 1F(a) of the Convention. The RPD found that current jurisprudence allows the Principal Appellant to be excluded as an accomplice, even though there is no evidence that he personally committed crimes against humanity.
- [14] Article 1F(a) of the Refugee Convention, set out in the Schedule to the Act, reads as follows:
- F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes ¹⁰

[15] The Appellants argue the RPD erred in this finding because there is no evidence that the Principal Appellant ever committed any of the crimes enumerated above, because the RPD failed to explicitly cite the jurisprudence it refers to, and as stated in paragraph 23 of the Principal Appellant's affidavit, because the RPD failed to apply the spirit of the law by deeming that some association with the army of the Philippines was equivalent to being an accomplice to its acts. For the reasons explained below, I disagree with these arguments of the Appellants.

[16] The burden of proving that the Principal Appellant is excluded from protection under Article 1F(a) rests with the Minister.¹¹ The standard of proof is 'a reasonable suspicion' which falls below the civil standard of balance of probabilities but is more than mere suspicion.¹²

[17] I note firstly that a person may be complicit in crimes against humanity, without the person having actually participated in them. The Supreme Court of Canada in *Ezokola* articulated the test for complicity as follows:

To exclude a claimant from the definition of 'refugee' by virtue of art 1F(a), there must be serious reasons for considering that the claimant has voluntarily made a significant and knowing contribution to the organization's crime or criminal purpose.¹³

Did the armies of the Philippines commit crimes against humanity during the relevant periods?

[18] As a preliminary matter, in order to find the Appellant is excluded under Article 1F(a) it is clearly necessary to evaluate whether the actions of the Philippines military during the period they employed the services of the Principal Appellant amount to war crimes.

[19] In submissions to the RPD, the Minister's Counsel referred to Canada's Crimes Against Humanity and War Crimes Act¹⁴ and the Rome Statute of the International Criminal Court¹⁵ (the Rome Statute) as stating that crimes against humanity include murder, torture, imprisonment or other severe deprivation of physical liberty and enforced disappearance of persons when committed as part of a widespread or systematic attack directed against any civilian population.

[20] Canada is a party to the Rome Statute, and Minister's Counsel correctly identifies that Parliament has implemented the treaty through the domestic legislation referred to above.

[21] Minister's Counsel also refers to the Supreme Court of Canada decision in *Mugesera*.¹⁶ This case is frequently cited as authority for the proposition that for a criminal act to reach the level of a crime against humanity, the four following elements must be made out:

- (1) An enumerated proscribed act has been committed;

- (2) The act was committed as part of a widespread or systemic attack;
- (3) The attack was directed against any civilian population or any identifiable group of persons; and
- (4) The person committing the proscribed act knew of the attack and knew or took the risk that his or her act comprised part of that attack.

[22] The Appellant submits that in this instance Mugesera ought not to be considered by the decision maker, because the circumstances of that specific case involve actions as a member of a political party in making public speeches inciting murder, genocide and hatred, whereas the role of the Principal Appellant in this matter was a passive one. However, I agree with the Minister's Counsel's submissions that Mugesera is relevant because it explains the elements that are required to establish a crime against humanity, including an explanation of when an act is "widespread" or "systematic."¹⁷

[23] Although the Appellants argue there is no such evidence, the documentation in the RPD Record is replete with reports from credible sources such as Amnesty International and Human Rights Watch of widespread torture, arbitrary arrest, indefinite detention, violation of prisoner

rights, and "disappearances."¹⁸ This documentation spans the period from the end of the rule of President Marcos, through the time when President Aquino ruled, followed by the rule of President Ramos and President Estrada.

[24] There is no doubt, based on the evidence before me, that the Philippines military committed these significant crimes on a widespread and systematically planned basis, and that they were directed against persons such as the New People Army (NPA) and others who were perceived as opponents of the regime, and that the persons involved in these attacks were fully cognizant of what was happening. It follows that there is no question that these actions of the Philippines military amount to crimes against humanity.

Was the Principal Appellant complicit in these crimes?

[25] Whether or not an individual's conduct meets the test for complicity in crimes against humanity is based on a detailed, contextualized assessment of the facts. Ezokola sets out the following non-exhaustive list of factors that may be relevant in establishing the three components necessary for complicity:

- (i) the size and nature of the organization;
- (ii) the part of the organization with which the refugee claimant was most directly concerned;
- (iii) the refugee claimant's duties and activities within the organization;
- (iv) the refugee claimant's position or rank in the organization;

(v) the length of time the refugee claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose;

(vi) the method by which the refugee claimant was recruited and the refugee claimant's opportunity to leave the organization.¹⁹

[26] The RPD found that the Philippines military is a legitimate force created by the government of that country, and consequently when they exercise legitimate force it is not a crime. The Appellants have not disputed this finding, and I agree that the RPD's finding in this respect is clearly correct.

[27] The RPD did not address under this heading whether the large size of the Philippines military machine mitigated against the possibility that the Principal Appellant was aware of its crimes against humanity. Nevertheless, in its analysis, the RPD found that the Principal Appellant was in a smaller unit of the military, and he was aware of the crimes. My analysis below confirms that.

Was the Principal Appellant's participation in the military voluntary?

[28] The RPD found that the Principal Appellant joined the military voluntarily, and that he could have left. The Principal Appellant has not disputed that he joined of his own free will, but submits that "the country's condition was so terrible, with low employment rates, upheaval and general conditions...made it nearly impossible"²⁰ to give up his position and support his family.

[29] As the Minister's Counsel pointed out, correctly in my opinion, economic considerations are a poor excuse for failing to leave an organization which is committing crimes against humanity, and I find later in my decision the Principal Appellant knew what the military was doing. Furthermore, there is no evidence in the RPD Record which would confirm that the Principal Appellant's wife did not bring in an income, how many children if any they had to support when the Principal Appellant first learned of the abuses while he was employed by the military, or that economic conditions were so dire that they effectively rendered him a slave to the military's purposes. I agree with the RPD, based on the evidence before me, that the Principal Appellant was not under duress because of the economic conditions pertaining in the Philippines, and that he was free to leave the military.

Role of the Principal Appellant

[30] In the Memorandum, the Principal Appellant denies any personal involvement in these atrocities and opposes the RPD's finding on the grounds that his job was merely to collate information provided by others, that there is no evidence that he knew of these violations, or of

his contribution to them. Moreover, the Appellants submit the RPD erred because its Reasons fail to disclose what jurisprudence entitled it to find that the Principal Appellant was subject to exclusion under Article 1F(a) as an accomplice, and therefore this conclusion of the RPD is invalid.

- [31] The fact that the RPD did not explain in paragraph 24 of its Reasons which legislation it relied upon to make its finding of complicity is not relevant in my view, because the RPD under section headings 'The Law' and 'The Jurisprudence' set out the relevant legislation and case law.²¹ Furthermore, I determine in my analysis below that the RPD correctly considered the factors it was required to evaluate, as established by the Supreme Court of Canada decision in *Ezokola*, to establish complicity: whether the Principal Appellant made a voluntary, significant, and knowing contribution to the crimes against humanity committed by the military in the Philippines.
- [32] *Ezokola* articulates a contribution-based approach to complicity. In deciding this case, the Supreme Court emphasized that mere association or passive acquiescence is not sufficient to conclude that there is complicity.
- [33] The RPD found that the Principal Appellant was employed as an intelligence officer from 1983 until 1997, and that although the Principal Appellant claimed he only learned about the atrocities committed by the military in the Philippines late in his career, this was not true; it was obvious that a person in the Principal Appellant's position would know of the abuses-he was in a vital position to know of them.

Was the Principal Appellant's contribution to these atrocities a significant and knowing one?

- [34] In his testimony and in his subsequent submissions, the Principal Appellant has explained that his work required him to collate tactical intelligence reports received from the field, type the information, and forward it to higher quarters. He maintains his role in the military was a minor one.
- [35] The information supplied by the Principal Appellant regarding his military service spans the period from 1981 to 2005, comprising service in the Philippines from 1981 to 1996, followed by service at the XXXX XXXX XXXX between 1997 to 2001, followed by service at the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX between 2002 until 2005.²² He eventually reaching the rank of XXXX XXXX. He was stationed within a XXXX XXXX XXXX (XXXX), for the most part XXXX-XXXX, and at one time XXXX XXXX XXXX XXXX
- [36] The RPD found that the Principal Appellant was evasive and vague in his testimony, for example with regard to the number of arrests he had helped to make, the number of interventions in which he took place during his military service, and that he claimed to have only learned about atrocities committed by the Philippines military services many years after his joining the military when YouTube became available. The Appellants submit that the Principal Appellant was "nervous, shaken, and psychologically fragile"²³ as an explanation for his vague and evasive testimony. The Appellants submit that "from the

beginning" the RPD was "confrontational and openly disbelieving", was "unprofessional" and "showed bias."²⁴

- [37] As well as reading the transcripts of the hearings (which took place on three separate days) in their entirety, I have listened to portions of the audio where the RPD confronted the Principal Appellant with its concerns. I find that overall, the RPD was fair and carefully assessed the evidence given by the Appellants. I do not find that the RPD's overall tone was inappropriate, or unprofessional. While, on occasion, the RPD may perhaps have been irritated by its perception that what the Principal Appellant was saying could not possibly be true, the RPD gave the Appellants ample opportunity to address its concerns and afforded them an extensive hearing. Furthermore, I do not apprehend based on my scrutiny of the testimony that the RPD was confrontational from the outset or that it was unprofessional. Furthermore, no accusation of bias was raised by Counsel for the Appellants at the RPD, and I do not see any evidence of bias in the testimony or the decision. It also does not appear to me, based on the audio of the hearing, that the Principal Appellant was unduly nervous or so affected by the stress of the hearing that he was unable to answer questions accurately and directly. I reject all these assertions of the Appellants.
- [38] I agree, having examined these portions of the hearing audio and the full transcripts of the oral testimony, that the Principal Appellant was vague and evasive in his testimony before the RPD. Moreover, his testimony that he only took the atrocities seriously after seeing YouTube videos is inconsistent with his statements to the Canada Border Services Agency (CBSA) officer who interviewed him, and in which he gave direct answers to these questions. The Principal Appellant stated in his interview with the CBSA that field operations sometimes needed his help in apprehending members of the NPA and that, while stationed in XXXX XXXX sometime between 1983 and 1989, he participated in the arrest of NPA members, and he participated in field operations a total of approximately five times. On one occasion, the Principal Appellant personally arrested a NPA member and took them to headquarters of XXXX XXXX XXXX. The Principal Appellant denied any personal involvement in mistreatment of NPA members. When asked whether he had ever seen any acts of torture towards NPA members or supporters of the NPA, the Principal Appellant stated he had witnessed that in other units but denied that such events ever occurred at XXXX XXXX XXXX where he worked.²⁵ He conceded however that in other units, or where the police were involved, persons would be beaten up, burned with cigarettes, deprived of sleep, and that he was aware of a person being killed. When asked whether he knew what had happened to the person whom he arrested, the Principal Appellant responded by indicating that person had been turned over to the police.
- [39] The RPD also points out, and I agree, that when the Principal Appellant was stationed in Japan, he had the opportunity to learn through uncensored news reports about these atrocities. The Principal Appellant served in the Philippines military for 25 years, and the length of his service also suggests that he would likely have known about the atrocities.

- [40] The Principal Appellant has not opposed the finding of the RPD to the effect that he had knowledge of the atrocities commencing early in his career and continuing later, except to state that the RPD failed to mention proof of such crimes in its decision, that there was no evidence of him being aware of the violations, and that the specific unit within which he was stationed never participated in such violations. Given that the independent evidence in the RPD Record to which I have referred clearly establishes such violations occurred, that the Principal Appellant himself confirmed to CBSA that he had witnessed atrocities, that he visited detainees within his own unit, and that according to the objective evidence the tactics used by the military and the police in the Philippines to interrogate subjects included torture, which the Principal Appellant also acknowledged in his interview with CBSA, I find these assertions of the Principal Appellant to be simply untrue. The Principal Appellant also confirmed having personally arrested a member of the NPA and having handed them over to the police, who he stated to CBSA torture people. I find that the RPD was correct to draw negative inferences against the credibility of the Principal Appellant based on his claims to have no knowledge of the atrocities, and the RPD was also correct that the Principal Appellant was aware of them from early in his career.
- [41] The Principal Appellant stated in his testimony before the RPD that the reports he collated were intended to identify members of the NPA who were fighting the government. The Principal Appellant, in his own sworn testimony, states that he relayed information to his superiors that enabled them to identify which persons were members of the NPA, or who were likely to be members of that organization. Since these were the very persons targeted by the government of the Philippines for acts which, as per my analysis above, constitute crimes against humanity, there is no doubt that the Appellant made significant contributions to these atrocities.
- [42] In summary, based on the evidence before me, the RPD and the Minister's Counsel were correct that the Principal Appellant's contribution to the crimes against humanity committed by the Philippines military was a voluntary, significant, and knowing contribution.
- [43] I conclude, in common with the RPD, that there are serious reasons for considering the Principal Appellant is excluded by operation of Article 1F(a) of the Convention from refugee protection.
- [44] It is unnecessary, given this finding, for me to examine other points advanced in favour of the Principal Appellant in the Appellants' Memorandum-for instance the denial that they were in the US illegally, or what the Principal Appellant meant when he said he was "proud"²⁶ to serve in the military in the Philippines, because these matters would not alter the outcome of the Principal Appellant's claim.

CLAIM OF THE ASSOCIATE APPELLANT

- [45] Since the RPD found that the Principal Appellant is excluded for complicity in crimes against humanity, it was an error for the RPD to continue to examine the inclusion issue for him: whether he had a claim to refugee protection on return to the Philippines, its finding of exclusion effectively disposes of his claim. Despite this, there is no evidence that his daughter, the Associate Appellant, had any connection to the crimes against humanity, and so her claim must be assessed independently of the claim of the Principal Appellant.
- [46] The Associate Appellant alleges that she fears harm at the hands of unknown members who killed her father's family, and because on return to the Philippines, she will no longer be regarded as a Filipina, but as a rich American who will be targeted for kidnapping and extortion.
- [47] The Associate Appellant did not assert that her claim is in any way based on her gender. The RPD decision states that the Chairperson's Guideline 4 was nevertheless taken into consideration, and that the Associate Appellant did not establish a serious possibility of persecution because of her gender. The Appellants have not opposed this finding of the RPD on appeal. There is no evidence in the National Documentation Package (NDP) for the Philippines that women are differentially targeted, or at greater personal risk because of their gender, in kidnapping and ransom attempts.²⁷ In my independent assessment, having considered the entirety of the evidence before me, as well as the Chairperson's Guideline 4, I find no reason to depart from this finding of the RPD.
- [48] The RPD found that the Appellants did not establish that the Principal Appellant's family, who they alleged were targeted by unknown persons and were under "anonymous threat" were targeted for their imputed political opinion, but rather that they were targeted by criminals. Based on the evidence before me, I agree. The Associate Appellant's claim therefore falls under section 97 of IRPA.²⁸
- [49] The RPD found that the Associate Appellants refugee claim, like that of her father's, was filed six months after their arrival in Canada, without a reasonable explanation for the delay, and that they both lacked subjective fear. I will not assess this finding, because it is not relevant to the Associate Appellant's claim, as subjective fear is not a requirement for a claim made under section 97 of IRPA.
- [50] The RPD found that the Appellants have an IFA in Manila.
- [51] The test for assessing an IFA is two-pronged and is set out in the Federal Court of Appeal decision in *Rasaratnam*:²⁹

- (1) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA.
- (2) Moreover, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for him to seek refuge there.
- [52] Although the RPD accepted that criminality is present in Manila and that persons who return from abroad are more at risk from criminal gangs, the RPD found this is a generalized risk which applies to all expatriates who return to Manila.
- [53] Section 97(1)(b)(ii) of IRPA excludes risks which are faced "generally by other individuals in or from that country."³⁰ I agree with the RPD that the Associate Appellant has not identified a section 97 risk which is different from that applicable to other expatriates of the Philippines returning to Manila, and therefore I find the Associate Appellant's risk from criminals in Manila under section 97(1) is excluded by operation of section 97(1)(b) of IRPA.
- [54] I find the first prong of the test for IFA is satisfied, because there is no evidence that the Principal Appellant faces section 96 or section 97 risks in the proposed IFA location of Manila.
- [55] Turning to the second prong of the test, the Federal Court imposes a very high standard before it can be found that an IFA is unreasonable or unduly harsh: "It requires 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. In addition, it requires actual and concrete evidence of such conditions."³¹
- [56] The Associate Appellant explained in her oral testimony that because she grew up in the US, she is unfamiliar with the lifestyle and the culture in Manila, she is unsure that there is money for her to obtain post-secondary education there, and that because there is low employment and a competitive environment, she is uncertain that she would even be able to obtain a job in Manila.
- [57] The objective country conditions evidence is that Manila is home to one-eighth of the country's population and states that 12.946 million persons live there.³² Another item of objective evidence states that while Manila is home to only 12.5 percent of the population, it is responsible for 36.5 percent of national Gross Domestic Product (GDP).³³ The Associate Appellant stated that she was working as a server in Canada, and she has provided no cogent explanation as to why that work would be unavailable to her in the Philippines, where a significant percentage of the economic activities of the country take place, and where so many people manage to live. Even if this is not the future the Associate Appellant envisages for herself, it does not amount to living in circumstances that meet the very high standards

imposed by the case law for an IFA to be unreasonable or unduly harsh. Refugee claimants are expected to move to and adapt to an IFA within their own country if it would meet the two-pronged test, prior to asking a country of which they are not a national, such as Canada, for protection.

[58] In view of the above, I find that the Associate Appellant has not met her burden of demonstrating that the proposed IFA of Manila is unreasonable or unduly harsh.

[59] I accordingly find that the proposed IFA of Manila meets both prongs of the test.

CONCLUSION

[60] The determination that a valid IFA exists is dispositive of claims under both section 96 and section 97 of IRPA. The RPD was therefore correct that the Associate Appellant's claim fails under both section 96 and section 97 of IRPA. The Principal Appellant's claim fails because he is excluded under Article 1F(a) of the Convention, as incorporated in Canadian legislation by section 98 of IRPA.

DETERMINATION

[61] Pursuant to paragraph 111(1)(a) of the IRPA,³⁴ the RAD confirms the determination of the RPD that the Principal Appellant is excluded from refugee protection by operation of section 98 of IRPA, and that the Associate Appellant also is neither a Convention refugee nor a person in need of protection.

(signed)

"Ron Liberman"

Ron Liberman

November 24, 2020

Date

1 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.

2 Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution, Effective date: 13 November 1996.

3 Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27, section 110(4).

4 Raza v. Canada (Minister of Citizenship and Immigration), 2007 FCA 385.

5 Canada (Minister of Citizenship and Immigration) v. Singh, 2016 FCA 96, [2016] 4 FCR 230.

-
- 6 Tiodunmo v. Canada (Citizenship and Immigration), 2019 FC 1489.
- 7 IRPA, section 110(6).
- 8 Huruglica v. Canada (Citizenship and Immigration), 2014 FC 799.
- 9 IRPA, section 98.
- 10 IRPA, subsection 2(1).
- 11 Ramirez v. Canada (Minister of Employment and Immigration), [1992] 2 F.C. 306 (C.A.).
- 12 Ezokola v. Canada (Citizenship and Immigration), 2013 SCC 40, [2013] 2 S.C.R. 678.
- 13 Ibid.
- 14 Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24.
- 15 UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998.
- 16 Mugesera v. Canada (Minister of Citizenship and Immigration), 2005 SCC 40, [2005] 2 S.C.R. 100.
- 17 Ibid.
- 18 Exhibit RPD-1, RPD Record, at pp. 690-693.
- 19 Supra, at endnote 13, para. 91.
- 20 Exhibit P-2, Appellant's Record, Appellant's Memorandum, at p. 24.
- 21 Exhibit RPD-1, RPD Record, Reasons, at pp. 10-11.
- 22 Exhibit RPD-1, RPD Record, Exhibit M-1, at p. 708.
- 23 Exhibit P-2, Appellant's Record, Appellant's Memorandum, at p. 23.
- 24 Ibid.
- 25 Exhibit RPD-2, RPD Record, Canadian Border Services Agency Minutes of a Hearing, at p. 51.
- 26 Exhibit P-2, Appellant's Record, Appellant's Memorandum, at p. 25.
- 27 National Documenttaion Package (NDP) for the Philippines (April 30, 2018), item 7.1: Philippines. 2018 Crime and Safety Report, March 13, 2018.
- 28 IRPA, section 97.
- 29 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 (FCA).
- 30 Supra, at endnote 31.
- 31 Ranganathan v. Canada (Minister of Citizenship and Immigration), 2003 FC 1367.

32 NDP for the Philippines (April 30, 2018), item 1.3: Philippines. The World Factbook, April 9, 2019.

33 NDP for the Philippines (April 30, 2018), item 2.4: Philippines. Freedom in the World 2018, 2018.

34 IRPA, section 111(1)(c).

RAD File / Dossier de la SAR : MB8-21435

MB8-21436

RAD.25.02 (January, 2020)

Disponible en français

2

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

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/ExclusionArticle1F-refugee-appeal-division-2020--6a40c3c14cf2c72690fb634b>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 24 October 2026 · Esheria