

CANADA / JUDGMENT

VB9-09744

COURT

Refugee Appeal Division

DECIDED

10 February 2020

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RAD File / Dossier de la SAR : VB9-09744 VB9-09745 / VB9-09746 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 XXXX Personnes en cause
Appeal considered / heard at Toronto, ON 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 Bjorn Harsanyi 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 (PA), XXXX XXXX XXXX XXXX, the Associate Appellant (AA), XXXX
XXXX XXXX XXXX, and the Minor Appellant, XXXX XXXX XXXX XXXX (their XXXX XXXX
XXXX old son), are citizens of Mexico who appeal a decision of the Refugee Protection
Division (RPD), dated November 20, 2019, that rejected their claims for refugee protection.

Determination

- [2] The Refugee Appeal Division (RAD) allows the appeals and substitutes its determination that
the Appellants are persons in need of protection. Allegations
- [3] The PA worked as a truck driver at Cancun, Quintana Roo State. While driving back to
Cancun on XXXX XXXX XXXX 2018, he was stopped by armed men belonging to the Zetas
drug cartel who wanted him to transport drugs for them. The PA was unwilling to do so and
resigned from his job the next day. On XXXX XXXX, someone shot at his home and left a
message telling him that he would work for the Zetas, whether he liked it or not. The
Appellants then moved to XXXX where the PA was born. This city is in the same state, it is
about 385 km south of Cancun. On XXXX XXXX XXXX 2018, the PA and the AA were in their
car when three shots were fired into it. In fear for his life, the PA travelled to Canada on
XXXX XXXX XXXX 2018 to stay with a relative. The other Appellants joined him on XXXX
XXXX, 2018 after financial arrangements were made for their tickets. Role of the RAD

- [4] The role of the RAD is to intervene when the RPD is wrong in law, in fact, or in fact and law. The applicable standard of review is correctness, unless deference should be shown to the RPD because it enjoyed a meaningful advantage over the RAD.¹ No issue was identified to which deference should be shown on this basis. Administrative Issues
- [5] The Appellants filed a transcript of the hearing.
- [6] Counsel has applied to file new evidence and has requested an oral hearing. Three documents have been admitted and the other three have been rejected. The request for the oral hearing is denied.
- [7] The National Documentation Package (NDP) used at the hearing was issued on August 30, 2019. This is still the current version.
- [8] The determinative issue for the RPD was an internal flight alternative (IFA) in Mexicali where the Zetas are not active. With respect to the first prong of the test, the question of whether the drug cartel has the motivation to search for the PA in the proposed IFA was the principal question. RPD Reasons for Decision
- [9] First, the RPD determined that the identified risk does not have a nexus to the Refugee Convention. This has not been challenged by the Appellants. Secondly, the RPD did not make any adverse credibility findings against the Appellants, and accepted the supporting documents without reservations. It went on to make the following findings:
- i) The Appellants have a viable IFA in Mexicali, Baja California State; ii) There is insufficient evidence that the shooter in XXXX belonged to Zetas Cartel; iii) There is no evidence to support the claim that the agents of harm have the motivation to pursue the Appellants in another state;
 - v) Objective documentary evidence indicates that the Zetas cartel is not operative in all of Mexico, and there is insufficient evidence to support the presence of the Zetas in proposed IFA; vi) With respect to the second prong of the IFA test, it would not be unreasonable for the Appellants to relocate to Mexicali. Reasons for the Appeal
- [10] The Appellants submit that new evidence that rebuts the RPD's findings ought to be admitted. In addition, the RPD erred in the following ways:²
- i) The findings of the RPD are based on speculation regarding the modus operandi of Los Zetas; ii) The RPD erred in making unreasonable implausibility findings; iii) The RPD erred in the assessment of IFA. New Evidence
- [11] Subsection 110(4) of the Immigration and Refugee Protection Act (IRPA) restricts the admission of new documents to evidence that arose after the rejection of the claim, or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented before the claim was rejected. The Federal Court of Appeal also requires an assessment of credibility, relevance, and newness. The Singh decision notes the prescriptive nature of the wording of subsection 110(4) of the IRPA and

mandates its narrow interpretation.³ Credibility relates to the source and circumstances surrounding the evidence's creation. Relevance addresses the question of whether the evidence can prove or disprove a relevant fact. Newness can involve significant changes in country conditions that took place after the RPD decision, the discovery of a fact that was unknown before the decision, or disclosure that contradicts a finding of fact made by the RPD, including those relating to credibility.

- [12] The hearing was conducted on October 28, 2019 and the decision was rendered on November 20, 2019. Six documents have been filed as new evidence on appeal. Four of them are admissible as new evidence and two are not.
- [13] The statements from the PA's mother and neighbour were drafted after the date of the decision.⁴ Both refer to an incident that took place on XXXX XXXX XXXX 2019 at which time the PA's mother found a blanket at the door of her house from the Zetas which threatened her family. She moved as a result. The neighbour was a witness to this and took her to hospital as a result of the psychological shock that she sustained. Photo identification cards were attached to both letters. The incident took place twelve days after the hearing, but before the decision was rendered eleven days later. The letters were signed on XXXX XXXX and XXXX, 2019. It is not reasonable to expect that the PA should have obtained these supporting letters with English translations for submission to the RPD within days of the event. Under the circumstances, they constitute new evidence. The RPD identified no adverse credibility issues during the hearing and accepted a previous letter from the PA's mother as likely being authentic. The photo identification cards confirm the identity of the authors. Under the circumstances, they come from credible sources. The documents are relevant, given that they directly contradict adverse findings that the RPD made about the Zetas' motivation to search for the PA in XXXX. They are admissible as new evidence.
- [14] A Facebook screen shot from December 16, 2019 posts an article which refers to the violent murder of a truck driver near the Cancun-Merida highway.⁵ He went missing on November 18, 2019 and was found near his truck. This document post-dates the RPD decision, comes from a reliable source, and is relevant to the issue of the targeting of truck drivers. It is admissible as new evidence.
- [15] A January 5, 2019 article "A night on the street in Mexicali" concerning the security situation in Mexicali rebuts a finding made by the RPD with respect to the reasonableness of the IFA in this city.⁶ An internet article dated June 3, 2019 indicates that the Mexican government admits 80% of its populated territory is run by cartels, including key border areas, including Mexicali.⁷ Both documents pre-date the RPD decision. Although the Appellants are entitled to present evidence that rebuts adverse findings made by the RPD, the question becomes whether the issue first came to light in reading the RPD decision or whether it was clearly identified by the RPD and could reasonably have been responded to at that time. Although the RPD only identified the issue of IFA in Mexicali at the hearing, the Appellants' counsel was able to question them about it and make submissions. No request was made to file post-hearing documents on this issue. The Appellants have not provided adequate reasons to

explain why this was not done. These documents are not admissible as new evidence.

- [16] The request for an oral hearing is denied because the criteria set out in subsection 110(6) of the IRPA have not been met. In particular, the documents do not engage the credibility of the Appellants.
- [17] A New York Times article provides information about the release of El Chapo's son.⁸ This document pre-dates the RPD decision and is not directly relevant to the PA's situation. At best, it provides additional information about country conditions that is documented in the NDP. This document is not admissible as new evidence.

ANALYSIS

- [18] The determinative issue concerns whether the Zetas have the motivation to track down the Appellant in the proposed IFA. The RPD considered three documents in the NDP: 7.2,9 7.910 and 7.15,11 and concluded that Los Zetas do not likely operate in Mexicali. The RPD went on to conclude that the evidence does not establish that members of this group have an interest in tracking down the PA, given that the people who fired bullets into his car in XXXX did not identify themselves. The RPD did not assess the documentary evidence with respect to whether Los Zetas have the means to locate people throughout Mexico. It simply proceeded on the assumption that they can.
- [19] Document 7.15 disposes of the question of whether Los Zetas have the means to track the PA to the proposed IFA.¹² Los Zeta have set up a national communications network that allows them to monitor their drug trafficking network throughout the country. They operate sophisticated networks that make use of informants, including taxi drivers, food vendors, and police. They employ hundreds of lookouts who use radios and cellphones. They also monitor social media accounts and use mapping software to track authorities. The significant question is not whether Los Zetas have the means to locate the PA, but rather whether they are interested in doing so.
- [20] Counsel submits that the RPD erred by speculating that this group would not be interested in tracking down the PA.¹³ The fact that shots were fired into his car shortly after moving back to his home town of XXXX (about a five hour drive down the coast from Cancun) suggests that a logical inference can be made that Los Zetas were responsible. The RPD did not see it that way. It was not satisfied that the simple refusal to work for the group would likely inspire them to target him to the degree alleged. The RPD erred in this conclusion by ignoring evidence. Section 5.1 of NDP item 7.15 contains a section concerning forced recruitment by criminal groups. It notes an increase in this practice and states that refusal to be recruited can motivate a cartel to track down the person outside of its area of influence. The RPD's implausibility finding is inconsistent with the documentary evidence and is unfounded.

- [21] Although the shots fired into his car in XXXX do not clearly establish that Los Zetas tracked him down there, the new evidence from his mother removes any doubt that this group undertook a search for him in this city. Los Zetas left a blanket with a threatening message at the door of his mother's house in XXXX that clearly identified them as the author.
- [22] These two factors demonstrate that Los Zetas have likely targeted the PA and are actively searching for him in Mexico as retribution for having defied their attempt to recruit him. The evidence establishes that this cartel has both the motivation and the means to locate the PA and either kill him or seriously assault him.
- [23] Although the government has engaged in initiatives over the years to combat drug trafficking, cartels continue to be well-armed, well-resourced and have infiltrated police and other public sectors. State protection is not likely available on these facts. The risk is present throughout the country, including Mexicali. More likely than not, the PA would be located, killed or seriously injured should he return to Mexico. He is a person in need of protection. He is not a Convention refugee because he is a victim of crime, not of persecution as understood in the section 96 definition.
- [24] Each Appellant must individually meet the definition of a person in need of protection. The issue becomes whether Los Zetas would likely target the AA and their son in order to get to the Appellant. The cartel targeted the PA's mother in order to continue to threaten him. She required hospital treatment and promptly moved out of fear. On these facts, it is likely that the PA's family is also at risk of being exploited for purposes of retaliation against the PA to a level that would constitute cruel and unusual treatment. They are also persons in need of protection.

CONCLUSION

- [25] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the Immigration and Refugee Protection Act (IRPA), the RAD sets aside the determination of the RPD and substitutes its own determination that the Appellants are persons in need of protection in accordance with section 97 of the IRPA. (signed) "H. Shepherd" H. Shepherd February 10, 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, [2016] 4 FCR 157, 2016 FCA 93 (CanLII). 2 Exhibit P-2, Appellants' Record, at p. 85. 3 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96 (CanLII), [2016] 4 FCR 230 at para. 35. 4 Exhibit P-2, Appellants' Record, at pp. 47-55. 5 Ibid., at p. 58. 6 Ibid., at pp. 64-67. 7 Ibid., at pp. 61-63. 8 Ibid., pp. 59-60. 9 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP), for Mexico, (August 30, 2019) item 7.2, 15 August 2019. 10 Ibid., item 7.9 April 2019. 11 Ibid., item 7.15 Response to Information Request (RIR) MEX106302.E. 15 August 2019. 12 Ibid. 13 Mendoza v. Canada (Citizenship and Immigration) 2014 FC 715 (CanLII).

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RAD.25.02 (January, 2020) Disponible en français

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