

CANADA / JUDGMENT

VB9-10079

COURT

Refugee Appeal Division

DECIDED

26 February 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 : VB9-10079 VB9-10080 / VB9-10081 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 XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX
Personnes en cause Appeal considered / heard at Vancouver, BC Appel instruit / entendu à Date of
decision February 26, 2020 Date de la décision Panel Daniel Tucci Tribunal Counsel for the
persons who are the subject of the appeal Abraham J. Garza Conseil des personnes en cause
Designated representative XXXX XXXX XXXX XXXX XXXX XXXXforXXXXXXXX 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), XXXX XXXX XXXX XXXX XXXX XXXX
(Associate Appellant) and XXXX XXXX XXXX XXXX (Principal Appellant's Son), (collectively
the Appellants), are citizens of Chile. They appeal a decision of the Refugee Protection
Division (RPD) rejecting their claims for refugee protection. They request that the Refugee
Appeal Division (RAD) set aside the RPD's decision under section 111(1)(b) of the
Immigration and Refugee Protection Act (IRPA)¹ and find that they are Convention²
refugees or persons in need of protection or in the alternative that the RAD refer the matter
back to the RPD for re-determination under section 111(1)(c) of the IRPA. DETERMINATION
OF THE APPEAL
- [2] Pursuant to section 111(1)(a) of the IRPA, the Panel confirms the determination of the RPD,
namely, that the Appellants are not Convention refugees pursuant to section 96 of the IRPA
nor are they persons in need of protection pursuant to section 97 of the IRPA.

BACKGROUND

- [3] The Appellants are citizens of Chile. The Principal Appellant was a technician in a
telecommunication company in Chile. His employer sent him to a home where he was
directed to disconnect the cable and internet connection as the client had not paid his
account. When he arrived on site, he began to disconnect the wiring when he was assaulted
by an individual who appeared to be the owner of the home. The Principal Appellant
reported the assault to the police. The police registered a police report of the incident. The
police effected a raid of the perpetrator's home and seized weapons and drugs. The

perpetrator was taken into custody and later released by the Court.

- [4] The Principal Appellant was subsequently threatened by a number of individuals. He states that he moved twice but that these individuals found him. He decided to flee Chile for his safety. He traveled to Canada without the Associate Appellant and his son. The Principal Appellant was hoping that the individuals would stop pursuing him. There were subsequent threats made to his family that led him to bring the Associate Appellant and his son to Canada where they all made a refugee claim. The Appellants believe that they will be harmed or killed if they return to Chile. NEW EVIDENCE AND ORAL HEARING
- [5] The Appellants have not submitted any new evidence under section 110(4) of the IRPA. The Appellants are not seeking an oral hearing for this appeal pursuant to section 110(6) of the IRPA. SCOPE OF RAD APPEAL
- [6] When reviewing the RPD decision, the Panel is required to independently determine whether the RPD was correct in relation to each alleged error of law, fact or mixed fact and law. The Panel may defer to the RPD's credibility assessment of oral testimony, if the Panel finds that the RPD had a meaningful advantage in the circumstances. Reasons will be provided in the Panel's analysis if the Panel finds that the RPD had a meaningful advantage. ANALYSIS OF THE MERITS OF THE APPEAL
- [7] The Panel has considered the evidence in the Record as well as the Appellant's Memorandum in this appeal and the recording of the hearing. The Panel has also reviewed the RPD Member's decision and reasons but the Panel has made its own independent assessment in this appeal.
- [8] The determinative issue for the RPD Member was Internal Flight Alternative (IFA). The RPD Member found that the Appellants have a viable IFA in Arica, Chile. The Panel agrees with the determination of the RPD Member. The Principal Appellant was targeted by an individual because he went to cut off the cable and internet service as a duty of his employment as a technician. The Principal Appellant was threatened and assaulted by the individual who seemed to be on drugs. The Principal Appellant reported the threats and assault to the police. The police took a report and raided the home of the individual. They seized drugs and weapons from the individual. The individual was arrested and later released by the Court. The Principal Appellant states that he learned that the individual that threatened and assaulted him was a member of a criminal organization. The Principal Appellant received threats from individuals other than the individual that had threatened and assaulted him. The Principal Appellant changed his location but he states that individuals other than the person that threatened and assaulted him located him. The Panel agrees with the RPD that the Appellants were credible witnesses.
- [9] The Panel finds that the Appellants have a viable IFA in Arica. The Appellants were asked if they could live safely in Arica. The Appellants stated that they could not. The Appellants state that the individual who threatened and assaulted the Principal Appellant belongs to a powerful criminal gang and that they have the means to locate the Appellants. The

Appellants were asked if they could provide details of the criminal gang that was after them. The Appellants were unaware of whether the gang had a name. They were unaware of the size of the gang. They were unaware of the area of operation of the gang. The Appellants did not provide any objective evidence on Chile detailing what gangs operate in the country, the number of gang members and the area of operations. The National Documentation Package on Chile also provide little information on gangs in Chile.

- [10] The Panel notes that Arica is approximately 2000 kilometres from Santiago, the area where the Appellants were targeted. The Appellants were asked how the individual who assaulted the Principal Appellant would find them. The appellants' Counsel mentioned in his Memorandum of argument that he conducted a cursory search of a Chilean database and managed to locate information on the principal Appellant. The Panel notes that the results of this search were not provided to the Panel and moreover, the Appellants' Counsel appeared to try to introduce new evidence into the appeal through the Memorandum rather than through an application under section 110(4) of the IRPA. The Panel gives Counsel's comments about his data search in his Memorandum little weight.
- [11] The Panel finds that the Appellants' assertions that they could be located through the search of a database to be speculative. There is no indication that the individual who is after them has access to such a database. In addition, the Panel finds that the Appellants have not established, on a balance of probabilities, that the individual has the means and motivation to locate them in Arica.
- [12] The Appellants were asked if there was any other reason why they could not live in Arica. They both stated that there were not. The Panel agrees with the RPD that the Appellants could live in Arica, and given their education and skills, that they could find gainful employment there. The Panel therefore finds that the Appellants have a viable IFA in Arica.
- [13] Although the issue of IFA is determinative in this appeal, the Panel wishes to further comment on the issue of state protection. The Principal Appellant was threatened and assaulted by an individual. He reported this to the police. The police took a report and acted against the individual. They went to the area where the Principal Appellant was assaulted and they made inquiries to identify the perpetrator. Once they identified the perpetrator and where he lives, they raided the home. They seized drugs and weapons from the home. The Panel finds that the Appellants have not rebutted the presumption of state protection. The Panel finds that the authorities provided the Appellants with adequate state protection.
- [14] There were other incidents that occurred that led the Appellants to believe that the authorities in Chile could not provide them with adequate state protection. The Panel disagrees. Unknown individuals approached the Principal Appellant's family and friends. The identity of these people was unknown. The Appellants state that the authorities told them they could not do anything unless the perpetrators took physical action against them. The Panel finds that this is insufficient to rebut the presumption of state protection. The authorities were unable to do anything as the individuals were unknown. The Panel finds

that the authorities in Chile were willing to provide adequate state protection to the Appellants. Therefore, the Panel finds that they have not provided sufficient evidence to rebut the presumption that they would receive adequate state protection if they return to Chile.

[15] Having considered all the evidence, the Panel finds that the Appellants have not established that they face a serious risk of persecution in Chile or that, on a balance of probabilities, they would be personally subjected to a danger of torture or that they would face a risk to life or a risk of cruel and unusual punishment or treatment in Chile as they have a viable IFA in Arica. REMEDIES

[16] For all these reasons, the Panel confirms the determination of the RPD, namely, that the Appellants are neither Convention refugees nor are they persons in need of protection. (signed) "Daniel Tucci" Daniel Tucci February 26, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27. 2 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.

RAD File / Dossier de la SAR : VB9-10079 VB9-10080 / VB9-10081 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/Internalflightalternative-refugee-appeal-division-2020--6a40c3b44cf2c72690fb2880>

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

Prepared on 28 October 2026 · Esheria