

CANADA / JUDGMENT

VB8-07533

COURT

Refugee Appeal Division

DECIDED

12 March 2020

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RAD File / Dossier de la SAR : VB8-07533

VB8-07534 / VB8-07535

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 XXXXXXXXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Ottawa, ON

Appel instruit / entendu à

Date of decision

March 12, 2020

Date de la décision

Panel

John Helis

Tribunal

Counsel for the persons who are the subject of the appeal

Ali Yusuf

Conseil des personnes en cause

Designated representative

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 (the principal AppellantXXXX XXXX XXXX XXXX XXXX XXXX and XXXX XXXX XXXX (the associate Appellants), citizens of Mexico, appeal a decision of the Refugee Protection Division (RPD), dated November 13, 2018, rejecting their claims for refugee protection.
- [2] The Appellants ask that the Refugee Appeal Division (RAD) set aside the decision of the RPD and substitute its own determination that they are Convention refugees or persons in need of protection.¹

DETERMINATION

- [3] The appeal is dismissed. I confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection.²

SUMMARY OF THE FACTS

- [4] The Appellants are a family from Puerto Vallarta in Jalisco state, and consist of the principal Appellant, his wife, and their 19-year-old son. The principal Appellant and his wife also have a 13-year-old daughter, who is a citizen of the United States, and is not a party to this appeal.
- [5] The Appellants returned to Mexico on XXXX XXXX, 2017, after residing in the United States for six years. They rented an apartment in Puerto Vallarta, obtained a XXXX XXXX XXXX permit to start a business, and purchased three plots of land. They also began working at the XXXX XXXX XXXX XXXX which they purchased land.
- [6] On XXXX XXXX, 2017, the Appellants were allegedly informed that their boss's son at the XXXX XXXX business had been killed during a kidnapping attempt. On XXXX XXXX, 2017, the Appellants' vehicle was intercepted by a group of armed men in a truck who knew their personal information, such as the name of their children and the fact that they came from the United States, and demanded that they "get into the system" and start paying a share of their income. The Appellants paid the assailants XXXX XXXX XXXX XXXX which they had in their possession. The assailants informed the Appellants that they expected to be paid on a regular basis, and warned them against speaking to the police. Following the incident, the Appellants broke the one-year lease on their apartment and moved into a house they owned in XXXX, which is located approximately XXXX minutes from Puerto Vallarta.

- [7] The Appellants were extorted XXXX XXXX XXXX XXXX on XXXX XXXX, 2017, by two armed assailants while sitting in their vehicle after work. When this happened again on XXXX XXXX, 2017, the Appellants told the assailants that they had insufficient money to pay. They went shopping after the incident, but the assailants eventually managed to corner them, and physically assaulted them. The Appellants reported the incident to the police, but received little assistance.
- [8] The Appellants left Mexico for Canada XXXX XXXX, 2017, arrived in Vancouver on the same day, and filed their claims for refugee protection on XXXX XXXX, 2017.
- [9] Since arriving in Canada, the female associate Appellant claims that her brother in Mexico state was attacked and his house was ransacked in XXXX 2018.

THE RPD DECISION

- [10] The RPD found that the Appellants are not persons in need of protection because the risk they face is generalized in nature, and because they have a viable internal flight alternative (IFA) in Merida, the capital and largest city in Yucatan state.
- [11] The RPD limited its analysis to the question of whether the Appellants are persons in need of protection because there is no nexus between their allegations and a ground of persecution in the Refugee Convention.

THE ISSUES

- [12] While the Appellants challenge both the RPD's determination of generalized risk, and its IFA analysis, I find that the determinative issue in this appeal is the viability of an IFA in Merida.

NEW EVIDENCE

- [13] The Appellants submit two videos as new evidence in this appeal which were posted on YouTube on May 11, 2015, and January 2, 2019. The Appellants believe that the videos help confirm that the agents of harm are members of the *Cártel Jalisco Nueva Generación* (CJNG), because they show CJNG members wearing similar clothing, including caps, jeans, black shirts, and black bandanas.
- [14] The Appellants have also included the following three news articles in their appeal record to the RAD:

* A December 28, 2018 article, in *The New York Times* entitled, "El Chapo Trial Shows That Mexico's Corruption Is Even Worse Than You Think."

* A January 7, 2019, article from CBC Radio entitled "Trial of El Chapo won't resolve the corruption that empowered him, says journalist."

* A July 11, 2017, article from *Rolling Stone* magazine entitled "The Brutal Rise of El Mencho."

The Appellants do not refer to these articles as new evidence in their appeal record, but have rather listed them in the table of authorities along with several Federal Court decisions. While the Appellants have not provided arguments about the admissibility of these articles, they remain subject to the legislative and common law admissibility requirements.

- [15] New evidence is only admissible before the RAD if it arose after the rejection of the claim, if it was not reasonably available, or if the Appellant could not have reasonably been expected in the circumstances to have presented the evidence at the time of the rejection of the claim.³ In addition to these legislative requirements, under the Federal Court of Appeal decisions in *Singh and Raza*, admissibility is limited to evidence that is relevant, new, and credible.⁴
- [16] The video posted on YouTube on May 11, 2015, is inadmissible because it does not meet the legislative requirements or the credibility requirement from *Singh and Raza*. The Appellants' sole argument is that they were unaware of the identity of the agents of harm and decided to do some research because the issue was raised at the hearing. The video did not arise after the rejection of the claim, and it was publicly available to the Appellants on YouTube. The Appellants should have reasonably expected to present any evidence available to them to establish the identity of the agents of harm at the time of the rejection of their claims. Nor is the video a credible source of evidence. Nothing is known about the video other than it was posted on the Grillonautas YouTube channel, and little can be discerned from the video since the audio is entirely in Spanish.
- [17] The video posted on YouTube on January 2, 2019, is also inadmissible. This video was posted after the denial of the claims, although it does not meet the credibility requirement from *Singh and Raza*. Like the first video, the audio is entirely in Spanish and nothing is known about the video other than it was posted on the Grillonautas YouTube channel. Moreover, the title does not even mention the CJNG.
- [18] The three news articles are inadmissible because they do not provide new evidence that is not already in the National Documentation Package (NDP). The articles in *The New York Times* and *CBC Radio* deal primarily with the corruption of public officials in Mexico by cartels. The article in *Rolling Stone* addresses the incarceration of "El Chapo" and the rise of "El Mencho" within the Mexican cartel network. There is already extensive evidence on the issue of corruption in Mexico in the NDP.⁵ The *Rolling Stone* article is even cited in the NDP.⁶ Without submissions from the Appellants on how these articles differ from the evidence already in the record through the NDP, I cannot hold that they provide new evidence.
- [19] The Appellants are not requesting an oral hearing before the RAD and one is not merited. Hearings are limited to circumstances when new evidence which is admissible in the appeal raises a serious issue with respect to the Appellants' credibility, that is central to the decision, and if accepted, would justify allowing or rejecting the refugee protection claim.⁷

STANDARD OF REVIEW

[20] The standard of correctness applies to this appeal as set out by the Federal Court of Appeal in *Huruglica*.⁸ This requires an independent assessment of the refugee claims to determine whether the RPD was correct in its findings and determinations. ⁹ While deference can be afforded to the RPD on specific issues when it enjoys a meaningful advantage over the RAD in making findings of fact or mixed fact and law, such an advantage does not arise in the present case.

ANALYSIS

- [21] After considering the Appellants' arguments and conducting an independent review of the entire record, including listening to the hearing recording of the proceeding before the RPD, I agree with the RPD that the Appellants have a viable IFA in Merida. Given the viability of an IFA, I do not need to address the RPD's determination that the risk they face is generalized.
- [22] The Appellants do not challenge the RPD's decision to limit its analysis to the question of whether they are persons in need of protection. I find that the RPD was correct in my independent assessment of the record because there is no nexus between the allegations that they were being extorted as business owners and a ground of persecution in the Refugee Convention. The allegations, if true, would make the Appellants victims of criminality, which does not have a nexus to a Convention ground.¹⁰
- [23] Refugee claimants are expected to seek protection in another part of their own country, if it is available, before they seek refuge in Canada.¹¹ The notion of an IFA is inherent in the definition of a Convention refugee because refugee protection is a form of surrogate protection.¹² Accordingly, the Appellants bear the onus to demonstrate that there is a serious possibility of persecution throughout the country, including the area identified as an IFA.¹³
- [24] The analysis for assessing an IFA has two parts according to the Federal Court in *Rasaratnam*.¹⁴ I must first determine whether there is a serious possibility that the Appellants will be persecuted, or whether they face, on a balance of probabilities, a risk to their lives, torture, cruel and unusual treatment or punishment in the proposed IFA. Secondly, I must also be satisfied, after considering the Appellants' individual circumstances and the conditions in the proposed IFA, that it would not be unreasonable to seek refuge in the IFA. An IFA will only be viable if both criteria are met.¹⁵ A high threshold of "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," applies equally to both parts of this test.¹⁶ For the reasons that follow, I find that the Appellants failed to meet their onus of proof under either prong.

There is no serious possibility of persecution or risk of harm in Merida

- [25] The Appellants have a viable IFA where they do not face a serious possibility of persecution or a risk of harm in Merida. An IFA analysis requires a contextual approach, looking at the profile of the agents of harm, their motivation to search for the Appellants, and their ability to find the Appellants throughout Mexico. There can only be a serious possibility of persecution or a risk of harm if the agents of harm have both the "means and the motivation" to locate the Appellants.¹⁷ The evidence does not demonstrate that the agents of harm have the motivation or the means to search for and locate the Appellants throughout Mexico -a country with over 124 million inhabitants, and, more specifically, in Merida.
- [26] The RPD correctly concluded that the evidence does not establish the identity of the agents of harm. The Appellants were unaware of the identity of the agents of harm at their hearing, but suggested they were members of either the CJNG or a group they were unable to name led by "El Mencho," because of the prevalence of these two groups in Puerto Vallarta. They now submit that the agents of harm are members of the CJNG.
- [27] The mere fact that the Appellants were extorted in Puerto Vallarta does not establish that the agents of harm are members of the CJNG. The evidence in the NDP indicates that a multitude of groups, ranging from transnational criminal organizations, drug and trafficking organizations, and opportunistic criminals are involved in extortive activity.¹⁸ Extortion is commonly committed by small gangs in order to generate income,¹⁹ and small criminal groups can often appear more credible in their threats because they can hide behind the presence of a larger criminal group in an area.²⁰
- [28] While the Appellants argue that the clothing worn by the agents of harm demonstrate that they are members of the CJNG, the evidence in the NDP does not indicate that jeans and black shirts are exclusively worn by members of the CJNG. I do not find that this establishes, on a balance of probabilities, the identity of the agents of harm as members of the CJNG.
- [29] The agents of harm have not attempted to find the Appellants since their departure from Mexico. The Appellants confirmed in testimony that the members of the principal Appellant's family that live in Puerto Vallarta, including his father and brother, have not been contacted by the agents of harm in an attempt to locate them in the two and a half years since the last incident.
- [30] I agree with the RPD that the evidence does not establish a connection between the alleged incident experienced by the female associate Appellant's brother in 2018, and the Appellants' circumstances. Her brother was unaware of the identity of the perpetrators, and there is no indication that he was targeted because of the Appellants' circumstances.
- [31] The scale of the extortion in the Appellants' circumstances does not support a finding that the agents of harm would be motivated to pursue them from Puerto Vallarta to Merida. The evidence in the NDP indicates that extortionists target "a broad range of businesses and institutions, including family-owned businesses, insurance companies, banks, other

financial institutions, mining companies, retail shops, refuelling stations, transportation services, manufacturers, hotels, and ranches." The nature of the business affects the amount being extorted and the size of the debt. A large debt "could motivate a gang to track someone outside their area, and that gangs can use 'corrupt law enforcement agents' to obtain information about people they pursue."²¹ Since the Appellants were small-scale food stand operators for one month and do not owe a large debt to the agents of harm, the evidence in the NDP does not support their argument that the agents of harm will "pay off state authorities" to locate them through methods such as school registration.

- [32] Nor does the evidence establish that the agents of harm have the means to locate the Appellants. Since the identity of the agents of harm is not established, there is no evidence on the financial means or connections available to them to pursue the Appellants. While the Appellants submit that the agents of harm are members of the CJNG "which has a massive war-chest and budget for corrupting state officials," the evidence does not demonstrate that the agents of harm are anything other than the actual individuals involved in the extortion.
- [33] For all of the reasons outlined above, I am satisfied that the first part of the Rasaratnam test has been met, and that the Appellants face neither a serious possibility of persecution, nor, on a balance of probabilities, a danger of torture, a risk to their lives, cruel and unusual treatment or punishment in Merida. I now turn to the second part of the test to consider the reasonableness of the Appellant relocating.

It is reasonable for the Appellants to relocate to Merida

- [34] The Appellants have not expressly challenged the RPD's determination on the second prong of the test for finding a viable IFA in their memorandum. The RPD considered relevant issues which inform the analysis of whether the proposed IFA locations are reasonable in the Appellants' specific circumstances, including employment, education, and language. The RPD also noted that Yucatan is the safest and most peaceful state in Mexico.²²
- [35] I have not identified any errors based on my independent assessment, and find that this determination is correct. The Federal Court in Adebayo explained that the high onus on the refugee claimant to demonstrate that a proposed IFA is unreasonable 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."²³ None of the factors in the Appellants' circumstances establish that their lives and safety would be jeopardized if they relocate to Merida.
- [36] For all of the reasons outlined above, I am satisfied that the second part of the Rasaratnam test has been met and that it would not be objectively unreasonable in the circumstances for the Appellant to relocate to Merida.

State Protection

[37] I do not agree with the Appellants' submission that Merida is not a viable IFA because of they would not have state protection as a result of police corruption. Regardless of whether the Appellants lack effective state protection, they would not require protection from law enforcement because Merida is a viable IFA where they do not face a serious possibility of persecution or a risk of harm. Since the evidence does not establish that the agents of harm have the motivation or the means to search and locate the Appellants in Merida, there is no need to consider whether the state will protect them. As the Federal Court explained in *Henguva*, "[i]t is trite law that the issue of state protection is distinct from the issue of an IFA. The Board's intermingling of these two questions in its application of the test for an IFA was incorrect."²⁴

CONCLUSION

[38] The RPD was correct in its determination that the Appellants have a viable IFA in Merida. I therefore dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection.²⁵

(signed)

"John Helis"

John Helis

March 12, 2020

Date

1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 111(1)(b) [IRPA].

2 IRPA s. 111(1)(a).

3 Ibid., s. 110(4).

4 *Raza v. Canada (Citizenship and Immigration)*, 2007 FCA 385 at para. 13; *Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96.

5 See for example: RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 1.5: Results. Mexico Peace Index 2019. Institute for Economics and Peace. April 2019 p. 5; RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 1.7: Building Peace in Mexico: Dilemmas Facing the López Obrador Government. Latin America Report N°69. International Crisis Group. 11 October 2018 p. 4; RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 2.1: Mexico. Country Reports on Human Rights Practices for 2018. United States. Department of State. 13 March 2019 pp. 22 - 23; National Documentation Package, Mexico, 30 August 2019, tab 2.8: Mexico. Freedom in the World 2019. Freedom House. 2019 pp. 4 - 5; RAD-1 National Documentation Package (NDP), Mexico, 30 August 2019, tab 4.1: I. Political Transformation. Transformation Index 2018 Country Report: Mexico. Bertelsmann Stiftung. 2018

p. 1; National Documentation Package, Mexico, 30 August 2019, tab 7.2: Mexico: Organized Crime and Drug Trafficking Organizations. United States. Congressional Research Service. June S. Beittel. 15 August 2019. R41576 p. 10 & 14; RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 7.16: The Victimology of Extortions in Mexico. Rice University. James A. Baker III Institute for Public Policy. Gary J. Hale. October 2016 p. 12; RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 9.5: Corruption that Kills: Why Mexico Needs An International Mechanism To Combat Impunity. Open Society Foundations. Open Society Justice Initiative. 1 May 2018; RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 9.10: Mexico's National Anti-Corruption System: A Historic Opportunity in the Fight against Corruption. Washington Office on Latin America. Maureen Meyer; Gina Hinojosa. May 2018; RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 10.1: False Suspicions: Arbitrary Detentions by Police in Mexico. Amnesty International. 13 July 2017. AMR 41/5340/2017.

6 RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 1.7, *ibid.* p. 14; RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 7.13: Policy Brief: The New Generation: Mexico's Emerging Organized Crime Threat. Justice in Mexico. 19 March 2018 p. 9, 12, 13, 15, 18, 20, 21.

7 IRPA s. 110(6); *Zhou v. Canada (Citizenship and Immigration)*, 2015 FCA 911.

8 *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 at para. 103.

9 *Rozas del Solar v. Canada (Citizenship and Immigration)*, 2018 FC 1145 at paras. 122-126.

10 *Lozandier v. Canada (Citizenship and Immigration)*, 2009 FC 770 at para. 15; *Rizkallah v. Canada (Minister of Employment and Immigration)* (1992), 156 N.R. 1 (F.C.A.).

11 *Canada (Attorney General) v. Ward*, [1993] 2 SCR 689 at 752.

12 *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589.

13 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 710. See also: *Okechukwu v. Canada (Citizenship and Immigration)*, 2016 FC 1142 at para. 35.

14 *Ibid.*

15 *Ibid.* at 711; *Calderon v. Canada (Citizenship and Immigration)*, 2010 FC 263 at para. 10.

16 *Adebayo v. Canada (Immigration, Refugees and Citizenship)*, 2019 FC 330 at para. 53.

17 *Nimako v. Canada (Citizenship and Immigration)*, 2013 FC 540 at para. 7; *Mayorga Gonzalez v. Canada (Citizenship and Immigration)*, 2012 FC 987 at para. 35.

18 RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 7.11: KRE in Mexico. KRE Global Monitor. December 2016 - March 2017. Liberty Speciality Markets; red24. 24 March 2017 p. 4.

19 RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 7.15: Drug cartels, including Los Zetas, the Gulf Cartel (Cartel del Golfo), La Familia Michoacana, and the Beltrán Leyva Organization (BLO); activities and areas of operation; ability to track individuals within Mexico (2017-August 2019). Immigration and Refugee Board of Canada. 15 August 2019.

MEX106302.E p. 5.

20 RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 7.22: Mexico's Out-Of-Control Criminal Market. Foreign Policy at Brookings. Vanda Felbab-Brown. March 2019 p. 14.

21 RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 7.15, supra note 19 p. 10.

22 RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 1.5, supra note 5 pp. pp. 4, 6, 9, 11, 13, 17, 19, 22, 27, 28 & 40; RAD-1 National Documentation Package, Mexico, 30 August 2019, tab 7.14: Mexico. 2019 Crime and Safety Report: Merida. United States. Overseas Security Advisory Council. 3 April 2019 p. 1.

23 Adebayo v. Canada (Immigration, Refugees and Citizenship), 2019 FC 330 at para. 53. Citing Rasaratnam, supra note 7. See also: Armando v. Canada (Citizenship and Immigration), 2020 FC 94 at para 62; Brahim v. Canada (Citizenship and Immigration), 2019 FC 503 at para. 27.

24 Henguva v. Canada (Citizenship and Immigration), 2013 FC 483 at para. 15.

25 IRPA s. 111(1)(a).

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VB8-07534 / VB8-07535

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Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

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Section d'appel des réfugiés

RAD.25.02 (January, 2020)

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