

CANADA / JUDGMENT

Aranda Moreno v. Canada (Citizenship and Immigration)

2025 FC 1298

COURT

Federal Court

DECIDED

21 July 2025

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Content Date: 20250721 Docket: IMM-12911-24 Citation: 2025 FC 1298 Toronto, Ontario, July 21,
2025 PRESENT: Mr. Justice Diner BETWEEN: OSCAR ARANDA MORENO CLAUDIA CUELLAR
QUINTERO BRAULIO ANTONIO ARANDA CUELLAR JULIETA REBECA ARANDA CUELLAR
Applicants and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT
AND REASONS

- [1] The Applicants are citizens of Mexico who came to Canada on December 31, 2022, and made a refugee claim, alleging they are at risk of harm at the hands of unknown criminals due to extortion demands. The Refugee Protection Division [RPD] rejected their claim on the basis that a viable internal flight alternative [IFA] was available to them. The Refugee Appeal Division [RAD] rejected the appeal and confirmed the RPD's conclusion. The Applicants now seek judicial review of the RAD decision [Decision]. I am dismissing their application for the following reasons. I. Parties' Positions [2] The Applicants argue that the RAD's Decision is unreasonable because the RAD erred by failing to consider the "comprehensive risks and challenges" the Applicants would face were they to return to Mexico. More specifically, the Applicants contend that the RAD failed to properly consider evidence of their assault, vandalized home, theft of personal information, and other intimidation and extortion and the direct threats of family members at the hands of the *Cártel Jalisco Nueva Generación* [CJNG], and of the ongoing threat and the risk they would face should they return to the IFA (Merida). The Applicants also state that the RAD failed to address their risk of persecution under Convention grounds under section 96 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA].
- [3] The Applicants further argue that the discovery of a "narcomanta" (a message of intimidation allegedly left at one of their properties in Mexico and discovered by a friend) which they wish to have admitted as new evidence before this Court, further solidifies their credibility and the risk they would face.

- [4] The Applicants further contend that the RAD failed to fully consider the extensive and far-reaching influence of the criminal organizations that target them, and that the RAD overlooked the fact that the organizations will use their personal information to locate them upon their return. The Applicants also allege that the RAD failed to consider their personal circumstances including the lack of financial resources and social support in the IFA, and the impact of their past traumas.
- [5] The Respondent, on the other hand, contends that the Applicants failed to persuade the RAD on a balance of probabilities, either that there was a serious possibility that they would be persecuted in the IFA or that it would be unreasonable for them to seek refuge there. II. Analysis [6] The only question before this Court is whether the RAD's Decision confirming the RPD's was reasonable. Both parties agree that RAD decisions are to be reviewed on a reasonableness standard, including the determination as to the viability of an IFA (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 341 at para 13).
- [7] When the existence of an IFA is raised, it falls upon the applicant to establish, on a balance of probabilities, a serious risk of persecution throughout their entire country of origin. Here, the RAD, after conducting its own independent assessment of the evidence on file, found that the Applicants were not refugees nor persons in need of protection because a viable IFA existed. I find no reviewable error in this conclusion.
- [8] The first prong of the IFA test requires that the applicant establish, on a balance of probabilities, that there is a serious possibility of persecution in the IFA under the agents of persecution's motivation and means (*Rasaratnam v Canada (Minister of Citizenship and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (FCA) at pp 710–711 [*Rasaratnam*]).
- [9] The RAD duly considered and weighed all of the evidence, including the objective documentary evidence, to reach conclusions regarding the analysis of the first prong of the IFA. After weighing the evidence that was properly before the tribunal, the RAD concluded that the Applicants would be safe in the IFA.
- [10] On the second prong of the test, the Applicants had the burden of establishing that their settlement in the proposed IFA would cause such difficulties that their life and safety would be in jeopardy (*Rasaratnam* at pp 710–711). It was for the RAD to determine the facts and weigh the evidence, and in doing so, it “was entitled to rely on relevant evidence most consistent with the profiles of the [A]pplicants and their agents of persecution” (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 336 at para 29).
- [11] The RAD looked at the Applicants' personal circumstances through different factors, considered the general safety of the IFA, and concluded that while there may be some challenges with relocating to the IFA for the Applicants, those challenges would not jeopardize their life and safety.

- [12] In short, the RAD considered the evidence that the Applicants provided, including the home break-in, and other extortion efforts, but found that there was no evidence linking the events, and that the Applicants did not know anything about the identity of who assaulted them or any gang affiliation. It noted that there was thus speculation on the agents of persecution, but nonetheless took the Applicants' suspicions that the agents belonged to the CJNG, and assessed the lack of means and motivation to pursue them in the IFA on that basis. The RAD discussed this aspect at paragraphs 27 and 28 of its Decision, and thus I cannot find that they either overlooked the evidence, or failed to consider the viability of the Applicant's ongoing risk in the IFA.
- [13] Regarding the Applicants' arguments on section 96, the RAD reasonably found at paragraph 13 of its reasons that this matter did not raise a section 96 risk as it was based on extortion, but rather raised a section 97 risk. Once again, I cannot find any reviewable error in this finding of the RAD.
- [14] The RAD also reasonably considered the second prong of the IFA test at paragraph 33 of its reasons, where it spoke of the high threshold requiring conditions that would jeopardize their life or safety. The RAD found that the IFA was indeed a reasonable location, and referred to the extensive analysis at paragraphs 18–22 of the RPDs reasons on the second prong of the test, which it found correct, based on the Applicants' "specific circumstances, including, their education, work experience, professional training, language skills, health, accommodation, work prospects and general safety of Merida education, work experience."
- [15] Furthermore, I note that Merida has been found in analogous situations to be a viable IFA for persons who do not have a profile that would suggest a target to the CJNG, given a lack of means or motivation to find these applicants. I note numerous cases have found equivalently when it comes to Merida and allegations of the CJNG, on the basis of a profile that does not raise particular concerns (see, for instance *Cortes v Canada* (Citizenship and Immigration), 2025 FC 597; *Altamirano v Canada* (Citizenship and Immigration), 2023 FC 989 and *Gonzalez Vargas v Canada* (Citizenship and Immigration), 2025 FC 419). In short, the findings of the RAD, given the evidence available to it, were not unreasonable with respect to the viability of Merida as an IFA. In sum, the Applicants have not convinced me that the RAD erred in its weighing of the evidence or that it failed to consider evidence that was properly before the tribunal. The Applicants have not pointed to any specific evidence that would have been ignored and would justify intervention from this Court. As the Applicants themselves conceded and stated that they understood at the outset of the hearing, it is not my role to reweigh the evidence.
- [16] With regard to the new evidence mentioned above – namely the message of intimidation that the Applicants state was left at one of their properties, which they argue invalidates the RAD's determination that the IFA is viable – it will not be taken into consideration. Indeed, new evidence is not admissible on judicial review unless it meets limited exemptions established by the law (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at paras 19–20; *Kabran v Canada* (Citizenship and

Immigration), 2018 FC 115 at para 19). This evidence does not fit any of the recognized exceptions set out in the jurisprudence.

- [17] In addition to this, a significant portion of the arguments raised by the Applicants with respect to ongoing risk was based on the new evidence, which emerged two weeks after the RAD Decision, and these cannot be considered by the Court for the reasons explained above (see also *Alvarez Calderon v Canada (Citizenship and Immigration)*, 2023 FC 1647 at paras 17–22). As Justice Azmudeh stated in paragraph 20 of that case: Accordingly, the Court will not consider this new personal information or the new evidence relating to the country conditions. Judicial review is based on the record presented to the RAD, not on documents filed after a negative decision. It is entirely inappropriate to view judicial review as an opportunity to conduct a *de novo* hearing and update it as it progresses through the system for the sole purpose of obtaining a decision different from that obtained before the administrative decision-makers.
- [18] In the Applicants' Reply arguments at the hearing, they submitted that this evidence supported all prior evidence. As explained above, while this may be the case, the RAD nonetheless considered the prior events that took place and evaluated them. For the edification of the Applicants arguments on this point, the new evidence does not, in any event, speak to the viability of the IFA. Rather, at most (even if it could have been considered by the Court) it would be a further indication that the Applicants' original city of residence would not be safe to return to, which the RAD – and the RPD before it – both acknowledged, and which is precisely what led to their IFA analyses. That IFA analysis was determinative of this matter, rather than returning to the original city where the new evidence arose.
- [19] Lastly, the Respondent took issue in its written submissions with the argument at paragraphs 19 and 20 of the Applicants' Memorandum, related to the potential for discrimination and social isolation, particularly against non-indigenous individuals, which the Applicants argue is likely to render the IFA unsafe.
- [20] At the hearing, the Respondent resiled from this objection, stating that that it was no longer taking issue with the point of it being a new argument, and not having been raised previously, but nonetheless argued that this point did not render the IFA finding unreasonable. I agree with the Respondent that this ground of risk does not render the RAD's findings unreasonable, or allow me to find any reviewable error.
- [21] There are two points by way of closing.
- [22] First, the style of cause will be amended to reflect the Respondent's proper name for the purposes of these proceedings.
- [23] Second, I wish to also acknowledge that in a pre-hearing motion on consent, I permitted the younger Applicants (siblings) to represent their parents, who were self-represented. Despite the outcome, for which I was constrained due to the facts and the law, including the applicable standard of review, they did a remarkable job putting together their Court record,

legal submissions, and subsequently articulating them orally in English, their second language (they even split up their arguments, as experienced counsel might do). The pair also spoke French proficiently, a third language which they were continuing to learn. Neither sibling had legal training, but they were organized, articulate, and presented relevant jurisprudence. In everything that I saw of them both in written format and in person, they would make fine immigrants to Canada. I wish them only the best for their future. III. Conclusion [24] For the reasons above, this application for judicial review is dismissed. The Applicants have not pointed to any reviewable error, and the Decision stands as reasonable in light of the facts and the law. No question was raised for certification. JUDGMENT in IMM-12911-24 THIS COURT'S JUDGMENT is that: The application for judicial review is dismissed. There is no question for certification proposed by the parties, and the Court agrees that none arise. No costs will issue. "Alan S. Diner" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-12911-24 STYLE OF CAUSE: OSCAR ARANDA MORENO ET AL v MCI PLACE OF HEARING: Montréal, Québec DATE OF HEARING: July 15, 2025 JUDGMENT AND REASONS: DINER J. DATED: July 21, 2025 APPEARANCES: Julieta Rebeca Aranda Cuellar Braulio Antonio Aranda Cuellar For The Applicants ON THEIR OWN BEHALF Larissa Foucault For The Respondent SOLICITORS OF RECORD: Attorney General of Canada Toronto, Ontario For The Respondent

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