

CANADA / JUDGMENT

Cortes v. Canada (Citizenship and Immigration)

2025 FC 597

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Cortes v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-04-01 Neutral citation 2025 FC 597 File numbers IMM-6629-24 Decision Content Date: 20250401 Docket: IMM-6629-24 Citation: 2025 FC 597 Toronto, Ontario, April 1, 2025 PRESENT: Mr. Justice Diner BETWEEN: EUSEBIO OSORIO CORTES Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] The Applicant seeks judicial review of a decision made by the Refugee Appeal Division [RAD], upholding the Refugee Protection Division's [RPD] decision and dismissing the Applicants' refugee claim [Decision]. The determinative issue was availability of an internal flight alternative [IFA]. For the reasons below, this application will be dismissed. I.
- Background [2] The Applicant, a citizen of Mexico, sought refugee protection in Canada based on fear of persecution by the Jalisco New Generation Cartel [CJNG or Cartel]. The Applicant ran a lending business in Atlixco, Puebla. Two members of the CJNG came to his office and threatened to kill him after he failed to pay monthly extortion fees of 10,000 pesos (a "protection fee" to continue operating his business). He was assaulted, held at gunpoint, and robbed.
- [3] The Applicant made several reports to the authorities, including the Prosecutor's Office, the Municipal President, and the police. However, in January 2022, members of the CJNG fired shots outside his house and left another threatening message before leaving. The Applicant closed his business, sent his wife and children to hide with extended family, changed his phone number, and relocated to live with his cousin in Veracruz, a few hours away. He thought CJNG would no longer be interested in him because his business was closed. However, in March 2022 he received another threatening message saying that the Cartel knew his location, there was no place in Mexico he could hide, and he would pay for defying the CJNG with his life. The Applicant fled Mexico for Canada a week after receiving this message.

- [4] In December 2023, the RPD rejected the Applicant's claim and determined he had a viable IFA in Merida. The RPD accepted as credible that the Applicant was threatened in December 2021 and January 2022, but found on a balance of probabilities that the March 2022 text message did not occur because it was not mentioned in his cousin's supporting affidavit. The RPD found CJNG's interest in the Applicant "was purely for extortion purposes. Therefore, it is unlikely the perpetrators would spend time, resources, money, and energy on pursuing him throughout Mexico, in order for him to pay extortion fees of 10,000 pesos a month."
- [5] On March 26, 2024, the RAD dismissed the appeal. The RAD held that while the RPD erred in parts of its IFA assessment, and while its credibility finding could no longer stand based on new evidence, the RPD did not err in its overall conclusion that an IFA existed. Specifically, the RAD found that the CJNG had the means to locate the Applicant across Mexico and that the Applicant fit the profile of someone the Cartel would be interested in. However, it held there was insufficient evidence of CJNG's motivation to pursue him. In particular, there was no evidence it had attempted to contact the Applicant's family members in Mexico (including his sister, who still lived in his house), contrary to objective evidence suggesting this was common practice. Nor had it attempted to contact him since March 2022, more than two years earlier. II. Issues [6] Within his challenge to the conclusion that he has an IFA in Merida, the Applicant contends that the RAD erred in: (i) misapprehending the Applicant's evidence regarding the currency noted in the Decision, (ii) making plausibility findings regarding the Cartel's further interest in pursuing the Applicant; (iii) selectively relying on and misapprehending national documentation package [NDP] evidence, such that it did not grapple with relevant evidence, and, (iv) failing to convene a hearing. Finally, the Applicant contends that even if these four errors do not individually warrant judicial review, they do in their cumulative effect.
- [7] These errors with respect to findings on the first prong of the of the IFA test are reviewable on the basis of reasonability (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [Vavilov]; *Gonzalez Vargas v Canada (Citizenship and Immigration)*, 2025 FC 419 at para 19). III. Analysis [8] For an IFA to exist, under the first prong of the test, the RPD must find, on a balance of probabilities, that a refugee claimant will not face a serious possibility of persecution in the proposed IFA, and under the second prong, that it is not unreasonable for them to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 711, 1991 CanLII 13517 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at 597, 1993 CanLII 3011 (FCA)).
- [9] The Applicant acknowledges that the "RAD[s] reasons were detailed and comprehensive and to be commended", but argues they overlooked important evidence, namely the amount he owes to the CJNG. The Applicant argues that the RPD and RAD both "reasoned under the assumption that the amount of money which the Applicant 'owes' to the CJNG is 10,000 pesos when in fact the Applicant's Basis of Claim [BOC] narrative clearly states that he was extorted for \$10,000 USD worth of money per month and that the CJNG men took from his

business premises \$22,000 USD.”

- [10] Further, the Applicant attests that he now owes about \$250,000 USD “due to the passage of time and unpaid monthly debt”, and that he is at further risk if returned to Mexico because the CJNG would perceive him as “rich” due to living in Canada. I note that this argument, as conceded by counsel for the Applicant, was only contained in his client’s Affidavit in support of this judicial review, and was not raised before the RAD.
- [11] The Applicant’s BOC referencing “\$10,000” was before both the RPD and RAD. Any potential error was not put to the RAD on appeal (in fact, his memorandum referenced “pesos”, as did the Applicant in his testimony before the RPD). While the Respondent did not flag this concern, these two arguments are raised for the first time on judicial review. I accordingly decline to consider these new arguments (*Canada (Citizenship and Immigration) v RK*, 2016 FCA 272 at para 6). The RAD cannot be faulted for failing to respond to arguments not raised before it (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 875 at para 45). The currency does not change the reasonability of the detailed and meticulous analysis done by the RAD in its decision of approximately 20 pages.
- [12] I thus find no reviewable error regarding the factual basis of what both the RPD and the RAD found. Even if – as the Applicant alleges – the currency was a sum payable in USD, it is immaterial viewed in light of the all the evidence.
- [13] In my view, the RAD left no stone unturned, including evaluating the RPD’s concerns related to the Applicant’s cousin’s text message. The RAD accepted new evidence the cousin submitted to explain the text message the RPD had taken issue with, and overturned the RPD’s findings in that regard.
- [14] Regarding the second issue, I do not find that the Board made any negative plausibility findings. Indeed, both parties agreed that the RAD had abandoned any concerns that the RPD had found. Rather, the RAD, in determining that the Cartel lacked any demonstrated motivation to pursue the Applicant in the IFA was effectively saying that the Applicant had insufficient evidence to find otherwise. That, in my view, was a reasonable conclusion given the objective evidence before it.
- [15] Viewed holistically, the RAD found the Applicant’s arguments that he would be targeted for his debt or further extortion to be speculative given the various reasons it explained, including that family had not been pursued (including his sister, who still lived in his house). No further contact by the Cartel had occurred since the threats in 2022. I find that the RAD reasonably explained its conclusion, based on the fact that the evidence showed on a balance of probability that the Cartel had the means but not the motivation to pursue the Applicant in the IFA.
- [16] On the third issue raised by the Applicant, I find that the RAD comprehensively considered the evidence regarding the Cartel, as well as the profile of the Applicant. This is far from a case which the Court sees where evidence has been selectively applied or overlooked. The

Board clearly grappled with and applied the evidence – both that presented by the Applicant, as well as that within the NDP. It acknowledged that the CJNG had the means to locate the Applicant and that he fit the profile of someone they would be interested in, but held there was insufficient evidence to demonstrate it still had the motivation to pursue him. The fact that the Applicant would prefer that the Board evaluated the evidence differently or weighted certain evidence more strongly in favour of the Applicant does not signal an error under the constraints of reasonableness as confirmed by *Vavilov*. After all, on the central point asserted by the Applicant – that the RAD overlooked evidence of the Cartel's establishment in Merida – the Board noted CJNG's reach in that city, at paragraphs 23, 30-23, and 48 of the Decision.

- [17] Regarding the fourth issue that the RAD unreasonably failed to hold a hearing, there was no need to do so since the RAD overturned the credibility finding of the RPD with new evidence. It was thus reasonable under section 110(6) of the Immigration and Refugee Protection Act, SC 2001, c27, not to hold a hearing (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 71).
- [18] On the Applicant's final argument regarding the cumulative effect of the RAD's findings, given that the four principal issues raised do not contain any reviewable errors, it follows that there are no cumulative effects of the individual findings that warrant the decision being overturned.
- [19] As a final observation, I note that several recent cases have held that the RAD reasonably considered the passage of time and lack of contact with family members in Mexico in finding an IFA existed in Merida (*Guillen v Canada (Citizenship and Immigration)*, 2025 FC 151; *Martinez Guzman v Canada (Citizenship and Immigration)*, 2024 FC 1688; *Hernandez Gutierrez v Canada (Citizenship and Immigration)*, 2024 FC 1676; *Torres Zamora v Canada (Citizenship and Immigration)*, 2022 FC 1071; *Ortiz Ortiz v Canada (Citizenship and Immigration)*, 2022 FC 1066). The Applicant submits these cases are distinguishable on the facts. I disagree.
- [20] I also wish to acknowledge Mr. Tomasevic's very able representation of the Applicant given the fact that he only took over carriage of the file after the RAD Decision. His client was well served, despite the outcome. IV. Conclusion [21] The application is dismissed. Neither party has proposed a question for certification and I agree none arises. JUDGMENT in IMM-6629-24 THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified, and there is no Order as to costs. blank "Alan S. Diner" blank Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-6629-24 STYLE OF CAUSE: EUSEBIO OSORIO CORTES v MCI PLACE OF HEARING: Toronto, ONTARIO DATE OF HEARING: March 25, 2025 JUDGMENT AND REASONS: DINER J. DATED: April 1, 2025 APPEARANCES: Milan Tomasevic For The Applicant John Locar For The Respondent SOLICITORS OF RECORD: Law Office of Milan Tomasevic Barristers and Solicitor Mississauga, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

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